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

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2020

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File Number: **001-38163**

PetIQ, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**35-2554312**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
923 S. Bridgeway Pl. Eagle, Idaho (Address of principal executive offices)	83616 (Zip Code)

208-939-8900
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Trading Symbol	Name of Each Exchange on Which Registered
Class A Common Stock, $0.001 par value	**PETQ**	**The Nasdaq Global Select Market**

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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

Large accelerated filer ☐ Accelerated filer ☒

Non-accelerated filer ☐ Smaller reporting company☐

Emerging growth company ☒

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). ☐ Yes ☒ No

As of August 7, 2020, we had 24,918,092 shares of Class A common stock and 3,653,763 shares of Class B common stock outstanding.

PetIQ, Inc.

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PetIQ, Inc.

Condensed Consolidated Balance Sheets

(Unaudited, in 000's except for per share amounts)

	June 30, 2020	December 31, 2019
Current assets		
Cash and cash equivalents	$ 117,023	$ 27,272
Accounts receivable, net	145,323	71,377
Inventories	111,300	79,703
Other current assets	9,510	7,071
Total current assets	383,156	185,423
Property, plant and equipment, net	57,471	52,525
Operating lease right of use assets	19,768	20,785
Deferred tax assets	58,660	59,780
Other non-current assets	1,955	3,214
Intangible assets, net	115,362	119,956
Goodwill	230,658	231,045
Total assets	$ 867,030	$ 672,728
Liabilities and equity		
Current liabilities		
Accounts payable	$ 91,492	$ 51,538
Accrued wages payable	10,950	9,082
Accrued interest payable	1,198	83
Other accrued expenses	13,017	3,871
Current portion of operating leases	4,717	4,619
Current portion of long-term debt and finance leases	3,855	3,821
Total current liabilities	125,229	73,014
Operating leases, less current installments	15,552	16,580
Long-term debt, less current installments	357,795	251,376
Finance leases, less current installments	2,840	3,331
Other non-current liabilities	2,523	117
Total non-current liabilities	378,710	271,404
Commitments and contingencies (Note 13)		
Equity		
Additional paid-in capital	344,270	300,120
Class A common stock, par value $0.001 per share, 125,000 shares authorized; 24,658 and 23,554 shares issued and outstanding, respectively	24	23
Class B common stock, par value $0.001 per share, 100,000 shares authorized; 3,770 and 4,752 shares issued and outstanding, respectively	4	5
Accumulated deficit	(19,897)	(15,903)
Accumulated other comprehensive loss	(1,774)	(1,131)
Total stockholders' equity	322,627	283,114
Non-controlling interest	40,464	45,196
Total equity	363,091	328,310
Total liabilities and equity	$ 867,030	$ 672,728

See accompanying notes to the condensed consolidated financial statements.

PetIQ, Inc.
Condensed Consolidated Statements of (Loss) Income
(Unaudited, in 000's except for per share amounts)

	For the Three Months Ended		For the Six Months Ended	
	June 30, 2020	**June 30, 2019**	**June 30, 2020**	**June 30, 2019**
Product sales	$ 264,307	$ 194,606	$ 430,587	$ 320,690
Services revenue	2,675	26,028	23,173	48,380
Total net sales	266,982	220,634	453,760	369,070
Cost of products sold	217,469	167,845	352,248	275,909
Cost of services	7,329	17,889	27,174	33,531
Total cost of sales	224,798	185,734	379,422	309,440
Gross profit	42,184	34,900	74,338	59,630
Operating expenses				
General and administrative expenses	38,492	24,450	70,182	44,988
Contingent note revaluations gain	—	1,460	—	780
Operating income	3,692	8,990	4,156	13,862
Interest expense, net	(5,967)	(2,242)	(10,671)	(4,179)
Foreign currency gain (loss), net	52	49	125	(73)
Other income, net	324	2	689	15
Total other expense, net	(5,591)	(2,191)	(9,857)	(4,237)
Pretax net (loss) income	(1,899)	6,799	(5,701)	9,625
Income tax (expense) benefit	(61)	(881)	1,108	(1,381)
Net (loss) income	(1,960)	5,918	(4,593)	8,244
Net (loss) income attributable to non-controlling interest	(69)	2,103	(599)	2,818
Net (loss) income attributable to PetIQ, Inc.	$ (1,891)	$ 3,815	$ (3,994)	$ 5,426
Net (loss) income per share attributable to PetIQ, Inc. Class A common stock				
Basic	$ (0.08)	$ 0.17	$ (0.17)	$ 0.25
Diluted	$ (0.08)	$ 0.17	$ (0.17)	$ 0.24
Weighted Average shares of Class A common stock outstanding				
Basic	24,425	22,365	24,077	22,087
Diluted	24,425	22,597	24,077	22,284

See accompanying notes to the condensed consolidated financial statements.

PetIQ, Inc.
Condensed Consolidated Statements of Comprehensive (Loss) Income
(Unaudited, in 000's)

	For the Three Months Ended		For the Six Months Ended	
	June 30, 2020	**June 30, 2019**	**June 30, 2020**	**June 30, 2019**
Net (loss) income	$ (1,960)	$ 5,918	$ (4,593)	$ 8,244
Foreign currency translation adjustment	(104)	(526)	(678)	(27)
Comprehensive (loss) income	(2,064)	5,392	(5,271)	8,217
Comprehensive (loss) income attributable to non-controlling interest	(71)	1,998	(694)	2,806
Comprehensive (loss) income attributable to PetIQ	$ (1,993)	$ 3,394	$ (4,577)	$ 5,411

See accompanying notes to the condensed consolidated financial statements.

PetIQ, Inc.
Condensed Consolidated Statements of Cash Flows
(Unaudited, in 000's)

	For the Six Months Ended June 30,	
	2020	**2019**
Cash flows from operating activities		
Net (loss) income	$ (4,593)	$ 8,244
Adjustments to reconcile net (loss) income to net cash used in operating activities		
Depreciation and amortization of intangible assets and loan fees	11,797	6,056
Gain on disposition of property, plant, and equipment	(369)	(62)
Stock based compensation expense	4,402	3,146
Deferred tax adjustment	(1,109)	1,638
Contingent note revaluation	—	780
Other non-cash activity	65	56
Changes in assets and liabilities		
Accounts receivable	(74,138)	(40,218)
Inventories	(31,627)	(6,294)
Other assets	(1,073)	1,250
Accounts payable	39,528	6,656
Accrued wages payable	1,847	1,407
Other accrued expenses	12,766	(717)
Net cash used in operating activities	(42,504)	(18,058)
Cash flows from investing activities		
Proceeds from disposition of property, plant, and equipment	429	69
Purchase of property, plant, and equipment	(10,425)	(1,730)
Net cash used in investing activities	(9,996)	(1,661)
Cash flows from financing activities		
Proceeds from issuance of convertible notes - liability component	90,465	—
Proceeds from issuance of convertible notes - equity component	53,285	—
Payment for Capped Call options	(14,821)	—
Proceeds from issuance of long-term debt	457,200	323,144
Principal payments on long-term debt	(438,874)	(331,856)
Payment of financing fees on Convertible Notes	(5,819)	—
Tax distributions to LLC Owners	(46)	(1,378)
Principal payments on finance lease obligations	(761)	(737)
Payment of deferred financing fees and debt discount	(275)	(50)
Tax withholding payments on Restricted Stock Units	(186)	—
Exercise of options to purchase class A common stock	2,171	798
Net cash provided by (used in) financing activities	142,339	(10,079)
Net change in cash and cash equivalents	89,839	(29,798)
Effect of exchange rate changes on cash and cash equivalents	(88)	2
Cash and cash equivalents, beginning of period	27,272	66,360
Cash and cash equivalents, end of period	$ 117,023	$ 36,564

See accompanying notes to the condensed consolidated financial statements.

PetIQ, Inc.
Condensed Consolidated Statements of Cash Flows, Continued
(Unaudited, in 000's)

Supplemental cash flow information	For the Six Months Ended June 30, 2020	2019
Interest paid	$ 8,106	$ 4,454
Net change in property, plant, and equipment acquired through accounts payable	(160)	(164)
Finance lease additions	381	315
Net change of deferred tax asset from step-up in basis	5,786	6,093
Income taxes paid, net of refunds	(46)	197
Accrued tax distribution	310	1,054

See accompanying notes to the consolidated financial statements.

PetIQ, Inc.
Condensed Consolidated Statements of Equity
(Unaudited, in 000's)

	Three months ended June 30, 2020								
	Accumulated Deficit	Accumulated Other Comprehensive Loss	Class A Common		Class B Common		Additional Paid-in Capital	Non-controlling Interest	Total Equity
			Shares	Dollars	Shares	Dollars			
Balance - March 31, 2020	$ (18,006)	$ (1,655)	24,318	$ 24	4,049	$ 4	$ 312,874	$ 38,262	$ 331,503
Exchange of LLC Interests held by LLC Owners	—	(17)	279	—	(279)	—	2,067	(2,050)	—
Equity component of Convertible Notes, net of offering costs and tax	—	—	—	—	—	—	36,597	6,519	43,116
Payment for capped call share options	—	—	—	—	—	—	(12,580)	(2,241)	(14,821)
Net increase in deferred tax asset from LLC Interest transactions	—	—	—	—	—	—	2,585	—	2,585
Accrued tax distributions	—	—	—	—	—	—	—	(206)	(206)
Other comprehensive income	—	(102)	—	—	—	—	—	(2)	(104)
Stock based compensation expense	—	—	—	—	—	—	1,594	250	1,844
Exercise of Options to purchase Common Stock	—	—	54	—	—	—	1,169	—	1,169
Issuance of stock vesting of RSU's, net of tax withholdings	—	—	7	—	—	—	(37)	—	(37)
Net loss	(1,891)	—	—	—	—	—	—	(69)	(1,960)
Balance - June 30, 2020	$ (19,897)	$ (1,774)	24,658	$ 24	3,770	$ 4	$ 344,270	$ 40,464	$ 363,091

	Six months ended June 30, 2020								
	Accumulated Deficit	Accumulated Other Comprehensive Loss	Class A Common		Class B Common		Additional Paid-in Capital	Non-controlling Interest	Total Equity
			Shares	Dollars	Shares	Dollars			
Balance - January 1, 2020	$ (15,903)	$ (1,131)	23,554	$ 23	4,752	$ 5	$ 300,120	$ 45,196	$ 328,310
Exchange of LLC Interests held by LLC Owners	—	(60)	982	1	(982)	(1)	8,732	(8,672)	—
Equity component of Convertible Notes, net of offering costs and tax	—	—	—	—	—	—	36,597	6,519	43,116
Payment for capped call share options	—	—	—	—	—	—	(12,580)	(2,241)	(14,821)
Net increase in deferred tax asset from LLC Interest transactions	—	—	—	—	—	—	5,786	—	5,786
Accrued tax distributions	—	—	—	—	—	—	—	(310)	(310)
Other comprehensive income	—	(583)	—	—	—	—	—	(95)	(678)
Stock based compensation expense	—	—	—	—	—	—	3,736	666	4,402
Exercise of Options to purchase Common Stock	—	—	100	—	—	—	2,171	—	2,171
Issuance of stock vesting of RSU's, net of tax withholdings	—	—	22	—	—	—	(292)	—	(292)
Net loss	(3,994)	—	—	—	—	—	—	(599)	(4,593)
Balance - June 30, 2020	$ (19,897)	$ (1,774)	24,658	$ 24	3,770	$ 4	$ 344,270	$ 40,464	$ 363,091

Note that certain figures shown in the tables above may not recalculate due to rounding.

See accompanying notes to the condensed consolidated financial statements.

PetIQ, Inc.
Condensed Consolidated Statements of Equity (continued)
(Unaudited, in 000's)

	Three months ended June 30, 2019								
	Retained Earnings/ Accumulated Deficit	Accumulated Other Comprehensive Loss	Class A Common		Class B Common		Additional Paid-in Capital	Non-controlling Interest	Total Equity
			Shares	Dollars	Shares	Dollars			
Balance - March 31, 2019	$ (2,839)	$ (941)	22,157	$ 22	6,028	$ 6	$ 271,916	$ 60,418	$ 328,582
Exchange of LLC Interests held by Continuing LLC Owners	—	35	566	—	(566)	1	5,759	(5,794)	—
Net increase in deferred tax asset from LLC Interest transactions	—	—	—	—	—	—	2,955	—	2,955
Accrued tax distributions	—	—	-	—	—	—	—	(797)	(797)
Other comprehensive loss	—	(421)	—	—	—	—	-	(105)	(526)
Stock based compensation expense	—	—	—	—	—	—	1,230	332	1,562
Exercise of Options to purchase Common Stock	—	—	22	—	—	—	483	—	483
Issuance of stock for vesting of RSU's	—	—	5	—	—	—	—	—	—
Net income	3,815	—	—	—	—	—	—	2,103	5,918
Balance - June 30, 2019	$ 976	$ (1,327)	22,750	$ 22	5,462	$ 7	$ 282,343	$ 56,157	$ 338,177

	Six months ended June 30, 2019								
	Retained Earnings/ (Accumulated Deficit)	Accumulated Other Comprehensive Loss	Class A Common		Class B Common		Additional Paid-in Capital	Non-controlling Interest	Total Equity
			Shares	Dollars	Shares	Dollars			
Balance - January 1, 2019	$ (4,450)	$ (1,316)	21,620	$ 22	6,547	$ 7	$ 262,219	$ 64,496	$ 320,977
Exchange of LLC Interests held by Continuing LLC Owners	—	4	1,085	—	(1,085)	—	10,808	(10,812)	—
Net increase in deferred tax asset from LLC Interest transactions	—	—	—	—	—	—	6,093	—	6,093
Accrued tax distributions	—	—	-	—	—	—	—	(1,054)	(1,054)
Other comprehensive loss	—	(15)	—	—	—	—	—	(12)	(27)
Stock based compensation expense	—	—	—	—	—	—	2,425	721	3,146
Exercise of Options to purchase Common Stock	—	—	38	—	—	—	798	—	798
Issuance of stock for vesting of RSU's	—	—	7	—	—	—	—	—	—
Net income	5,426	—	—	—	—	—	—	2,818	8,244
Balance - June 30, 2019	$ 976	$ (1,327)	22,750	$ 22	5,462	$ 7	$ 282,343	$ 56,157	$ 338,177

Note that certain figures shown in the tables above may not recalculate due to rounding.

See accompanying notes to the condensed consolidated financial statements.

PetIQ Inc.
Notes to the Condensed Consolidated Financial Statements (unaudited)

Note 1 – Principal Business Activity and Significant Accounting Policies

Principal Business Activity and Principles of Consolidation

PetIQ is a leading pet medication and wellness company delivering a smarter way for pet parents to help their pets live their best lives through convenient access to affordable veterinary products and services. We engage with customers through more than 60,000 points of distribution across retail, including veterinary, and e-commerce channels with our branded distributed medications, which is further supported by our own world-class medication manufacturing facility in Omaha, Nebraska. Our national service platform, VIP Petcare ("VIP"), operates in over 3,400 retail partner locations in 41 states, providing cost effective and convenient veterinary wellness services. PetIQ believes that pets are an important part of the family and deserve the best products and care we can give them.

We have two reporting segments: (i) Products; and (ii) Services. The Products segment consists of our manufacturing and distribution business. The Services segments consists of veterinary services, and related product sales, provided by the Company directly to consumers.

We are the sole managing member of PetIQ Holdings, LLC ("HoldCo"), a Delaware limited liability company, which is the sole member of PetIQ, LLC ("Opco") and, through Holdco, operate and control all of the business and affairs of Opco.

The condensed consolidated financial statements as of June 30, 2020 and December 31, 2019 and for the three and six months ended June 30, 2020 and 2019 are unaudited. The condensed consolidated balance sheet as of December 31, 2019 has been derived from the audited financial statements at that date but does not include all of the disclosures required by U.S. GAAP. These interim condensed consolidated financial statements should be read in conjunction with the consolidated financial statements as of and for the year ended December 31, 2019 and related notes thereto included in most recent annual report and filed with the Securities and Exchange Commission ("SEC") on Form 10-K on March 11, 2020. Operating results for the interim periods are not necessarily indicative of the results that may be expected for the full year.

Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of sales and expenses during the reporting period. Actual results could differ from those estimates. Significant items subject to such estimates and assumptions include the useful lives of property, plant, and equipment and intangible assets; the valuation of property, plant, and equipment, intangible assets and goodwill, the valuation of assets and liabilities in connection with acquisitions, the valuation of deferred tax assets, the valuation of inventories, liability and equity allocation of convertible notes, and reserves for legal contingencies.

Fair Value of Financial Instruments

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in an orderly transaction between market participants at the reporting date. The accounting guidance establishes a three-tiered hierarchy, which prioritizes the inputs used in the valuation methodologies in measuring fair value:

Level 1—Quoted prices in active markets for identical assets or liabilities.

Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The categorization of a financial instrument within the valuation hierarchy is based on the lowest level of input that is significant to the fair value measurement.

The carrying amounts of the Company's financial instruments, including cash, accounts receivable, accounts payable and accrued liabilities, are at cost, which approximates fair value due to their relatively short maturities. The guarantee note is carried at cost, which approximates fair value. Our term loan and revolving credit facility bear interest at a variable interest rate plus an applicable margin and, therefore, carrying amounts approximate fair value.

A portion of the purchase price for the acquisition of VIP, (the "VIP Acquisition") was structured in the form of Contingent Notes (the "Contingent Notes") that vested based on the combined Company EBITDA targets for the years ending December 31, 2018 and 2019. The combined Company EBITDA targets were met for each year end, and as such the Contingent Notes were earned. As such, the portion of the liability as it relates to each Contingent Note became fixed as of December 31, 2019 and 2018, and are carried at cost, which approximates fair value as the stated interest rate is consistent with current market rates. See Note 2 – "Business Combinations" for more information regarding the VIP Acquisition.

The Contingent Notes are included in long-term debt in the accompanying consolidated balance sheets. The Contingent Notes began bearing interest at a fixed rate of 6.75% once they were earned, with the balance payable in July of 2023.

The following table summarizes the Level 3 activity related to the Contingent Notes for the six months ended June 30, 2019:

$'s in 000's		
Balance at beginning of the period	$	2,680
Change in fair value of contingent consideration		780
Balance at the end of the period	$	3,460

On May 19, 2020, the Company issued $143.8 million aggregate principal amount of Convertible Senior Notes due 2026 (the "Notes"). The fair value of the Notes was $194.4 million as of June 30, 2020. The estimated fair value of Notes is based on market rates and the closing trading price of the Notes as of June 30, 2020 and is classified as Level 2 in the fair value hierarchy. As of June 30, the if-converted value of the Convertible notes did not exceed the principal amount. See "Note 5 – Debt" for more information about the Notes.

Cash and Cash Equivalents

Cash equivalents consist of highly liquid investments with an original maturity of three months or less at the date of acquisition. All credit card, debit card and electronic transfer transactions that process in less than seven days are classified as cash and cash equivalents. The Company maintains its cash accounts in various deposit accounts, the balances of which at times exceeded federal deposit insurance limits during the periods presented.

Receivables and Credit Policy

Trade receivables due from customers are uncollateralized customer obligations due under normal trade terms generally requiring payment within 45 days from the invoice date. Accounts receivable are stated at the amount billed to the customer, net of discounts and estimated deductions. The Company does not have a policy for charging interest on overdue customer account balances. The Company provides an allowance for doubtful accounts equal to expected losses. The Company's estimate is based on historical collection experience, a review of the current status of trade accounts receivable, and known current economic conditions including the current and expected impact of COVID-19. Payments of trade receivables are allocated to the specific invoices identified on the customer's remittance advice.

Other receivables consists of various receivables due from vendors, banking partners, and notes receivable from suppliers.

Accounts receivable consists of the following as of:

$'s in 000's	June 30, 2020	December 31, 2019
Trade receivables	$ 140,002	$ 67,551
Other receivables	5,895	4,257
	145,897	71,808
Less: Allowance for doubtful accounts	(574)	(431)
Total accounts receivable, net	$ 145,323	$ 71,377

Inventories

Inventories are stated at the lower of cost or net realizable value. Cost is determined on the first-in first-out (“FIFO”) method and includes estimated rebate amounts. The Company maintains reserves for estimated obsolete or unmarketable inventory based on the difference between the cost of inventory and its estimated net realizable value. In estimating the reserves, management considers factors such as excess or slow-moving inventories, product expiration dating, and market conditions. Changes in these conditions may result in additional reserves. Major components of inventories consist of the following as of:

$'s in 000's	June 30, 2020	December 31, 2019
Raw materials	$ 12,929	$ 10,675
Work in progress	1,782	1,717
Finished goods	96,589	67,311
Total inventories	$ 111,300	$ 79,703

Property, Plant, and Equipment

Property, plant, and equipment are recorded at cost. Expenditures for improvements that significantly add to the productive capacity or extend the useful life of an asset are capitalized. Expenditures for maintenance and repairs are charged to expense as incurred.

Depreciation and amortization is calculated using the straight-line method, based on estimated useful lives of the assets, except for leasehold improvements and finance leased assets which are depreciated over the shorter of the expected useful life or the lease term. Depreciation and amortization expense is recorded in cost of sales and general and administrative expenses in the condensed consolidated statements of operations, depending on the use of the asset. The estimated useful lives of property, plant, and equipment are as follows:

Computer equipment and software	3 years
Vehicle and vehicle accessories	3-5 years
Buildings	33 years
Equipment	2-15 years
Leasehold improvements	2-15 years
Furniture and fixtures	5-10 years

Convertible Debt

We separately account for the liability and equity components of convertible debt instruments that can be settled in cash by allocating the proceeds from issuance between the liability component and the embedded conversion option in accordance with accounting for convertible debt instruments that may be settled in cash (including partial cash settlement) upon conversion. The value of the equity component is calculated by first measuring the fair value of the liability component, using the interest rate of a similar liability that does not have a conversion feature, as of the issuance date. The difference between the proceeds from the convertible debt issuance and the amount measured as the liability

component is recorded as the equity component with a corresponding discount recorded on the debt. We recognize amortization of the resulting discount using the effective interest method as interest expense in our consolidated statements of operations. The equity component is not remeasured as long as it continues to meet the conditions for equity classification. We have allocated issuance costs relating to the Notes incurred to the liability and equity component. Issuance costs attributable to the liability component are being amortized to expense over the respective term of the Notes, and issuance costs attributable to the equity components were netted with the respective equity component in additional paid-in capital. Simultaneously, with the issuance of the Notes, we bought capped call options from certain financial institutions to minimize the impact of potential dilution of our Class A common stock upon conversion of the Notes. The premium for the capped call options was recorded as additional paid-in capital in our consolidated balance sheets as the options are settleable in our Class A common stock.

Revenue Recognition

When Performance Obligations Are Satisfied

A performance obligation is a promise in a contract to transfer a distinct good or service to the customer and is the unit of account for revenue recognition. A contract's transaction price is allocated to each distinct performance obligation and recognized as revenue when, or as, the performance obligation is satisfied. The Company's performance obligations are product sales and the delivery of veterinary services.

Revenue is generally recognized for product sales on a point in time basis when product control is transferred to the customer. In general, control transfers to the customer when the product is shipped or delivered to the customer based upon applicable shipping terms, as the customer can direct the use and obtain substantially all of the remaining benefits from the asset at this point in time.

The Company determined that certain products manufactured to a customer's specifications do not have an alternative future use at a reasonable profit margin due to costs associated with reworking, transporting and repackaging these products. These products are produced subject to purchase orders that include an enforceable right to payment. Therefore the Company determined that revenue on these products would be recognized over time, as the products are produced. This represents a minor subset of the products the Company manufactures.

Revenue is recognized for services at the time the service is delivered. Customer contracts generally do not include more than one performance obligation. When a contract does contain more than one performance obligation, we allocate the contract's transaction price to each performance obligation based on its relative standalone selling price. The standalone selling price for each distinct good is generally determined by directly observable data.

Incentives in the form of cash paid to the customer (or a reduction of a customer cash payment to us) typically are recognized as a reduction of sales unless the incentive is for a distinct benefit that we receive from the customer (e.g., advertising or marketing).

The performance obligations in our contracts are satisfied within one year. As such, we have not disclosed the transaction price allocated to remaining performance obligations as of June 30, 2020.

Significant Payment Terms

Our customer contracts identify the product, quantity, price, payment and final delivery terms. Payment terms usually include early pay discounts. We grant payment terms consistent with industry standards. Although some payment terms may be more extended, no terms beyond one year are granted at contract inception. As a result, we do not adjust the promised amount of consideration for the effects of a significant financing component because the period between our transfer of a promised good or service to a customer and the customer's payment for that good or service will be one year or less.

Shipping

All shipping and handling costs associated with outbound freight are accounted for as fulfillment costs and are included in the cost of sales. This includes shipping and handling costs after control over a product has transferred to a customer.

Variable Consideration

In addition to fixed contract consideration, most contracts include some form of variable consideration. The most common forms of variable consideration include discounts, rebates, and sales returns and allowances. Variable consideration is treated as a reduction in revenue when product revenue is recognized. Depending on the specific type of variable consideration, we use either the expected value or most likely amount method to determine the variable consideration. We believe there will not be significant changes to our estimates of variable consideration when any related uncertainties are resolved with our customers. The Company reviews and updates its estimates and related accruals of variable consideration each period based on the terms of the agreements, historical experience, and any recent changes in the market. Any uncertainties in the ultimate resolution of variable consideration due to factors outside of the Company’s influence are typically resolved within a short timeframe therefore not requiring any additional constraint on the variable consideration.

Trade marketing expense, consisting primarily of customer pricing allowances and merchandising funds are offered through various programs to customers and are designed to promote our products. They include the cost of in-store product displays, feature pricing in retailers' advertisements and other temporary price reductions. These programs are offered to our customers both in fixed and variable (rate per case) amounts. The ultimate cost of these programs depends on retailer performance and is subject to management estimates.

Certain retailers require the payment of product introductory fees in order to obtain space for the Company's products on the retailer's store shelves. This cost is typically a lump sum and is determined using the expected value based on the contract between the two parties.

Both trade marketing expense and product introductory fees are recognized as reductions of revenue at the time the transfer of control of the associated products occurs. Accruals for expected payouts, or amounts paid in advance, under these programs are included as accounts payable or other current assets in the Condensed Consolidated Balance Sheets.

Warranties & Returns

PetIQ provides all customers with a standard or assurance type warranty. Either stated or implied, the Company provides assurance the related products will comply with all agreed-upon specifications and other warranties provided under the law. No significant services beyond an assurance warranty are provided to customers.

The Company does not grant a general right of return. However, customers may return defective or non-conforming products. Customer remedies may include either a cash refund or an exchange of the product. As a result, the right of return and related refund liability is estimated and recorded as a reduction in revenue. This return estimate is reviewed and updated each period and is based on historical sales and return experience.

Contract balances

Contract asset and liability balances as of June 30, 2020 and December 31, 2019 are immaterial. The Company does not have significant deferred revenue or unbilled receivable balances.

Cost of Services

Cost of Services are comprised of all service and product costs related to the delivery of veterinary services, including but not limited to, salaries of veterinarians, technicians and other clinic based personnel, transportation and delivery costs, rent, occupancy costs, supply costs, depreciation and amortization of clinic assets, certain marketing and promotional expenses and costs of goods sold.

Research and Development and Advertising Costs

Research and development and advertising costs are expensed as incurred and are included in general and administrative expenses. Research and development costs amounted to $0.9 million and $1.9 million for three and six months ended June 30, 2020, respectively, and $0.1 million and $0.2 million for the three and six months ended June 30, 2019, respectively. Advertising costs were $3.3 million and $5.8 million for the three and six months ended June 30, 2020, respectively, and $1.0 million and $1.7 million for the three and six months ended June 30, 2019, respectively.

Collaboration Agreements

On July 8, 2019, the Company, through Opco, completed the acquisition of all the outstanding stock of Sergeant's Pet Care Products, Inc. ("Sergeant's"), d/b/a Perrigo Animal Health, including any assets related to Perrigo Company plc's animal health business (the "Perrigo Animal Health Acquisition"). In connection with the closing, we entered into a product development and asset purchase agreement with a third party for certain product formulations in development by the third party. The Company may make up to $20.6 million of payments over the course of the next several years contingent on achievement of certain development and regulatory approval milestones. Product development costs are expensed as incurred or as milestone payments become probable. There can be no assurance that these products will be approved by the U.S. Food and Drug Administration ("FDA") on the anticipated schedule or at all. Consideration paid after FDA approval will be capitalized and amortized to cost of goods sold over the economic life of each product. The expenses paid prior to FDA approval will be included in General and Administrative expenses on the Consolidated Statements of (Loss) Income. No costs were incurred during the six months ended June 30, 2020 or 2019.

Income taxes

The Company records a tax provision for the anticipated tax consequences of the reported results of operations. The provision for income taxes is computed using the asset and liability method, under which deferred tax assets and liabilities are recognized for the expected future tax consequences of temporary differences between the financial reporting and tax basis of assets and liabilities, and for operating losses and tax credit carryforwards. Deferred tax assets and liabilities are measured using the currently enacted tax rates that apply to taxable income in effect for the years in which those tax assets are expected to be realized or settled. The Company may record a valuation allowance, if conditions are applicable, to reduce deferred tax assets to the amount that is believed more likely than not to be realized.

Non-controlling interest

The non-controlling interests on the condensed consolidated statements of (loss) income represents the portion of earnings or loss attributable to the economic interest in the Company's subsidiary, Holdco, held by the non-controlling holders of Class B common stock and limited liability company interests in Holdco. Non-controlling interests on the condensed consolidated balance sheet represents the portion of net assets of the Company attributable to the non-controlling holders of Class B common stock and limited liability company interests in Holdco, based on the portion of the LLC Interests owned by holders of Class B common stock and limited liability company interests in Holdco. As of June 30, 2020 and December 31, 2019 the non-controlling interest was approximately 13.3% and 16.8%, respectively.

Litigation

The Company is subject to various legal proceedings, claims, litigation, investigations and contingencies arising out of the ordinary course of business. If the likelihood of an adverse legal outcome is determined to be probable and the amount of loss is estimable, then a liability is accrued in accordance with accounting guidance for Contingencies. If the assessment indicates a potentially material loss contingency is not probable but is reasonably possible, or is probable but cannot be estimated, then the nature of the contingent liability, together with an estimate of the range of possible loss if determinable and material, is disclosed. The Company consults with both internal and external legal counsel related to litigation.

Adopted Accounting Standard Updates

Effective January 1, 2020, the Company adopted Accounting Standards Update (“ASU”) No. 2016-13, "Financial Instruments - Credit Losses." This ASU requires an organization to measure all expected credit losses for financial assets, including trade receivables, held at the reporting date based on historical experience, current conditions, and reasonable and supportable information. Organizations will now use forward-looking information to better estimate their credit losses. The Company adopted this ASU using a modified retrospective approach. Under this method of adoption, the Company determined that there was no cumulative-effect adjustment to beginning Retained earnings on the condensed consolidated balance sheet. Adoption of this standard did not impact the Company’s income before income taxes and had no impact on the condensed consolidated statement of cash flows.

In May 2020, the SEC issued Final Rule Release No. 33-10786, which amends the financial statement requirements for acquisitions and dispositions of businesses and related pro forma financial information required under SEC Regulation S-X, Rule *3-05*. The final rule modifies the significance test required in SEC Regulation S-X, Rule 1-02(w) by raising the significance threshold for reporting dispositions of a business from 10% to 20% and by modifying the calculation of the investment and income tests. The Company has early adopted these modifications, which are effective for fiscal years starting after December 31, 2020 with early adoption permitted.

Note 2 – Business Combination

Perrigo Animal Health Acquisition

On July 8, 2019, PetIQ, through Opco, completed the Perrigo Animal Health Acquisition. Sergeant’s is now an indirect wholly-owned subsidiary of the Company.

The fair value of the consideration is summarized as follows:

$'s in 000's	**Fair Value**
Inventories	$ 17,998
Property, plant and equipment	19,568
Other current assets	13,048
Other assets	9,680
Indefinite-lived intangible assets	23,040
Definite-lived intangible assets - 13 year weighted average life	14,480
Goodwill	105,838
Total assets	203,652
Liabilities assumed	19,259
Purchase price	$ 184,393
Cash paid, net of cash acquired	$ (185,090)
Post-closing working capital adjustment	697
Fair value of total consideration transferred	$ (184,393)

The definite-lived intangibles primarily relate to trademarks, customer relationships, developed technology and know-how and in-process research and development intangibles. The $14.5 million represents the fair value and will be amortized over the estimated useful lives of the assets through June 2039. Amortization expense for these definite-lived intangible assets for the three and six months ended June 30, 2020 was $0.6 million and $1.2 million, respectively.

The indefinite-lived intangibles primarily relate to trademarks and in-process research and development. We evaluate goodwill and indefinite-lived intangible assets for impairment on an annual basis and more frequently if an event occurs or circumstances change that would indicate impairment may exist.

Goodwill represents the future economic benefits that do not qualify for separate recognition and primarily includes the assembled workforce and other non-contractual relationships, as well as expected future synergies. Approximately $105.8 million of goodwill is expected to be deductible for tax purposes. Goodwill was allocated to the Products segment.

Pro Forma Combined Statements of Operations (Unaudited)

The following unaudited pro forma combined statements of operations presents the Company's operations as if the Perrigo Animal Health Acquisition and related financing activities had occurred on January 1, 2019. Additionally the share count utilized and Net (loss) income do not account for non-controlling interests. The pro forma combined statements of operations are not necessarily indicative of the results of operations as they would have been had the Perrigo Animal Health Acquisition been effected on the assumed date and are not intended to be a projection of future results: Pro forma results for the three and six months ended June 30, 2019:

($'s in 000's, except per share data)	**3 months**	**Six months**
Net sales	$ 242,982	$ 410,987
Net income	$ 5,112	$ 6,748
Earnings per share:		
Basic	$ 0.23	$ 0.31
Diluted	$ 0.23	$ 0.30

For the six months ended June 30, 2020, the acquired business had Product sales of $58.6 million and pre-tax net income of $19.9 million and are included in the Condensed Consolidated Statements of (Loss) Income. For the three months ended June 30, 2020, the acquired business had Product sales of $34.8 million and pre-tax net income of $13.0 million and are included in the Condensed Consolidated Statements of (Loss) Income.

Note 3 – Property, Plant, and Equipment

Property, plant, and equipment consists of the following at:

$'s in 000's	**June 30, 2020**	**December 31, 2019**
Leasehold improvements	$ 17,375	$ 15,517
Equipment	23,808	23,138
Vehicles and accessories	5,951	6,007
Computer equipment and software	10,062	8,070
Buildings	10,082	10,050
Furniture and fixtures	2,083	1,836
Land	7,067	4,557
Construction in progress	6,718	3,392
	83,146	72,567
Less accumulated depreciation	(25,675)	(20,042)
Total property, plant, and equipment	$ 57,471	$ 52,525

Depreciation expense related to these assets was $3.0 million and $5.9 million for the three and six months ended June 30, 2020, respectively, and $1.5 million and $3.2 million for the three and six months ended June 30, 2019, respectively.

Note 4 – Intangible Assets and Goodwill

Intangible assets consist of the following at:

$'s in 000's	Useful Lives	June 30, 2020	December 31, 2019
Amortizable intangibles			
Certification	7 years	$ 350	$ 350
Customer relationships	12-20 years	89,160	89,232
Patents and processes	5-10 years	4,810	4,928
Brand names	5-15 years	14,962	15,019
Total amortizable intangibles		109,282	109,529
Less accumulated amortization		(17,405)	(13,058)
Total net amortizable intangibles		91,877	96,471
Non-amortizable intangibles			
Trademarks and other		18,016	18,016
In-process research and development		5,469	5,469
Intangible assets, net of accumulated amortization		$ 115,362	$ 119,956

Certain intangible assets are denominated in currencies other than the U.S. Dollar; therefore, their gross and net carrying values are subject to foreign currency movements. Amortization expense for the three months ended June 30, 2020 and 2019 was $2.3 million and $1.3 million, respectively, and $4.5 million and $2.6 million for the six months ended June 30, 2020 and 2019, respectively.

The in-process research and development (“IPRD”), intangible assets represent the value assigned to acquired R&D projects that principally represent rights to develop and sell a product that the Company has acquired which have not yet been completed or approved. The IPRD acquired as part of the Perrigo Animal Health Acquisition is accounted for as an indefinite-lived asset until the product is available for sale and regulatory approval is obtained, or abandonment of the associated research and development efforts. If the research and development efforts are successfully completed, the IPRD would be amortized over its then estimated useful life. The fair value of the IPRD was estimated using the multi-period excess earnings income method. The projected cash flows estimates for the future products were based on certain key assumptions including estimates of future revenues and expenses, taking into account the stage of development at the acquisition date and the resources needed to complete development.

Estimated future amortization expense for each of the following years is as follows:

Years ending December 31, *($'s in 000's)*	
Remainder of 2020	$ 4,479
2021	8,950
2022	9,151
2023	8,793
2024	6,787
Thereafter	53,717

The following is a summary of the changes in the carrying value of goodwill for the period from January 1, 2019 to June 30, 2020:

	Reporting Unit		
($'s in 000's)	**Products**	**Services**	**Total**
Goodwill as of January 1, 2019	77,765	47,264	125,029
Foreign currency translation	178	—	178
Acquisitions	105,838	—	105,838
Goodwill as of December 31, 2019	183,781	47,264	231,045
Foreign currency translation	(387)	—	(387)
Goodwill as of June 30, 2020	$ 183,394	$ 47,264	$ 230,658

Note 5 – Debt

Convertible Notes

On May 19, 2020, the Company issued $143.8 million in aggregate principal amount of 4.00% Convertible Senior Notes pursuant to the indenture (the "Indenture"), dated as of May 19, 2020. The total net proceeds from the Notes offering, after deducting debt issuance costs paid or payable by us, was $137.9 million. The Notes accrue interest at a rate of 4.00% per annum, payable semi-annually in arrears on June 1 and December 1 of each year, beginning on December 1, 2020. The Notes will mature on June 1, 2026, unless earlier repurchased, redeemed or converted. Before January 15, 2026, holders will have the right to convert their Notes only upon the occurrence of certain events. From and after January 15, 2026, holders may convert their Notes at any time at their election until the close of business on the scheduled trading day immediately before the maturity date. The Company will settle conversions by paying or delivering, as applicable, cash, shares of its Class A common stock, or a combination of cash and shares of its Class A common stock, at its election. The initial conversion rate is 33.7268 shares of Class A common stock per $1,000 principal amount of Notes. The conversion rate and conversion price will be subject to customary adjustments upon the occurrence of certain events. In addition, if certain corporate events that constitute a "Make-Whole Fundamental Change" (as defined in the Indenture) occur, then the conversion rate will, in certain circumstances, be increased for a specified period of time.

The Notes are redeemable, in whole or in part, at the Company's option at any time, and from time to time, on or after June 1, 2023 and on or before the 40th scheduled trading day immediately before the maturity date, at a cash redemption price equal to the principal amount of the Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date, but only if the last reported sale price per share of the Company's Class A common stock exceeds 130% of the conversion price on (i) each of at least 20 trading days, whether or not consecutive, during the 30 consecutive trading days ending on, and including, the trading day immediately before the date the Company sends the related redemption notice; and (2) the trading day immediately before the date the Company sends such notice. In addition, calling any Notes will constitute a Make-Whole Fundamental Change with respect to such Notes, which will result in an increase to the conversion rate if such Notes are converted after they are called for redemption.

If certain corporate events that constitute a "Fundamental Change" (as defined in the Indenture) occur, then noteholders may require the Company to repurchase their Notes at a cash repurchase price equal to the principal amount of the Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the fundamental change repurchase date. The definition of Fundamental Change includes certain business combination transactions involving the Company and certain de-listing events with respect to the Company's Class A common stock.

The Notes are the Company's senior, unsecured obligations and are (i) equal in right of payment with the Company's existing and future senior, unsecured indebtedness; (ii) senior in right of payment to the Company's existing and future indebtedness that is expressly subordinated to the Notes; (iii) effectively subordinated to the Company's existing and future secured indebtedness, to the extent of the value of the collateral securing that indebtedness; and (iv) structurally subordinated to all existing and future indebtedness and other liabilities, including trade payables, and (to the extent the Company is not a holder thereof) preferred equity, if any, of the Company's subsidiaries. The Notes contain customary events of default.

In accounting for the issuance of the Notes, the Company separated the Notes into liability and equity components. The carrying amount of the liability component was calculated using a discount rate of 13%, which was determined by measuring the fair value of a similar debt instrument that does not have an associated convertible feature. The amount of the equity component representing the conversion option was $53.3 million and was determined by deducting the fair value of the liablity component from the par value of the Notes. The excess of the principal amount of the liablity component over its carrying amount, or the debt discount, is amortized to interest expense at an annual effective interest rate over the contractual terms of the Notes.

The fair value of the Notes was $194.4 million as of June 30, 2020. The estimated fair value of the Notes is based on market rates and the closing trading price of the Convertible Notes as of June 30, 2020 and is classified as Level 2 in the fair value hierarchy. As of June 30, the if-converted value of the Notes did not exceed the principal amount.

The net carrying amount of the liability component of the Notes was as follows:

($'s in 000's)	**June 30, 2020**
Par value of the Notes	$ 143,750
Unamortized debt discount	(52,595)
Unamortized debt issuance costs	(3,615)
Net carrying amount	$ 87,540

The net carrying amount of the equity component of the Notes was as follows:

($'s in 000's)	**June 30, 2020**
Proceeds allocated to the conversion option	$ 53,285
Deferred tax affect	(8,011)
Issuance costs	(2,158)
Net carrying amount	$ 43,116

The following table sets forth the interest expense recognized related to the Notes:

($'s in 000's)	**For the Three Months Ended June 30, 2020**
Contractual interest expense	$ 671
Amortization of debt issuance costs	689
Amortization of debt discount	47
Total	$ 1,407
Effective interest rate of the liability component	*13.0%*

Capped Call Transactions

On May 14, 2020 and May 19, 2020, the Company entered into capped call transactions (the “Capped Call Transactions”) with two counterparties (the “Option Counterparties”). The Capped Call Transactions cover, subject to anti-dilution adjustments substantially similar to the Notes, the underlying shares of Class A common stock and are intended to reduce, subject to a limit, the potential dilution with respect to the Class A common stock upon conversion of the Notes. The cap price of the Capped Call Transactions is $41.51 per share of Class A common stock, and is subject to certain adjustments under the terms of the Capped Call Transactions.

The Company paid approximately $14.8 million for the Capped Call Transactions, which was recorded as additional paid-in capital, using a portion of the gross proceeds from the sale of the Notes. The capped call is expected to be tax

deductible as the Company elected to integrate the capped call into the Notes for tax purposes. The tax effect on the equity component of the Convertible Notes of $8.0 million was recorded through additional paid-in capital.

A&R Credit Agreement

The Company amended the existing revolving credit agreement of Opco and each of its domestic wholly-owned subsidiaries (the "Amended Revolving Credit Agreement") on July 8, 2019. The Amended Revolving Credit Agreement provides for a secured revolving credit facility of $125 million that matures on July 8, 2024. The borrowers under the Amended Revolving Credit Facility incur fees between 0.375% and 0.50% as unused facility fees, dependent on the aggregate amount borrowed. On May 14, 2020, the Company amended the Amended Revolving Credit Agreement to allow for the Notes described above. Additionally the amendment instituted a Eurodollar floor of 1% to the agreement.

All obligations under the Amended Revolving Credit Agreement are unconditionally guaranteed by HoldCo and, subject to certain exceptions, each of its material current and future domestic wholly-owned subsidiaries. All obligations under the Amended Revolving Credit Agreement, and the guarantees of those obligations, are secured by substantially all of the assets of each borrower and guarantor under the Amended Revolving Credit Agreement, subject to certain exceptions.

The Amended Revolving Credit Agreement contains a number of covenants that, among other things, restrict the ability of the borrowers and guarantors thereunder to (subject to certain exceptions): (i) make investments, loans or advances; (ii) incur additional indebtedness; (iii) create liens on assets; (iv) engage in mergers or consolidations and/or sell assets; (v) pay dividends and distributions or repurchase our equity interests; (vi) repay subordinated indebtedness; (vii) make certain acquisitions; and (viii) other restrictions typical for a credit agreement of this type. As of June 30, 2020, the borrowers and guarantors thereunder were in compliance with these covenants. Although the Company currently expects continued compliance with debt covenants, the impact COVID-19 may negatively affect the Company's ability to comply with these covenants. The Amended Revolving Credit Agreement also contains certain customary affirmative covenants and events of default (including change of control). In addition, the Amended Revolving Credit Agreement contains a minimum fixed charge coverage ratio covenant which is tested if availability under the Amended Revolving Credit Agreement falls below a certain level. As of June 30, 2020, the borrower and guarantors thereunder were in compliance with these covenants.

As of June 30, 2020, $30.0 million was outstanding under the Amended Revolving Credit Agreement. The weighted average interest rate on the Amended Revolving Credit Agreement was 2.3% at June 30, 2020.

A&R Term Loan Credit Agreement

The Company amended and restated the existing term loan credit agreement of Opco (the "A&R Term Loan Credit Agreement") on July 8, 2019. The $220.0 million A&R Term Loan Credit Agreement has an interest rate equal to the Eurodollar rate plus 4.50%. The proceeds of the A&R Term Loan Agreement were used to refinance the existing term loan facility and consummate the Perrigo Animal Health Acquisition.

All obligations under the A&R Term Loan Credit Agreement are unconditionally guaranteed by PetIQ Holdings, LLC and each of its domestic wholly-owned subsidiaries and, subject to certain exceptions, each of its material current and future domestic wholly-owned subsidiaries. All obligations under the A&R Term Loan Credit Agreement, and the guarantees of those obligations, are secured by substantially all of the assets of PetIQ, LLC and each guarantor under the A&R Term Loan Credit Agreement, subject to certain exceptions.

The A&R Term Loan Credit Agreement contains a number of covenants that, among other things, restrict the ability of the borrower and guarantors thereunder to (subject to certain exceptions): (i) make investments, loans or advances; (ii) incur additional indebtedness; (iii) create liens on assets; (iv) engage in mergers or consolidations and/or sell assets; (v) pay dividends and distributions or repurchase our equity interests; (vi) repay subordinated indebtedness; (vii) make certain acquisitions; and (viii) other restrictions typical for a credit agreement of this type. The A&R Term Loan Credit Agreement also contains certain customary affirmative covenants and events of default (including change of control). In addition, the A&R Term Loan Credit Agreement includes a maintenance covenant that requires compliance with a maximum first lien net leverage ratio. The availability of certain baskets and the ability to enter into certain transactions (including our ability

to pay dividends) may also be subject to compliance with secured leverage ratios. As of June 30, 2020, the borrower and guarantors thereunder were in compliance with these covenants.

General Other Debt

The Company entered into a mortgage with a local bank to finance $1.9 million of the purchase price of a commercial building in Eagle, Idaho, in July 2017. The mortgage bears interest at a fixed rate of 4.35% and utilizes a 25 year amortization schedule with a 10 year balloon payment of the balance due at that time.

In connection with the VIP Acquisition, the Company entered into a guarantee note of $10.0 million and the Contingent Notes. As of June 30, 2020, $7.5 million was payable pursuant to the 2018 Contingent Note and $10.0 million was payable pursuant to the 2019 Contingent Note. The guarantee note and the Contingent Notes, have a collective balance of $27.5 million and require quarterly interest payments of 6.75% with the balance payable July 17, 2023. The following represents the Company's long-term debt as of:

$'s in 000's	**June 30, 2020**	**December 31, 2019**
Convertible Notes	$ 143,750	$ —
Term loans	218,350	220,000
Revolving credit facility	30,000	10,000
Mortgage	1,789	1,812
Notes Payable - VIP Acquisition	27,500	27,500
Net discount on debt and deferred financing fees	(61,345)	(5,688)
	$ 360,044	$ 253,624
Less current maturities of long-term debt	(2,249)	(2,248)
Total long-term debt	$ 357,795	$ 251,376

Future maturities of long-term debt, excluding the discount on debt and deferred financing fees, as of June 30, 2020, are as follows:

($'s in 000's)	
Remainder of 2020	$ 1,124
2021	2,250
2022	2,253
2023	29,755
2024	2,257
Thereafter	383,750

The Company incurred debt issuance costs of $0.3 million related to the A&R Credit Agreement during the three and six months ended June 30, 2020. The Company incurred debt issuance costs of $0.1 million related to the A&R Credit Agreement and zero related to the Term Loan during the six months ended June 30, 2019.

The Company incurred debt issuance costs of $5.8 million in May 2020. In accordance with FASB ASC 470, *Debt*, these costs were allocated to debt and equity components in proportion to the allocation of proceeds. $2.2 million of issuance costs were recorded as additional paid-in capital and such amounts are not subject to amortization. The remaining issuance costs of $3.7 million are recorded as debt issuance costs in the net carrying value of the Notes. The debt issuance costs are amortized on an effective interest basis over the term of the Notes and is included in interest

expense, net on the condensed consolidated statements of operations. Future amortization expense for our debt discount and debt issuance costs for the the term of the Convertible Notes is as follows:

($'s in 000's)	**Debt Discounts**	**Debt Issuance Costs**
Remainder of 2020	$ 2,544	$ 175
2021	6,689	460
2022	7,602	522
2023	8,640	594
2024	9,820	675
Thereafter	17,300	1,189

Note 6 – Leases

The Company leases certain real estate for commercial, production, and retail purposes, as well as equipment from third parties. Lease expiration dates are between 2020 and 2026. A portion of leases are denominated in foreign currencies.

For both operating and finance leases, the Company recognizes a right-of-use asset, which represents the right to use the underlying asset for the lease term, and a lease liability, which represents the present value of our obligation to make payments arising over the lease term.

We elected the short-term lease exemption for all leases that qualify. This means leases having an initial term of twelve months or less are not recorded on the balance sheet and the related lease expense is recognized on a straight-line basis over the term of the lease.

The Company's leases may include options to extend or terminate the lease. Renewal options generally range from one to ten years and the options to extend are included in the lease term when it is reasonably certain that we will exercise that option. Some leases have variable payments, however, because they are not based on an index or rate, they are not included in the ROU assets and liabilities. Variable payments for real estate leases primarily relate to common area maintenance, insurance, taxes and utilities. Variable payments for equipment, vehicles, and leases within supply agreements primarily relate to usage, repairs, and maintenance. As the implicit rate is not readily determinable for most of the Company's leases, the Company applies a portfolio approach using an estimated incremental borrowing rate, giving consideration to company specific information and publicly available interest rates for instruments with similar characteristics, to determine the initial present value of lease payments over the lease terms.

	For the Three Months Ended		**For the Six Months Ended**	
$'s in 000's	**June 30, 2020**	**June 30, 2019**	**June 30, 2020**	**June 30, 2019**
Finance lease cost				
Amortization of right-of-use assets	$ 391	$ 411	$ 782	$ 701
Interest on lease liabilities	77	59	159	109
Operating lease cost	1,279	961	3,110	1,871
Variable lease cost[(1)]	78	115	253	187
Short-term lease cost	14	5	19	19
Sublease income	(226)	—	(452)	—
Total lease cost	$ 1,613	$ 1,551	$ 3,871	$ 2,887

(1) Variable lease cost primarily relates to common area maintenance, property taxes and insurance on leased real estate.

Other information related to leases was as follows as of:

	June 30, 2020	December 31, 2019
Weighted-average remaining lease term (years)		
Operating leases	4.65	5.15
Finance leases	2.59	2.73
Weighted-average discount rate		
Operating leases	5.3%	5.3%
Finance leases	5.8%	5.7%

Annual future commitments under non-cancelable leases as of June 30, 2020, consist of the following:

	Lease Obligations	
$'s in 000's	**Operating Leases**	**Finance Leases**
Remainder of 2020	$ 2,983	$ 815
2021	5,232	1,412
2022	4,926	1,222
2023	4,134	1,196
2024	2,609	150
Thereafter	2,998	21
Total minimum future obligations	$ 22,882	$ 4,816
Less interest	(2,613)	(370)
Present value of net future minimum obligations	20,269	4,446
Less current lease obligations	(4,717)	(1,606)
Long-term lease obligations	$ 15,552	$ 2,840

Supplemental cash flow information:

$'s in 000's	**Six Months Ended June 30, 2020**	**Six Months Ended June 30, 2019**
Cash paid for amounts included in the measurement of lease liabilities		
Operating cash flows from finance leases	$ 159	$ 109
Operating cash flows from operating leases	3,058	1,800
Financing cash flows from finance leases	761	737
(Noncash) right-of-use assets obtained in exchange for lease obligations		
Operating leases	2,106	1,566
Finance leases	381	315

Note 7 – Income Tax

As a result of the Company's initial public offering and related reorganization transactions completed in July 2017, the Company held a majority of the economic interest in Holdco and consolidates the financial position and results of Holdco. The remaining ownership of Holdco not held by the Company is considered a non-controlling interest. Holdco is treated as a partnership for income tax reporting. Holdco's members, including the Company, are liable for federal, state, and local income taxes based on their share of Holdco's taxable income.

Our effective tax rate (ETR) from continuing operations was (3.2)% and 19.5% for the three and six months ended June 30, 2020, respectively, and 13.0% and 14.3% for the three and six months ended June 30, 2019, respectively, including discrete items. Income tax expense for the three and six months ended June 30, 2020 and 2019 was different than the U.S federal statutory income tax rate of 21% primarily due to the effect of state taxes, foreign GILTI income

inclusion and various permanent tax differences which are offset partially by the impact of the non-controlling interest income that is not taxable.

The Company has assessed the realizability of the net deferred tax assets as of June 30, 2020 and in that analysis has considered the relevant positive and negative evidence available to determine whether it is more likely than not that some portion or all of the deferred income tax assets will not be realized. The realization of the gross deferred tax assets is dependent on several factors, including the generation of sufficient taxable income prior to the expiration of certain carryforwards. The Company believes that there will be sufficient taxable income in the future that the Company's deferred tax assets will be realized except for the following. The Company has a valuation allowance for certain deferred tax assets of $0.1 million and $0.1 million as of June 30, 2020 and December 31, 2019, respectively. It is possible that some or all of the remaining deferred tax assets could ultimately not be realized in the future if our operations are not able to generate sufficient taxable income. Therefore, a substantial valuation allowance to reduce our deferred tax assets may be required, which would materially increase our tax expense in the period in which the allowance is recognized and would adversely affect our results of operations.

HoldCo makes cash distributions to members to pay taxes attributable to their allocable share of income earned. In the three and six months ended June 30, 2020, the Company made cash distributions of $0.03 million and $0.05 million, respectively. In the three and six months ended June 30, 2019, the Company made cash distributions of $1 thousand and $1.4 million, respectively. Additionally, HoldCo accrues for distributions required to be made related to estimated income taxes. During the three and six months ended June 30, 2020, the Company accrued distributions of $0.2 million and $0.3 million, respectively, and during the three and six months ended June 30, 2019, the Company accrued $0.8 million and $1.1 million, respectively.

On March 27, 2020, the U.S. government enacted the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") which includes temporary changes regarding the prior and future utilization of net operating losses, temporary changes to the prior and future limitations on interest deductions, temporary suspension of certain payment requirements for the employer portion of Social Security taxes, technical corrections from prior tax legislation for tax depreciation of certain qualified improvement property, and the creation of certain refundable employee retention credits. The Company will benefit from the Employee Retention Credits and the payroll tax deferral.

Note 8 – Earnings per Share

Basic and Diluted (Loss) Earnings per Share

Basic earnings (loss) per share of Class A common stock is computed by dividing net (loss) income available to PetIQ by the weighted-average number of shares of Class A common stock outstanding during the period. Diluted (loss) earnings per share of Class A common stock is computed by dividing net (loss) income available to PetIQ by the weighted-average number of shares of Class A common stock outstanding adjusted to give effect to potentially dilutive securities. We use the 'if-converted' method for calculating any potential dilutive effect of the Notes on diluted earnings per share, subject to meeting the criteria for using the treasury stock method in future periods.

The following table sets forth reconciliations of the numerators and denominators used to compute basic and diluted earnings per share of Class A common stock:

(in 000's, except for per share amounts)	Three months ended June 30, 2020	Three months ended June 30, 2019	Six months ended June 30, 2020	Six months ended June 30, 2019
Numerator:				
Net (loss) income	$ (1,960)	$ 5,918	$ (4,593)	$ 8,244
Less: net (loss) income attributable to non-controlling interests	(69)	2,103	(599)	2,818
Net (loss) income attributable to PetIQ, Inc. — basic and diluted	(1,891)	3,815	(3,994)	5,426
Denominator:				
Weighted-average shares of Class A common stock outstanding -- basic	24,425	22,365	24,077	22,087
Dilutive effects of stock options that are convertible into Class A common stock	—	215	—	188
Dilutive effect of RSUs	—	17	—	9
Dilutive effect for conversion of Notes	—	—	—	—
Weighted-average shares of Class A common stock outstanding -- diluted	24,425	22,597	24,077	22,284
(Loss) earnings per share of Class A common stock — basic	$ (0.08)	$ 0.17	$ (0.17)	$ 0.25
(Loss) earnings per share of Class A common stock — diluted	$ (0.08)	$ 0.17	$ (0.17)	$ 0.24

Shares of the Company's Class B common stock do not share in the earnings or losses of the Company and are therefore not participating securities. As such, separate presentation of basic and diluted earnings per share of Class B common stock under the two-class method has not been presented.

For the three and six months ended June 30, 2020 and 2019, all shares of the Company's Class B common stock have not been included in the diluted earnings per share calculation as they have been determined to be anti-dilutive under the if-converted method, respectively.

Additionally, all stock options and restricted stock units and convertible Notes have not been included in the diluted earnings per share calculation for the three and six months ended June 30, 2020, as they have been determined to be anti-dilutive under the treasury stock method. For the three and six months ended June 30, 2019, 1,180 thousand and 1,550 thousand, respectively, stock options and restricted stock units have not been included in the diluted earnings per share calculation as they have been determined to be anti-dilutive under the treasury stock method.

Note 9 – Stock Based Compensation

PetIQ, Inc. Omnibus Incentive Plan

The PetIQ, Inc. Omnibus Incentive Plan, as amended (the "Plan") provides for the grant of various equity-based incentive awards to directors of the Company, employees, and consultants. The types of equity-based awards that may be granted under the Plan include: stock options, stock appreciation rights (SARs), restricted stock, restricted stock units (RSUs), and other stock-based awards. The Company has 3,914 thousand authorized shares under the Plan. As of June 30, 2020, 1,294 thousand shares were available for issuance under the Plan. All awards issued under the Plan may only be settled in shares of Class A common stock.

PetIQ, Inc. 2018 Inducement and Retention Stock Plan for CVC Employees

The PetIQ, Inc. 2018 Inducement and Retention Stock Plan for CVC Employees (the "Inducement Plan") provided for the grant of stock options to employees hired in connection with the VIP Acquisition as employment inducement awards pursuant to NASDAQ Listing Rule 5635(c)(4). The Inducement Plan reserved 800 thousand shares of Class A Common Stock of the Company. As of June 30, 2020, no shares were available for issuance under the Inducement Plan. All awards issued under the Plan may only be settled in shares of Class A common stock.

Stock Options

The Company awards stock options to certain employees and directors under the Plan and previously issued stock options under the Inducement Plan, which are subject to time-based vesting conditions, typically 25% on each anniversary of the grant date until fully vested. Upon a termination of service relationship by the Company, all unvested options will be forfeited and the shares of common stock underlying such awards will become available for issuance under the Plan. The maximum contractual term for stock options is 10 years.

The fair value of these equity awards is amortized to equity based compensation expense over the vesting period, which totaled $1.3 million and $3.5 million for the three and six months ended June 30, 2020, respectively, and $1.3 million and $2.6 million for the three and six months ended June 30, 2019, respectively. All stock based compensation expense is included in general and administrative expenses based on the role of recipients. The fair value of the stock option awards was determined on the grant dates using the Black-Scholes valuation model based on the following weighted-average assumptions for the periods ended June 30, 2020 and 2019:

	June 30, 2020	June 30, 2019
Expected term (years) [1]	6.25	6.25
Expected volatility [2]	33.91 %	35.00 %
Risk-free interest rate [3]	0.72 %	2.74 %
Dividend yield [4]	0.00 %	0.00 %

(1) The Company utilized the simplified method to determine the expected term of the stock options since we do not have sufficient historical exercise data to provide a reasonable basis upon which to estimate expected term.

(2) The expected volatility assumption was calculated based on a peer group analysis of stock price volatility with a look back period consistent with the expected option term.

(3) The risk-free interest rate was based on the U.S. Treasury yield curve in effect at the time of grant, which corresponds to the expected term of the stock options.

(4) The Company has not paid and does not anticipate paying a cash dividend on our common stock.

The weighted average grant date fair value of stock options granted during the period ended June 30, 2020 was $6.70 per option. At June 30, 2020, total unrecognized compensation cost related to unvested stock options was $11.9 million and is expected to be recognized over a weighted-average period of 2.5 years.

	Stock Options (in 000's)	Weighted Average Exercise Price	Aggregate Intrinsic Value (in 000's)	Weighted Average Remaining Contractual Life (years)
Outstanding at December 31, 2019	2,072	$ 24.63	$ 6,266	8.0
Granted	482	19.49		
Exercised	(100)	21.61		
Forfeited	(13)	22.98		
Outstanding at June 30, 2020	2,441	$ 23.75	$ 27,345	7.7
Options exercisable at June 30, 2020	841			

Restricted Stock Units

The Company awards RSUs to certain employees and directors under the Plan, which are subject to time-based vesting conditions. Upon a termination of service relationship by the Company, all unvested RSUs will be forfeited and the shares of common stock underlying such awards will become available for issuance under the Plan. The fair value of RSUs are measured based on the closing fair market value of the Company’s common stock on the date of grant. At June 30, 2020, total unrecognized compensation cost related to unvested RSUs was $7.0 million and is expected to vest over a weighted average 3.2 years.

The fair value of these equity awards is amortized to equity based compensation expense over the vesting period, which totaled $0.5 million and $0.9 million for the three and six months ended June 30, 2020, respectively, and $0.3 million and $0.5 million for the three and six months ended June 30, 2019, respectively. All stock based compensation expense is included in general and administrative expenses based on the role of recipients.

The following table summarizes the activity of the Company's RSUs for the period ended June 30, 2020.

	Number of Shares (in 000's)	Weighted Average Grant Date Fair Value
Outstanding at December 31, 2019	133	$ 28.85
Granted	245	19.49
Settled	(30)	27.32
Forfeited	(1)	32.53
Nonvested RSUs at June 30, 2020	347	$ 22.38

Note 10 – Stockholders' Equity

Exchanges

During the six months ended June 30, 2020 holders of Class B common stock and LLC Interests exercised exchange rights and exchanged 982 thousand Class B common shares and corresponding LLC Interests for newly issued Class A Common Stock. The LLC Agreement generally allows for exchanges on the last day of each calendar month.

Note 11 – Non-Controlling Interests

The following table presents the outstanding LLC Interests and changes in LLC Interests for the periods presented.

	LLC Interests held			% of Total	
$'s in 000's	**LLC Owners**	**PetIQ, Inc.**	**Total**	**LLC Owners**	**PetIQ, Inc.**
As of December 31, 2019	4,752	23,554	28,306	16.8%	83.2%
Stock based compensation adjustments	—	122	122		
Exchange transactions	(982)	982	—		
As of June 30, 2020	3,770	24,658	28,428	13.3%	86.7%

Note that certain figures shown in the table above may not recalculate due to rounding.

For the three and six months ended June 30, 2020 the Company owned a weighted average of 86.0% and 84.9% of Holdco, respectively.

Note 12 – Customer Concentration

The Company has significant exposure to customer concentration. During the three and six months ended June 30, 2020 three customers individually accounted for more than 10% of sales, comprising 54% and 51% of net sales, respectively for such periods. During the three and six months ended June 30, 2019 two customers individually accounted for more than 10% of sales, together comprising 34% of net sales in both such periods.

At June 30, 2020 one Products segment customer individually accounted for more than 10% of outstanding trade receivables, and accounted for 51% of outstanding trade receivables, net. At December 31, 2019 two Products segment customers individually accounted for more than 10% of outstanding trade receivables, and accounted for 61% of outstanding trade receivables, net.

Note 13 – Commitments and Contingencies

Litigation Contingencies

On April 4, 2018, Med Vets, Inc. and Bay Medical Solutions Inc. (collectively "Plaintiffs") filed suit in the United States District Court for the Northern District of California against PetIQ and VIP Petcare Holdings, Inc. for alleged unlawful merger and other antitrust violations. On June 29, 2020, the 9th Circuit Court of Appeals issued an opinion affirming the dismissal of Med Vets' merger challenge. The Plaintiffs have filed for an *en banc* hearing. As no impact to the Company is considered probable or estimable, no litigation reserve has been accrued.

The Company has a supplier who has alleged PetIQ has breached its supply agreement due to the acquisition of Perrigo Animal Health. During July 2020, the Company entered into a Termination, Settlement and Asset Purchase Agreement ("Agreement"). The Agreement called for PetIQ to pay $20.6 million, $2.6 million at signing and $1 million per quarter thereafter. The Agreement terminated the supply agreement that was previously in place, settled all outstanding claims and operations, and allowed PetIQ to purchase certain intellectual property related assets. The Company has estimated the fair value of the payment obligation as $17.5 million, and determined the fair value of the acquired assets to be $9.7 million. The Agreement will allow the Company to manufacture and distribute products out of the Omaha facility (versus previously purchasing them from the supplier), thereby directly benefitting from Omaha's product manufacturing process and improving company profitability. The remainder of the obligation is considered to be a payment to settle the alledged breech of the supply agreement, and as it represents circumstances that existed at June 30, 2020, the Company has accrued the amount as settlement expense included in general and aministrative expenses on the condensed consolidated statement of operations and the related liability as an ather accrued expenses and other non-current liability on the condensed consolidated balance sheet.

The Company records a liability when a particular contingency is probable and estimable and provides disclosure for contingencies that are at least reasonably possible of resulting in a loss including an estimate which we currently cannot make. The Company has not accrued for any contingency at June 30, 2020 and December 31, 2019 as the Company does not consider any contingency to be probable or estimable. The Company expenses legal costs as incurred within general and administrative expenses on the consolidated condensed statements of operations.

Commitments

During the three months ended March 31, 2020, the Company executed an Asset Purchase Agreement (the "Purchase Agreement") to acquire the U.S. rights to Capstar® and CapAction® and related assets (the "Capstar Acquisition") from Elanco US Inc. ("Elanco") for $95 million, plus the cost of certain outstanding finished goods inventory in saleable condition. The Acquisition was completed on July 31, 2020, using cash on hand as a result of the issuance of the Notes in May 2020.

Note 14 – Segments

The Company has two operating segments: Products and Services. The Products segment consists of the Company's manufacturing and distribution business. The Services segment consists of the Company's veterinary services, and related product sales, provided by the Company directly to consumers.

The segments are based on the discrete financial information reviewed by the Chief Operating Decision Maker ("CODM") to make resource allocation decisions and to evaluate performance. We measure and evaluate our reportable segments based on net sales and segment Adjusted EBITDA. We exclude from our segments certain corporate costs and expenses, such as accounting, legal, human resources, information technology and corporate headquarters expenses as our corporate functions do not meet the definition of a segment as defined in the accounting guidance related to segment reporting.

Financial information relating to the Company's operating segments for the three months ended:

$'s in 000's June 30, 2020	Products	Services	Unallocated Corporate	Consolidated
Net Sales	$ 264,307	$ 2,675	$ —	$ 266,982
Adjusted EBITDA	41,851	1,112	(14,657)	28,306
Depreciation expense	1,167	890	926	2,983
Capital expenditures	3,593	940	817	5,350

$'s in 000's June 30, 2019	Products	Services	Unallocated Corporate	Consolidated
Net Sales	$ 194,606	$ 26,028	$ —	$ 220,634
Adjusted EBITDA	21,156	6,804	(7,130)	20,831
Depreciation expense	429	520	579	1,529
Capital expenditures	$ 812	$ 25	$ 11	$ 848

Financial information relating to the Company's operating segments for the six months ended:

$'s in 000's June 30, 2020	Products	Services	Unallocated Corporate	Consolidated
Net Sales	$ 430,587	$ 23,173	$ —	$ 453,760
Adjusted EBITDA	66,130	3,101	(26,467)	42,764
Depreciation expense	2,484	1,737	1,635	5,856
Capital expenditures	5,266	3,773	1,386	10,425

$'s in 000's June 30, 2019	Products	Services	Unallocated Corporate	Consolidated
Net Sales	$ 320,690	$ 48,380	$ —	$ 369,070
Adjusted EBITDA	34,712	12,081	(15,091)	31,703
Depreciation expense	982	1,045	1,156	3,183
Capital expenditures	1,258	306	166	1,730

The following table reconciles Segment Adjusted EBITDA to Net (loss) income for the periods presented.

	For the three months ended		For the six months ended	
$'s in 000's	**June 30, 2020**	**June 30, 2019**	**June 30, 2020**	**June 30, 2019**
Adjusted EBITDA:				
Product	$ 41,851	$ 21,156	$ 66,130	$ 34,712
Services	1,112	6,804	3,101	12,081
Unallocated Corporate	(14,657)	(7,130)	(26,467)	(15,091)
Total Consolidated	28,306	20,831	42,764	31,703
Adjustments:				
Depreciation	(2,983)	(1,529)	(5,856)	(3,183)
Amortization	(2,250)	(1,278)	(4,492)	(2,557)
Interest	(5,967)	(2,242)	(10,671)	(4,179)
Acquisition costs[1]	(146)	(2,889)	(732)	(3,465)
Stock based compensation expense	(1,844)	(1,602)	(4,402)	(3,146)
Non same-store revenue[2]	953	2,155	3,235	3,671
Non same-store costs[2]	(3,698)	(4,045)	(10,098)	(7,296)
Fair value adjustment of contingent note[3]	—	(1,460)	—	(780)
Integration costs and costs of discontinued clinics[4]	(8,850)	(1,142)	(9,304)	(1,142)
Clinic launch expenses[5]	(603)	—	(1,279)	—
Litigation expenses	(384)	—	(433)	—
COVID-19 related costs[6]	(4,433)	—	(4,433)	—
Pretax net (loss) income	$ (1,899)	$ 6,799	$ (5,701)	$ 9,625
Income tax benefit (expense)	(61)	(881)	1,108	(1,381)
Net (loss) income	$ (1,960)	$ 5,918	$ (4,593)	$ 8,244

(1) Acquisition costs include legal, accounting, banking, consulting, diligence, and other out-of-pocket costs related to completed and contemplated acquisitions.

(2) Non same-store revenue and costs relate to Services segment and are from wellness centers, host partners, and regions with less than six full trailing quarters of operating results.

(3) Fair value adjustment on the contingent note represents the non cash adjustment to mark the 2019 Contingent Note to Fair value.

(4) Integration costs and costs of discontinued clinics represent costs related to integrating the acquired businesses, such as personnel costs like severance and signing bonuses, consulting work, contract termination, and IT conversion costs. These costs are primarily in the Products segment and the Corporate segment for personnel costs, legal and consulting expenses, and IT costs.

(5) Clinic launch expenses relate to our Services segment and represent the nonrecurring costs to open new veterinary wellness centers, primarily employee costs, training, marketing, and rent prior to opening for business.

(6) Costs related to maintaining service segment infrastructure, staffing, and overhead related clinics and wellness centers closed due to COVID-19 related health and safety initiatives. Product segment and unallocated corporate costs related to incremental wages paid to essential workers and sanitation costs due to COVID.

Supplemental geographic disclosures are below.

	Six months ended June 30, 2020		
$'s in 000's	**U.S.**	**Foreign**	**Total**
Product sales	$ 428,332	$ 2,255	$ 430,587
Service revenue	23,173	—	23,173
Total net sales	$ 451,505	$ 2,255	$ 453,760

	Six months ended June 30, 2019		
$'s in 000's	**U.S.**	**Foreign**	**Total**
Product sales	$ 317,445	$ 3,245	$ 320,690
Service revenue	48,380	—	48,380
Total net sales	$ 365,825	$ 3,245	$ 369,070

	Three months ended June 30, 2020		
$'s in 000's	**U.S.**	**Foreign**	**Total**
Product sales	$ 263,260	$ 1,047	$ 264,307
Service revenue	2,675	—	2,675
Total net sales	$ 265,935	$ 1,047	$ 266,982

	Three months ended June 30, 2019		
$'s in 000's	**U.S.**	**Foreign**	**Total**
Product sales	$ 192,994	$ 1,612	$ 194,606
Service revenue	26,028	—	26,028
Total net sales	$ 219,022	$ 1,612	$ 220,634

Property, plant, and equipment by geographic location is below.

	June 30, 2020	**December 31, 2019**
United States	$ 56,221	$ 51,397
Europe	1,250	1,128
Total	$ 57,471	$ 52,525

Note 15 – Related Parties

As discussed in Note 7– Income taxes, the Company has accrued tax distributions that are payable to Continuing LLC Owners to facilitate the Continuing LLC Owners periodic estimated tax obligations. At June 30, 2020, and December 31, 2019, the Company had accrued $0.7 million and $0.4 million, respectively, for estimated tax distributions, which are included in accounts payable on the consolidated balance sheets.

As discussed in Note 5– “Debt,” the Company has notes payable to the sellers of VIP, who are significant shareholders of the Company, of $27.5 million in aggregate as of June 30, 2020 and December 31, 2019. The Company had $0.5 million in accrued interest on these notes as of June 30, 2020 and no accrued interest on these notes as of December 31, 2019. The Company paid $0.7 million in the three months ended June 30, 2020 and paid $0.7 million of interest in the six months ended June 30, 2020, respectively and paid $0.3 million and $0.7 million of interest in the three and six months ended June 30, 2019, respectively.

The Company leases office and warehouse space from a company under common control of the sellers of VIP, commencing on January 17, 2018. The Company incurred rent expenses of $0.1 million and $0.2 million in the three and six months ended June 30, 2020, respectively, and $0.1 million and $0.2 million in the three and six months ended June 30, 2019, respectively.

Chris Christensen, the brother of CEO, McCord Christensen, acts as the Company’s agent at Moreton Insurance (“Moreton”), which acts as a broker for a number of the Company’s insurance policies. The Company’s premium expense,

paid to Moreton and subsequently transferred to insurance providers, was $0 million and $0.3 million for the three and six months ended June 30, 2020 and $0 million and $0.1 million for the three and six months ended June 30, 2019. Mr. Chris Christensen was paid a commission of approximately $0 thousand and $18 thousand for the three and six months ended June 30, 2020, respectively, and $0 thousand and $7 thousand for the three and six months ended June 30, 2019, respectively, for the sale of such insurance policies to the Company.

In April 2020, the Company purchased a parcel of land for $2.5 million. The broker for the Company was Colliers International, and the agent was Mike Christensen, the brother of CEO McCord Christensen. Total commission paid to Colliers was approximately $75 thousand.

Note 16 – Subsequent events

On July 31, 2020, the Company closed the Capstar Acquisition. See “Note 13.”

On July 9, 2020, the Company entered into the Agreement. See “Note 13.”

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following is a discussion of our results of operations and current financial condition. This should be read in conjunction with the accompanying unaudited condensed consolidated financial statements and related notes included elsewhere in this Quarterly Report on Form 10-Q and our audited consolidated financial statements for the year ended December 31, 2019 and related notes included in the annual report for PetIQ, Inc., filed with the Securities and Exchange Commission (the "SEC") on Form 10-K for the year ended December 31, 2019. This discussion contains forward-looking statements that reflect our plans, estimates, and beliefs and involve numerous risks and uncertainties. Actual results may differ materially from those contained in any forward-looking statements. See "Cautionary Note Regarding Forward-Looking Statements."

Business Overview

PetIQ is a leading pet medication and wellness company delivering a smarter way for pet parents to help their pets live their best lives through convenient access to affordable veterinary products and services. We engage with customers through more than 60,000 points of distribution across retail and e-commerce channels with our branded distributed medications, which is further supported by our own world-class medication manufacturing facility in Omaha, Nebraska. Our national service platform, VIP Petcare, operates in over 3,400 retail partner locations in 41 states, providing cost effective and convenient veterinary wellness services. PetIQ believes that pets are an important part of the family and deserve the best products and care we can give them.

We have two reporting segments: (i) Products; and (ii) Services. The Products segment consists of our manufacturing and distribution business. The Services segments consists of our veterinary services, and related product sales, provided by the Company directly to consumers.

We are the sole managing member of PetIQ Holdings, LLC ("Holdco"), a Delaware limited liability company, which is the sole member of PetIQ, LLC ("Opco") and, through Holdco, operate and control all of the business and affairs of Opco.

Coronavirus Disease (COVID-19) Considerations

On March 11, 2020, the World Health Organization formally declared the Novel Coronavirus ("COVID-19") outbreak to be a pandemic. The spread of COVID-19 has caused illness, quarantines, cancellation of events and travel, business and school shutdowns, reduction in business activity, widespread unemployment, supply chain interruptions, and overall economic and financial market instability. All states have declared states of emergency and various states and cities have restricted commerce and travel to a varied degree.

We made the strategic and difficult decision to temporarily close all of our veterinarian service clinics effective March 20, 2020 to protect the health and safety of our employees, customers and retail partners. We began reopen veterinary service locations in May 2020 and will continue the reopening, with 95% of wellness centers and mobile clinics expected to be resumed by September 30, 2020. This effort required developing a number of protocols, including curbside service at some locations, procurement of personal protective equipment, training of team members, and more to facilitate our ability to re-open. The Company has determined that veterinary services are an essential business, and as such the Company does not expect an additional large scale disruption once it resumes activites.

The amount of the decrease in business that we will ultimately experience remains uncertain. This is largely due to: (i) existing concerns that many non-essential businesses and employees face permanent closure or heavy reliance on newly-established federal government programs, such as the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act), in order to remain in operation and the ultimate success of these programs remains unknown; and (ii) uncertainty of consumer/pet owner response and more specifically, the timing of engaged demand as the public is reintroduced to our retail environments as government restrictions are lifted or reduced.

Our Products segment has remained in operation at our main three facilities in Springville, Utah, Omaha, Nebraska, and Daytona Beach, Florida, as well as our contract manufacturing partner in Plano, Texas. We have implemented a variety of policies and procedures to ensure the health and safety of our workforce, including staggering break times, adding additional shifts to enhance social distancing, enhancing sanitation procedures, providing personal protective equipment to employees, and requiring social distancing. We also provided a $2 an hour temporary wage increase for our production employees during the three months ended June 30, 2020.

Our corporate and administrative personnel have been fully functional since we closed various administrative offices to employees and the general public, and implemented enhanced social distancing and work-from-home policies. A number of employees returned to these offices during the three months ended June 30, 2020, however a number of employees remain working remotely. We expect to continually review and adjust to local health conditions for the various jurisdictions in which we operate.

We are taking precautions to protect the safety and well-being of our employees while providing uninterrupted deliveries of products to our retailer partners. However, no assurance can be given that these actions will be sufficient, nor can we predict the level of disruption that will occur should the COVID-19 pandemic and its related macro-economic risks continue for an extended period of time. Additional information regarding risks and uncertainties to our business and results of operations related to the COVID-19 pandemic are set forth in Part II, Item 1A of this report.

Recent Developments

During the three months ended March 31, 2020, the Company executed an Asset Purchase Agreement (the "Purchase Agreement") to acquire the U.S. rights to Capstar® and CapAction® and related assets (the "Acquisition") from Elanco US Inc. ("Elanco") for $95 million, plus the cost of certain outstanding finished goods inventory in saleable condition. The Acquisition was completed on July 31, 2020, using cash on hand as a result of the Company's 4.00% Senior Convertible Notes due 2026 (the "Notes") in May 2020. See "Description of Indebtedness."

Results of Operations

The following tables set forth our consolidated statements of income in dollars and as a percentage of net sales for the periods presented:

	For the Three Months Ended		% of Net Sales	
$'s in 000's	**June 30, 2020**	**June 30, 2019**	**June 30, 2020**	**June 30, 2019**
Product sales	$ 264,307	$ 194,606	99.0 %	88.2 %
Services revenue	2,675	26,028	1.0 %	11.8 %
Total net sales	266,982	220,634	100.0 %	100.0 %
Cost of products sold	217,469	167,845	81.5 %	76.1 %
Cost of services	7,329	17,889	2.7 %	8.1 %
Total cost of sales	224,798	185,734	84.2 %	84.2 %
Gross profit	42,184	34,900	15.8 %	15.8 %
General and administrative expenses	38,492	24,450	14.4 %	11.1 %
Contingent note revaluations loss	—	1,460	— %	0.7 %
Operating income	3,692	8,990	1.4 %	4.1 %
Interest expense, net	(5,967)	(2,242)	(2.2)%	(1.0)%
Foreign currency loss, net	52	49	0.0 %	0.0 %
Other income, net	324	2	0.1 %	0.0 %
Total other expense, net	(5,591)	(2,191)	(2.1)%	(1.0)%
Pretax net (loss) income	(1,899)	6,799	(0.7)%	3.1 %
Provision for income taxes	(61)	(881)	(0.0)%	(0.4)%
Net (loss) income	$ (1,960)	$ 5,918	(0.7)%	2.7 %

	For the Six Months Ended		% of Net Sales	
$'s in 000's	**June 30, 2020**	**June 30, 2019**	**June 30, 2020**	**June 30, 2019**
Product sales	$ 430,587	$ 320,690	94.9 %	86.9 %
Service revenue	23,173	48,380	5.1 %	13.1 %
Total net sales	453,760	369,070	100.0 %	100.0 %
Cost of products sold	352,248	275,909	77.6 %	74.8 %
Cost of services	27,174	33,531	6.0 %	9.1 %
Total cost of sales	379,422	309,440	83.6 %	83.8 %
Gross profit	74,338	59,630	16.4 %	16.2 %
General and administrative expenses	70,182	44,988	15.5 %	12.2 %
Contingent note revaluation loss	—	780	— %	0.2 %
Operating income	4,156	13,862	0.9 %	3.8 %
Interest expense, net	(10,671)	(4,179)	(2.4)%	(1.1)%
Foreign currency (loss) gain, net	125	(73)	0.0 %	(0.0)%
Other income (expense), net	689	15	0.2 %	0.0 %
Total other expense, net	(9,857)	(4,237)	(2.2)%	(1.1)%
Pretax net income	(5,701)	9,625	(1.3)%	2.6 %
Benefit (provision) for income taxes	1,108	(1,381)	0.2 %	(0.4)%
Net (loss) income	$ (4,593)	$ 8,244	(1.0)%	2.2 %

The following tables set forth financial information relating to the Company's operating segments for the periods presented:

	For the three months ended		For the six months ended	
$'s in 000's	**June 30, 2020**	**June 30, 2019**	**June 30, 2020**	**June 30, 2019**
Services segment sales:				
Same-store sales	$ 1,722	$ 23,873	$ 19,938	$ 44,709
Non same-store sales	953	2,155	3,235	3,671
Net services segment sales	2,675	26,028	23,173	48,380
Products segment sales	264,307	194,606	430,587	320,690
Total net sales	266,982	220,634	453,760	369,070
Adjusted EBITDA				
Products	41,851	21,156	66,130	34,712
Services	1,112	6,804	3,101	12,081
Unallocated Corporate	(14,657)	(7,130)	(26,467)	(15,091)
Total Adjusted EBITDA	$ 28,306	$ 20,831	$ 42,764	$ 31,703

Three Months Ended June 30, 2020 Compared With Three Months Ended June 30, 2019

Net sales

Consolidated Net Sales

Consolidated net sales increased $46.4 million, or 21%, to $267.0 for the three months ended June 30, 2020, compared to $220.6 million for the three months ended June 30, 2019. This increase was driven by the expansion of manufactured items as a result of the Perrigo Animal Health Acquisition, other growth in the Products segment related to distributed products driven by online retailers, offset by declining sales in the Services segment due to COVID-19 related closures.

Products Segment

Product sales increased $69.7 million, or 36%, to $264.3 million for the three months ended June 30, 2020, compared to $194.6 million for the three months ended June 30, 2019. This increase was driven by accelerated growth in manufactured products led by those produced in our Omaha facility and by velocity growth within current customers of distributed products led by online retailers.

Services Segment

Service revenue decreased $23.3 million, or 90%, from $26.0 million to $2.7 million for the three months ended June 30, 2020, compared to the three months ended June 30, 2019. Same-store sales decreased $22.2 million, or 93%, to $1.7 million for the three months ended June 30, 2020, compared to $23.9 million for the three months ended June 30, 2019. The decrease in same-store sales was driven by COVID-19 related closures. Non same-store sales decreased $1.2 million or 56%, to $1.0 million for the three months ended June 30, 2020, compared to $2.2 million for the three months ended June 30, 2019. The decrease in non same-store sales was a result of opening 80 additional wellness centers in the 2019 period, as well as the maturation of clinics opened in the past six trailing quarters, offset by the permanent closure of 15 wellness centers in the non-same store sales base and COVID-19 related closures.

Gross profit

Gross profit increased by $7.3 million, or 21%, to $42.2 million for the three months ended June 30, 2020, compared to $34.9 million for the three months ended June 30, 2019. This increase is due to the significant Products sales growth, and particularly in products manufactured in our Omaha Nebraska facility, which carry a higher margin than our distributed product sales.

Gross margin remained consistent at 15.8% for the three months ended June 30, 2020 and 2019, driven by product sales growth primarily in higher margin items, offset by service closures while still incurring costs.

General and administrative expenses

Consolidated general and administrative expenses ("G&A") increased by $14.0 million, or 57%, to $38.5 million for the three months ended June 30, 2020, compared to $24.5 million for the three months ended June 30, 2019. As a percentage of net sales, G&A increased from 11.1% for the three months ended June 30, 2019 to 14.4% for the second quarter of 2020, primarily driven by a $7.8 million contract termination cost, costs related to the addition of overhead to support the Omaha facilities, and general growth in corporate services.

Products Segment

Products segment G&A increased $0.4 million or 6% to $7.0 million for the three months ended June 30, 2020, compared to $6.7 million for the three months ended June 30, 2019. This increase was driven by acquisitions, resulting in approximately $3.2 million in G&A costs related to the acquired Perrigo Animal Health business, primarily selling and distribution expenses, offset by decreases of certain infrequent costs, such as a advertising sponsorship that was deferred due to COVID-19, and certain employee onboarding costs in 2019 that did not recur.

Services Segment

Services segment G&A decreased $1.2 million, or 33%, to $2.5 million for the three months ended June 30, 2020, compared to $3.7 million for the three months ended June 30, 2019. This decrease was driven by COVID-19 related closures that reduced variable costs such as labor, host fees, and bank charges, as well as a payroll tax credit offsetting certain wages.

Unallocated Corporate

Unallocated corporate G&A increased $14.8 million, or 105%, to $28.9 million for the three months ended June 30, 2020, from $14.1 million for the three months ended June 30, 2019. The increase was related to the following:

- Increased corporate marketing efforts for approximately $2.8 million;
- Additional corporate compensation (both stock compensation and wages/bonus) of approximately $2.8 million;
- Increased professional fees, primarily related to the increased size of the Company, as well as non-recurring acquisition costs, integration costs, and litigation;
- A contract termination cost related to the transition from the Perrigo Animal Health Acquisition of $7.8 million, and
- Other variable costs related to Company growth, such as insurance and information technology.

Interest expense, net

Interest expense, net, increased $3.8 million to $6.0 million for the three months ended June 30, 2020, compared to $2.2 million for the three months ended June 30, 2019. This increase was driven by additional debt taken on to fund the Perrigo Animal Health Acquisition during 2019 and the Notes issued in May 2020 to finance the Capstar Acquisition.

Provision for income taxes

Our effective tax rate was 3.2% and 13.0% for the three months ended June 30, 2020 and 2019, respectively, with a tax expense of $0.06 million and $0.90 million, respectively. The Company's tax rate is impacted by the ownership structure of Holdco, which changes over time.

Segment Adjusted EBITDA

Effective during the three months ended September 30, 2019, the Company changed its segment measure of profitability for its reportable segments from segment operating income (loss) to Adjusted EBITDA to better align the way the chief operating decision maker views reportable segment operations in light of changes in the Company's operations, including the increase of manufacturing operations as a result of the Perrigo Animal Health Acquisition in the Products segment and the growth of the Company's wellness centers, host partners, and regions within the Services segment. For comparability purposes, previous periods have been recast to reflect the measure of segment profitability.

Products Segment

Products segment Adjusted EBITDA increased $20.7 million, or 98% to $41.9 million for the three months ended June 30, 2020, compared to $21.2 million for the three months ended June 30, 2019. Products segment Adjusted EBITDA fluctuates based on the quantity and mix of products sold, specifically whether the products are produced by PetIQ, or are distributed for other manufacturers. The significant growth in Products segment Adjusted EBITDA relates to significant sales growth of manufactured products, primarily produced at our Omaha facility.

Services Segment

Services segment Adjusted EBITDA decreased $5.7 million, or 84%, to $1.1 million for the three months ended June 30, 2020, compared to $6.8 million for the three months ended June 30, 2019. Services segment Adjusted EBITDA can fluctuate considerably for the Services segment based on the volume of pets seen in clinics, due to the relatively fixed cost nature of a clinic. Additionally, Services segment earnings are impacted by the Company's growth strategy of opening new wellness centers and the impact of the Company's same store portfolio, discussed further below. Services segment Adjusted EBITDA was significantly impacted by the COVID-19 closures, as well as converting some community clinics to wellness centers, which transitions operations into the non-same store category.

Unallocated Corporate

Unallocated corporate expenses consist of expenses incurred by centrally-managed departments, including accounting, legal, human resources information technology and headquarters expenses, as well as executive and incentive compensation expenses, and other miscellaneous costs. Unallocated corporate costs have primarily grown due to the growth in the Company, including adding to administrative headcount through acquisitions, as well as headquarters growth to support the larger Company. Adjustments to unallocated corporate include expenses related to specific events, such as the acquisition expenses, fair value of the inventory adjustment, integration costs, and the fair value adjustment to the contingent note. Adjustments also include non-cash expenses, such as depreciation, amortization, and stock based compensation.

The following tables reconcile Segment pre-tax net income to Adjusted EBITDA for the periods presented.

	Three months ended June 30, 2020			
$'s in 000's	**Products**	**Services**	**Unallocated Corporate**	**Consolidated**
Pretax net income (loss)	$ 40,305	$ (7,180)	$ (35,024)	$ (1,899)
Adjustments:				
Depreciation	1,167	890	926	2,983
Interest	—	—	5,967	5,967
Amortization	—	—	2,250	2,250
Acquisition costs	—	—	146	146
Stock based compensation expense	—	—	1,844	1,844
Non same-store revenue	—	(953)	—	(953)
Non same-store costs	—	3,698	—	3,698
Integration costs and costs of discontinued clinics	—	—	8,850	8,850
Clinic launch expense	—	603	—	603
Litigation expenses	—	—	384	384
COVID-19 related costs(6)	379	4,054	—	4,433
Adjusted EBITDA	$ **41,851**	$ **1,112**	$ **(14,657)**	**28,306**

	Three months ended June 30, 2019			
$'s in 000's	**Products**	**Services**	**Unallocated Corporate**	**Consolidated**
Pretax net income (loss)	$ 20,227	$ 4,394	$ (17,822)	$ 6,799
Adjustments:				
Depreciation	429	520	579	1,529
Interest	—	—	2,242	2,242
Amortization	—	—	1,278	1,278
Acquisition costs	—	—	2,889	2,889
Stock based compensation expense	—	—	1,602	1,602
Non same-store revenue	—	(2,155)	—	(2,155)
Non same-store costs	—	4,045	—	4,045
Fair value adjustment of contingent note	—	—	1,460	1,460
Integration costs and costs of discontinued clinics	500	—	642	1,142
Adjusted EBITDA	**$ 21,156**	**$ 6,804**	**$ (7,130)**	**20,831**

Six Months Ended June 30, 2020 Compared With Six Months Ended June 30, 2019

Net sales

Consolidated Net Sales

Consolidated net sales increased $84.7 million, or 23%, to $453.8 million for the six months ended June 30, 2020, compared to $369.1 million for the six months ended June 30, 2019. This increase was driven by the expansion of manufactured items as a result of the Perrigo Animal Health Acquisition, other growth in the Products segment related to distributed products led by the online channel, offset by declining sales in the Services segment due to COVID-19 related closures.

Products Segment

Product sales increased $109.9 million, or 34%, to $430.6 million for the six months ended June 30, 2020, compared to $320.7 million for the six months ended June 30, 2019. This increase was driven by accelerated growth in manufactured products led by those produced in our Omaha facility and by velocity growth within current customers of distributed products.

Services Segment

Service revenue decreased $25.2 million, or 52%, from $48.4 million to $23.2 million for the six months ended June 30, 2020, compared to the six months ended June 30, 2019. Same-store sales decreased $24.8 million, or 55%, to $19.9 million for the six months ended June 30, 2020, compared to $44.7 million for the six months ended June 30, 2019. The decrease in same-store sales was driven by COVID-19 related closures. Non same-store sales decreased $0.4 million or 12%, to $3.2 million for the six months ended June 30, 2020, compared to $3.7 million for the six months ended June 30, 2019. The decrease in non same-store sales was a result of opening 80 additional wellness centers in the 2019 period, as well as the maturation of clinics opened in the past six trailing quarters, offset by the permanent closure of 15 wellness centers in the non-same store sales base and COVID-19 related closures.

Gross profit

Gross profit increased by $14.7 million, or 25%, to $74.3 million for the six months ended June 30, 2020, compared to $59.6 million for the six months ended June 30, 2019. This increase is due to the significant Products sales growth, and particularly in products manufactured in our Omaha Nebraska facility, which carry a higher margin than our distributed product sales, offset by a negative gross profit in services due to COVID-19 related closures.

Gross margin increased to 16.4% for the six months ended June 30, 2020, from 16.2% for the six months ended June 30, 2019, driven by product sales growth primarily in higher margin items, offset by the declines in Services due to COVID-19 related closures.

General and administrative expenses

Consolidated general and administrative expenses ("G&A") increased by $25.2 million, or 56%, to $70.2 million for the six months ended June 30, 2020, compared to $45.0 million for the six months ended June 30 , 2019. As a percentage of net sales, G&A increased from 12.2% for the six months ended June 30, 2019 to 15.5% for the six months ended June 30, 2020, primarily driven by a $8.2 million in expense related to the termination of a contract, costs related to the addition of overhead in and to support the Omaha facilities, and growth in corporate services.

Products Segment

Products segment G&A increased $4.2 million or 36% to $15.8 million for the six months ended June 30, 2020, compared to $11.6 million for the six months ended June 30, 2019. This increase was driven by acquisitions, resulting in approximately $6.4 million in G&A costs related to the acquired Perrigo Animal Health business, primarily selling and distribution expenses. This was offset by a reduction in other costs, like a deferred advertising sponsorship that was postponed due to COVID-19 in the current year, as well as employee onboarding costs in 2019 that did not recur.

Services Segment

Services segment G&A decreased $0.7 million, or 9.4%, to $6.7 million for the six months ended June 30, 2020, compared to $7.4 million for the six months ended June 30, 2019. This decrease was driven by variable costs in supporting the Services revenue decreases due to COVID-19 closures, including host fees, marketing, and bank charges. Offset slightly due to growth from opening new wellness centers.

Unallocated Corporate

Unallocated corporate G&A increased $21.8 million, or 84%, to $47.7 million for the six months ended June 30, 2020, from $26.0 million for the six months ended June 30, 2019. The increase was related to the following:

- Increased corporate marketing efforts for approximately $4.7 million;
- Additional corporate compensation (both stock compensation and wages/bonus) of approximately $4.6 million;
- Increased professional fees and licensing costs, primarily related to the increased size of the Company, as well as non-recurring acquisition costs, integration costs, and litigation;
- Higher amortization on the inclusion of the Perrigo Animal Health Acquisition;
- A contract termination cost related to the transition from the Perrigo Animal Health Acquisition of $7.8 million, and
- Other variable costs related to Company growth, such as insurance and information technology.

Interest expense, net

Interest expense, net, increased $6.5 million to $10.7 million for the six months ended June 30, 2020, compared to $4.2 million for the six months ended June 30, 2019. This increase was driven by additional debt taken on to fund the Perrigo Animal Health Acquisition during 2019 as well as the Convertible Notes entered into during May 2020.

Provision for income taxes

Our effective tax rate was (19.4)% and 14.3% for the six months ended June 30, 2020 and 2019, respectively, with a tax benefit of $(1.1) million and tax expense of $1.4 million. The Company's tax rate is impacted by the ownership structure of Holdco, which changes over time.

Segment Adjusted EBITDA

Products Segment

Products segment Adjusted EBITDA increased $31.4 million, or 90% to $66.1 million for the six months ended June 30, 2020, compared to $34.7 million for the six months ended June 30, 2019. Products segment Adjusted EBITDA fluctuates based on the quantity and mix of products sold, specifically whether the products are produced by PetIQ, or are distributed for other manufacturers. The significant growth in Products segment Adjusted EBITDA relates to significant sales growth of manufactured products, primarily produced as the newly acquired Omaha facility.

Services Segment

Services segment Adjusted EBITDA decreased $9.0 million, or 74%, to $3.1 million for the six months ended June 30, 2020, compared to $12.1 million for the six months ended June 30, 2019. Services segment Adjusted EBITDA can fluctuate considerably for the Services segment based on the volume of pets seen in clinics, due to the relatively fixed cost nature of a clinic. Additionally, Services segment earnings are impacted by the Company's growth strategy of opening new wellness centers and the impact of the Company's same store portfolio, discussed further below. Services segment Adjusted EBITDA was significantly impacted by the COVID-19 closures, as well as converting some community clinics to wellness centers, which transitions operations into the non-same store category.

Unallocated Corporate

Unallocated corporate expenses consist of expenses incurred by centrally-managed departments, including accounting, legal, human resources information technology and headquarters expenses, as well as executive and incentive compensation expenses, and other miscellaneous costs. Unallocated corporate costs have primarily grown due to the growth in the Company, including adding to administrative headcount through acquisitions, as well as headquarters growth to support the larger Company. Adjustments to unallocated corporate include expenses related to specific events, such as the acquisition expenses, fair value of the inventory adjustment, integration costs, and the fair value adjustment to the contingent note. Adjustments also include non-cash expenses, such as depreciation, amortization, and stock based compensation.

The following tables reconcile Segment pre-tax net income to Adjusted EBITDA for the periods presented.

	Six months ended June 30, 2020			
$'s in 000's	**Products**	**Services**	**Unallocated Corporate**	**Consolidated**
Pretax net income (loss)	$ 63,267	$ (10,832)	$ (58,136)	$ (5,701)
Adjustments:				
Depreciation	2,484	1,737	1,635	5,856
Interest	—	—	10,671	10,671
Amortization	—	—	4,492	4,492
Acquisition costs	—	—	732	732
Stock based compensation expense	—	—	4,402	4,402
Non same-store revenue	—	(3,235)	—	(3,235)
Non same-store costs	—	10,098	—	10,098
Integration costs and costs of discontinued clinics	—	—	9,304	9,304
Clinic launch expense	—	1,279	—	1,279
Litigation expenses	—	—	433	433
COVID-19 related costs	379	4,054	—	4,433
Adjusted EBITDA	**$ 66,130**	**$ 3,101**	**$ (26,467)**	**$ 42,764**

$'s in 000's	Six months ended June 30, 2019			
June 30, 2019	**Products**	**Services**	**Unallocated Corporate**	**Consolidated**
Pretax net income (loss)	$ 33,230	$ 7,411	$ (31,016)	$ 9,625
Adjustments:				
Depreciation	982	1,045	1,156	3,183
Interest	—	—	4,179	4,179
Amortization	—	—	2,557	2,557
Acquisition costs	—	—	3,465	3,465
Stock based compensation expense	—	—	3,146	3,146
Non same-store revenue	—	(3,671)	—	(3,671)
Non same-store costs	—	7,296	—	7,296
Fair value adjustment of contingent note	—	—	780	780
Integration costs and costs of discontinued clinics	500	—	642	1,142
Adjusted EBITDA	**$ 34,712**	**$ 12,081**	**$ (15,091)**	**$ 31,703**

Consolidated Non-GAAP Financial Measures

EBITDA and Adjusted EBITDA are non-GAAP financial measures. EBITDA represents net income before interest, income taxes and depreciation and amortization. Adjusted EBITDA represents EBITDA plus adjustments for transactions that management does not believe are representative of our core ongoing business. Adjusted EBITDA is utilized by management: (i) as a factor in evaluating management's performance when determining incentive compensation and (ii) to evaluate the effectiveness of our business strategies. The Company presents EBITDA because it is a necessary component for computing Adjusted EBITDA.

We believe that the use of EBITDA and Adjusted EBITDA provides an additional tool for investors to use in evaluating ongoing operating results and trends. In addition, you should be aware when evaluating EBITDA and Adjusted EBITDA that in the future we may incur expenses similar to those excluded when calculating these measures. Our presentation of these measures should not be construed as an inference that our future results will be unaffected by these or other unusual or non-recurring items. Our computation of EBITDA and Adjusted EBITDA may not be comparable to other similarly titled measures computed by other companies, because all companies do not calculate EBITDA and Adjusted EBITDA in the same manner.

Our management does not, and you should not, consider EBITDA or Adjusted EBITDA in isolation or as an alternative to financial measures determined in accordance with GAAP. The principal limitation of EBITDA and Adjusted EBITDA is that they exclude significant expenses and income that are required by GAAP to be recorded in our financial statements. Some of these limitations are:

- EBITDA does not reflect our cash expenditures, or future requirements, for capital expenditures or contractual commitments;
- EBITDA does not reflect changes in, or cash requirements for, our working capital needs;
- EBITDA does not reflect the interest expenses, or the cash requirements necessary to service interest or principal payments, on our debts;
- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and Adjusted EBITDA does not reflect any cash requirements for such replacements;
- Adjusted EBITDA does not reflect the impact of certain cash charges resulting from matters we consider not to be indicative of our ongoing core operations; and

- Other companies in our industry may calculate Adjusted EBITDA differently than we do, limiting its usefulness as a comparative measure.

Because of these limitations, EBITDA and Adjusted EBITDA should not be considered in isolation or as a substitute for performance measures calculated in accordance with GAAP. We compensate for these limitations by relying primarily on our GAAP results and using EBITDA and Adjusted EBITDA only supplementally. You should review the reconciliations of net (loss) income to EBITDA and Adjusted EBITDA below and not rely on any single financial measure to evaluate our business.

The following table reconciles net (loss) income to EBITDA and Adjusted EBITDA for the periods presented.

	For the three months ended		For the six months ended	
	June 30, 2020	**June 30, 2019**	**June 30, 2020**	**June 30, 2019**
Net income	$ (1,960)	$ 5,918	$ (4,593)	$ 8,244
Plus:				
Tax expense (benefit)	61	881	(1,108)	1,381
Depreciation	2,983	1,529	5,856	3,183
Amortization	2,250	1,278	4,492	2,557
Interest	5,967	2,242	10,671	4,179
EBITDA	$ 9,301	$ 11,848	$ 15,318	$ 19,544
Acquisition costs[1]	146	2,889	732	3,465
Stock based compensation expense	1,844	1,602	4,402	3,146
Non same-store revenue[2]	(953)	(2,155)	(3,235)	(3,671)
Non same-store costs[2]	3,698	4,045	10,098	7,296
Fair value adjustment of contingent note[3]	—	1,460	—	780
Integration costs and costs of discontinued clinics[4]	8,850	1,142	9,304	1,142
Clinic launch expenses[5]	603	—	1,279	—
Litigation expenses	384	—	433	—
COVID-19 related costs[6]	4,433	—	4,433	—
Adjusted EBITDA	$ 28,306	$ 20,831	$ 42,764	$ 31,703
Adjusted EBITDA Margin	***10.6%***	*9.5%*	***9.5%***	*8.7%*

(1) Acquisition costs include legal, accounting, banking, consulting, diligence, and other out-of-pocket costs related to completed and contemplated acquisitions.
(2) Non same-store revenue and costs relate to our Services segment and are from wellness centers, host partners, and regions with less than six full trailing quarters of operating results.
(3) Fair value adjustment on the contingent note represents the non cash adjustment to mark the 2019 Contingent Note to fair value.
(4) Integration costs and costs of discontinued clinics represent costs related to integrating the acquired businesses, such as personnel costs like severance and signing bonuses, consulting work, contract termination, and IT conversion costs. These costs are primarily in the Products segment and the corporate segment for personnel costs, legal and consulting expenses, and IT costs.
(5) Clinic launch expenses relate to our Services segment and represent the nonrecurring costs to open new veterinary wellness centers, primarily employee costs, training, marketing, and rent prior to opening for business.
(6) Costs related to maintaining service segment infrastructure, staffing, and overhead related clinics and wellness centers closed due to COVID-19 related health and safety initiatives. Product segment and unallocated corporate costs related to incremental wages paid to essential works and sanitation costs due to COVID.

Financial Condition, Liquidity, and Capital Resources

Historically, our primary sources of liquidity have been cash flows from operations, borrowings, and equity capital. As of June 30, 2020 and December 31, 2019, our cash and cash equivalents were $117.0 million and $27.3 million, respectively. As of June 30, 2020, we had $30.0 million outstanding under a revolving credit facility, $218.3 million

under a term loan, $143.8 million of outstanding Notes, and $29.3 million in other debt. Our debt agreements bear interest at rates between 2.3% and 6.75%.

Our primary cash needs are for working capital. Our maintenance capital expenditures have typically been less than 1.0% of net sales, but we may make additional capital expenditures as necessary to support our growth, such as the investment in additional veterinary clinics. Our primary working capital requirements are to carry inventory and receivable levels necessary to support our increasing net sales. Fluctuations in working capital are primarily driven by the timing of new product launches and seasonal retailer demand. As of June 30, 2020 and December 31, 2019, we had working capital (current assets less current liabilities) of $257.9 million and $112.4 million, respectively.

Additionally, the Company acquired the U.S. rights to Capstar® and CapAction® and related assets (the “Acquisition”) from Elanco, US Inc. for $95 million, plus the cost of certain outstanding finished goods inventory in saleable condition. The Acquisition closed on July 31, 2020 and was financed using cash from the sale of the Notes in May 2020.

We believe that our operating cash flow, cash on hand, and debt proceeds from our borrowings under our credit facility will be adequate to meet our operating, investing, and financing needs for the foreseeable future. To the extent additional funds are necessary to meet long-term liquidity needs as we continue to execute our business strategy, we anticipate that they will be obtained through the incurrence of additional indebtedness, additional equity financings or a combination of these potential sources of funds, although we can provide no assurance that these sources of funding will be available on reasonable terms.

Cash Flows

Cash used in Operating Activities

Net cash used in operating activities was $42.4 million for the six months ended June 30, 2020, compared to cash used in operating activities of $18.1 million for the six months ended June 30, 2019. The change in operating cash flows primarily reflects lower earnings and a significant expansion in working capital. Working capital changes are driven by increased inventory and accounts receivable on the seasonality of the business, growing sales, offset somewhat by growth in accounts payable. Net changes in assets and liabilities accounted for $52.7 million in cash used in operating activities for the six months ended June 30, 2020 compared to $37.9 million of cash used in operating activities for the six months ended June 30, 2019.

Cash used in Investing Activities

Net cash used in investing activities was $10.0 million for the six months ended June 30, 2020, compared to $1.7 million for the six months ended June 30, 2019. The increase in net cash used in investing activities is a result of the continued wellness center rollout initiative as well as the start of construction on a new corporate headquarters.

Cash provided by Financing Activities

Net cash provided by financing activities was $142.4 million for the six months ended June 30, 2020, compared to $10.1 million in net cash used by financing activities for the six months ended June 30, 2019. The change in cash provided by financing activities is primarily driven by the Company’s utilization of its revolving credit facility to fund working capital expansion due to seasonality and the issuance of Convertible Notes. During the six months ended June 30, 2020, we received $137.9 million of proceeds from the issuance of 4.0% Convertible Senior Notes Due 2026 (the “Notes”), net of issuance costs, paid $14.8 million for privately negotiated convertible note hedge transactions (“Capped Call”).

Description of Indebtedness

Convertible Notes

On May 19, 2020, the Company issued $143.8 million in aggregate principal amount of 4.00% Convertible Senior Notes pursuant to the indenture (the “Indenture”), dated as of May 19, 2020. The total net proceeds from the Notes offering, after deducting debt issuance costs paid or payable by us, was $137.9 million. The Notes accrue interest at a rate of 4.00% per annum, payable semi-annually in arrears on June 1 and December 1 of each year, beginning on December 1,

2020. The Notes will mature on June 1, 2026, unless earlier repurchased, redeemed or converted. Before January 15, 2026, holders will have the right to convert their Notes only upon the occurrence of certain events. From and after January 15, 2026, holders may convert their Notes at any time at their election until the close of business on the scheduled trading day immediately before the maturity date. The Company will settle conversions by paying or delivering, as applicable, cash, shares of its Class A common stock, or a combination of cash and shares of its Class A common stock, at its election. The initial conversion rate is 33.7268 shares of Class A common stock per $1,000 principal amount of Notes. The conversion rate and conversion price will be subject to customary adjustments upon the occurrence of certain events. In addition, if certain corporate events that constitute a "Make-Whole Fundamental Change" (as defined in the Indenture) occur, then the conversion rate will, in certain circumstances, be increased for a specified period of time.

The Notes are redeemable, in whole or in part, at the Company's option at any time, and from time to time, on or after June 1, 2023 and on or before the 40th scheduled trading day immediately before the maturity date, at a cash redemption price equal to the principal amount of the Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date, but only if the last reported sale price per share of the Company's Class A common stock exceeds 130% of the conversion price on (i) each of at least 20 trading days, whether or not consecutive, during the 30 consecutive trading days ending on, and including, the trading day immediately before the date the Company sends the related redemption notice; and (2) the trading day immediately before the date the Company sends such notice. In addition, calling any Notes will constitute a Make-Whole Fundamental Change with respect to such Notes, which will result in an increase to the conversion rate if such Notes are converted after they are called for redemption.

If certain corporate events that constitute a "Fundamental Change" (as defined in the Indenture) occur, then noteholders may require the Company to repurchase their Notes at a cash repurchase price equal to the principal amount of the Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the fundamental change repurchase date. The definition of Fundamental Change includes certain business combination transactions involving the Company and certain de-listing events with respect to the Company's Class A common stock.

The Notes are the Company's senior, unsecured obligations and are (i) equal in right of payment with the Company's existing and future senior, unsecured indebtedness; (ii) senior in right of payment to the Company's existing and future indebtedness that is expressly subordinated to the Notes; (iii) effectively subordinated to the Company's existing and future secured indebtedness, to the extent of the value of the collateral securing that indebtedness; and (iv) structurally subordinated to all existing and future indebtedness and other liabilities, including trade payables, and (to the extent the Company is not a holder thereof) preferred equity, if any, of the Company's subsidiaries. The Notes contain customary events of default.

In accounting for the issuance of the Notes, the Company separated the Notes into liability and equity components. The carrying amount of the liability component was calculated using a discount rate of 13%, which was determined by measuring the fair value of a similar debt instrument that does not have an associated convertible feature. The carrying amount of the equity component representing the conversion option was $51.1 million and was determined by deducting the fair value of the liablity component from the par value of the Notes. The excess of the principal amount of the liablity component over its carrying amount, or the debt discount, is amortized to interest expense at an annual effective interest rate over the contractual terms of the Notes.

A&R Credit Agreement

The Company amended the existing revolving credit agreement of Opco and each of its domestic wholly-owned subsidiaries (the "Amended Revolving Credit Agreement") on July 8, 2019. The Amended Revolving Credit Agreement provides for a secured revolving credit facility of $125 million that matures on July 8, 2024. The borrowers under the Amended Revolving Credit Facility incur fees between 0.375% and 0.50% as unused facility fees, dependent on the aggregate amount borrowed. On May 14, 2020, the Company amended the Amended Revolving Credit Agreement to allow for the Notes described above. Additionally the amendment instituted a Eurodollar floor of 1% to the agreement.

All obligations under the Amended Revolving Credit Agreement are unconditionally guaranteed by HoldCo and, subject to certain exceptions, each of its material current and future domestic wholly-owned subsidiaries. All obligations under the Amended Revolving Credit Agreement, and the guarantees of those obligations, are secured by substantially all of the assets of each borrower and guarantor under the Amended Revolving Credit Agreement, subject to certain exceptions.

The Amended Revolving Credit Agreement contains a number of covenants that, among other things, restrict the ability of the borrowers and guarantors thereunder to (subject to certain exceptions): (i) make investments, loans or advances; (ii) incur additional indebtedness; (iii) create liens on assets; (iv) engage in mergers or consolidations and/or sell assets; (v) pay dividends and distributions or repurchase our equity interests; (vi) repay subordinated indebtedness; (vii) make certain acquisitions; and (viii) other restrictions typical for a credit agreement of this type. As of June 30, 2020, the borrowers and guarantors thereunder were in compliance with these covenants. Although the Company currently expects continued compliance with debt covenants, the impact COVID-19 may negatively affect the Company's ability to comply with these covenants. The Amended Revolving Credit Agreement also contains certain customary affirmative covenants and events of default (including change of control). In addition, the Amended Revolving Credit Agreement contains a minimum fixed charge coverage ratio covenant which is tested if availability under the Amended Revolving Credit Agreement falls below a certain level. As of June 30, 2020, the borrower and guarantors thereunder were in compliance with these covenants.

As of June 30, 2020, $30.0 million was outstanding under the Amended Revolving Credit Agreement. The weighted average interest rate on the Amended Revolving Credit Agreement was 2.3% at June 30, 2020.

A&R Term Loan Credit Agreement

The Company amended and restated the existing term loan credit agreement of Opco (the "A&R Term Loan Credit Agreement") on July 8, 2019. The $220.0 million A&R Term Loan Credit Agreement has an interest rate equal to the Eurodollar rate plus 4.50%. The proceeds of the A&R Term Loan Agreement were used to refinance the existing term loan facility and consummate the Perrigo Animal Health Acquisition.

All obligations under the A&R Term Loan Credit Agreement are unconditionally guaranteed by PetIQ Holdings, LLC and each of its domestic wholly-owned subsidiaries and, subject to certain exceptions, each of its material current and future domestic wholly-owned subsidiaries. All obligations under the A&R Term Loan Credit Agreement, and the guarantees of those obligations, are secured by substantially all of the assets of PetIQ, LLC and each guarantor under the A&R Term Loan Credit Agreement, subject to certain exceptions.

The A&R Term Loan Credit Agreement contains a number of covenants that, among other things, restrict the ability of the borrower and guarantors thereunder to (subject to certain exceptions): (i) make investments, loans or advances; (ii) incur additional indebtedness; (iii) create liens on assets; (iv) engage in mergers or consolidations and/or sell assets; (v) pay dividends and distributions or repurchase our equity interests; (vi) repay subordinated indebtedness; (vii) make certain acquisitions; and (viii) other restrictions typical for a credit agreement of this type. The A&R Term Loan Credit Agreement also contains certain customary affirmative covenants and events of default (including change of control). In addition, the A&R Term Loan Credit Agreement includes a maintenance covenant that requires compliance with a maximum first lien net leverage ratio. The availability of certain baskets and the ability to enter into certain transactions (including our ability to pay dividends) may also be subject to compliance with secured leverage ratios. As of June 30, 2020, the borrower and guarantors thereunder were in compliance with these covenants.

General Other Debt

The Company entered into a mortgage with a local bank to finance $1.9 million of the purchase price of a commercial building in Eagle, Idaho, in July 2017. The mortgage bears interest at a fixed rate of 4.35% and utilizes a 25 year amortization schedule with a 10 year balloon payment of the balance due at that time.

In connection with the VIP Acquisition, the Company entered into a guarantee note of $10.0 million. As of June 30, 2020, $7.5 million was payable pursuant to the 2018 Contingent Note and $10.0 million was payable pursuant to the 2019

Contingent note. The guarantee note and the Contingent Notes, collectively, “Notes Payable – VIP Acquisition” of $27.5 million require quarterly interest payments of 6.75% with the balance payable July 17, 2023.

The Company incurred debt issuance costs of $0.3 million related to the A&R Credit Agreement during the three and six months ended June 30, 2020. The Company incurred debt issuance costs of $0.1 million related to the A&R Credit Agreement and zero related to the Term Loan during the six months ended June 30, 2019.

Contractual Obligations and Commitments

The following table summarizes our contractual obligations as of June 30, 2020:

		Payments Due by Period			
$'s in 000's	**Total**	**Remainder 2020**	**2021-2022**	**2023-2024**	**Thereafter**
Long-term debt	$ 421,389	$ 1,124	$ 4,503	$ 32,012	$ 383,750
Interest on debt	96,373	10,710	41,345	35,897	8,421
Operating lease obligations	22,882	2,983	10,158	6,743	2,998
Finance lease obligations	4,816	815	2,634	1,346	21
Product purchase obligations	31,676	25,917	1,934	1,093	2,732
R&D arrangement	20,300	200	12,850	7,250	—
Total contractual obligations	$ 597,436	$ 41,749	$ 73,424	$ 84,341	$ 397,922

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements.

Item 3. Quantitative and Qualitative Disclosures about Market Risk.

We are exposed to certain market risks arising from transactions in the normal course of our business. Such risk is principally associated with interest rates. We currently do not enter into derivatives or other financial instruments for trading or speculative purposes.

Interest Rate Risk

We are exposed to changes in interest rates because the indebtedness incurred under our A&R Credit Agreement and A&R Term Loan Credit Agreement are variable rate debt. Interest rate changes generally do not affect the market value of our credit agreement but do affect the amount of our interest payments and, therefore, our future earnings and cash flows. As of June 30, 2020, we had variable rate debt of approximately $248.4 million under our Revolver and Term Loan. An increase of 1% would have increased our interest expense for the six months ended June 30, 2020 by approximately $2.5 million.

Item 4. Controls and Procedures.

Internal Control over Financing Reporting

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as that term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) that are designed to ensure that information required to be disclosed in our reports under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on such evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that as of such date, our disclosure controls and procedures were effective.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting that occurred during our fiscal quarter ended June 30, 2020, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting. We have not experienced any material impact to our internal controls over financial reporting despite the fact that our corporate employees are working remotely due to the COVID-19 pandemic. We are continually monitoring and assessing the impact of COVID-19 on our internal controls to minimize the impact on their design and operating effectiveness.

Cautionary Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements that involve risks and uncertainties, such as statements about our plans, objectives, expectations, assumptions or future events. In some cases, you can identify forward-looking statements by terminology such as “anticipate,” “estimate,” “plan,” “project,” “continuing,” “ongoing,” “expect,” “believe,” “intend,” “may,” “will,” “should,” “could” and similar expressions. Examples of forward-looking statements include, without limitation:

- statements regarding our strategies, results of operations or liquidity;
- statements concerning projections, predictions, expectations, estimates or forecasts as to our business, financial and operational results and future economic performance;
- statements of management’s goals and objectives; and
- assumptions underlying statements regarding us or our business.

Forward-looking statements involve estimates, assumptions, known and unknown risks, uncertainties and other factors that could cause actual results to differ materially from any future results, performances, or achievements expressed or implied by the forward-looking statements. Forward-looking statements should not be read as a guarantee of future performance or results, and will not necessarily be accurate indications of the times at, or by, which such performance or results will be achieved. Forward-looking statements are based on information available at the time those statements are made or management’s good faith belief as of that time with respect to future events, and are subject to risks and uncertainties that could cause actual performance or results to differ materially from those expressed in or suggested by the forward-looking statements. Important factors that could cause such differences include, but are not limited to, factors discussed under the headings “Management’s Discussion and Analysis of Financial Condition and Results of Operations”; the impact of COVID-19 on our business and the global economy; our ability to successfully grow our business through acquisitions; our dependency on a limited number of customers; our ability to implement our growth strategy effectively; disruptions in our manufacturing and distribution chains; competition from veterinarians and others in our industry; reputational damage to our brands; economic trends and spending on pets; the effectiveness of our marketing and trade promotion programs; recalls or withdrawals of our products or product liability claims; our ability to manage our manufacturing and supply chain effectively; disruptions in our manufacturing and distribution chains; our ability to introduce new products and improve existing products; our failure to protect our intellectual property; costs associated with governmental regulation; our ability to keep and retain key employees; our ability to sustain profitability; and the risks set forth under the “Risk Factors” of our Annual Report on Form 10-K for the year ended December 31, 2019 our Quarterly Report on Form 10-Q for the period ended March 31, 2020, this Report and other reports filed from time to time with the Securities and Exchange Commission.

Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or operating results. The forward-looking statements speak only as of the date on which they are made, and, except as required by law, we undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events. In addition, we cannot assess the impact of each factor on our business or the

extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. Consequently, you should not place undue reliance on forward-looking statements.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

We are from time to time subject to, and are presently involved in, litigation and other proceedings. Other than the litigation described below, we believe that there are no pending lawsuits or claims that, individually or in the aggregate, may have a material adverse effect on our business, financial condition or results of operations.

As previously disclosed, on April 4, 2018, Med Vets, Inc. and Bay Medical Solutions Inc. (collectively "Plaintiffs") filed suit in the United States District Court for the Northern District of California against PetIQ and VIP Petcare Holdings, Inc. for alleged unlawful merger and other antitrust violations. On June 29, 2020, the 9th Circuit Court of Appeals issued an opinion affirming the dismissal of Med Vets' merger challenge. The Plaintiffs have filed for an *en banc* hearing. As no impact to the Company is considered probable or estimable, no litigation reserve has been accrued.

During the three months ended March 31, 2020, the Company executed an Asset Purchase Agreement (the "Purchase Agreement") to acquire the U.S. rights to Capstar® and CapAction® and related assets (the "Capstar Acquisition") from Elanco US Inc. ("Elanco") for $95 million, plus the cost of certain outstanding finished goods inventory in saleable condition. The Acquisition was completed on July 31, 2020, using cash received in connection with the issuance of the Notes

Additionally the Company is subject to various litigation related to its products as well as other corporate litigation. No individual item is significant.

The Company records a liability when a particular contingency is probable and estimable and provides disclosure for contingencies that are at least reasonably possible of resulting in a loss including an estimate which we currently cannot make. The Company has not accrued for any contingency at June 30, 2020 except the $7.8 million noted in Note 13 in the accompanying financial statements, as the Company does not consider any contingency to be probable or estimable. The Company expenses legal costs as incurred within general and administrative expenses on the consolidated statements of operations.

Item 1A. Risk Factors.

There have been no material changes to the risk factors disclosed in our annual report on Form 10-K for the year ended December 31, 2019, except for the risk factor updated below:

The scale and scope of the recent COVID-19 outbreak and resulting pandemic is unknown and, due to wellness center and community clinic closures and other factors, is likely to result in an adverse impact on our business at least for the near term.

As the U.S. faces the novel COVID-19 pandemic, the Company is following the recommendations of government and health authorities to minimize exposure for its veterinarians, associates, customers and retail partners. As a result, the Company announced on March 19, 2020 that it is temporarily closing all of its veterinary community clinics and wellness centers effective Friday, March 20, 2020. The Company will closely monitor this global health crisis to reopening its community clinics and wellness centers as quickly as practical. The Company will continue to reassess its strategy on a regular, ongoing basis as the situation evolves. Additionally, the rapid spread of COVID-19 globally also has resulted in travel restrictions and disruption and shutdown of certain businesses in the U.S., including those of certain of our retail partners. We may experience impacts from changes in customer behavior related to pandemic fears, quarantines and market downturns, as well as impacts on our workforce if the virus becomes widespread in any of our markets. If the virus were to affect a significant amount of the workforce employed or operating at our facilities, we may experience delays or the inability to produce and deliver products to our retail partners on a timely basis. In addition, one or more of our customers, service providers or suppliers may experience financial distress, file for bankruptcy protection, go out of business, or suffer disruptions in their business due to the COVID-19 outbreak. The global scale and scope of

COVID-19 is unknown and the duration of the business disruption and related financial impact cannot be reasonably estimated at this time. The extent to which the coronavirus impacts the Company's results will ultimately depend on future developments, which are highly uncertain and will include the duration of our wellness center and community clinic closures as well as closures of our retail partners, emerging information concerning the severity of COVID-19 and the actions taken by governments and private businesses to attempt to contain COVID-19. However, the Company believes COVID-19 is likely to result in an adverse impact on our business, results of operations and financial condition, at least for the near term.

Item 6. Exhibits. –

2.1*	Amended and Restated Asset Purchase Agreement, dated June 19, 2020, by and between Elanco US, Inc., PetIQ, LLC and PetIQ Inc.
4.1	Indenture, dated as of May 14, 2020, among PetIQ, Inc. and Wells Fargo, National Association, as trustee
10.1	Second Amendment to Term Loan Credit Agreement, dated May 14, 2020, by and among PetIQ, LLC, the guarantors party thereto, Ares Capital Corporation, as a lender and as the administrative agent, and the other lenders party thereto
10.2*	Third Amendment to Term Loan Credit Agreement, dated July 9, 2020, by and among PetIQ, LLC, the guarantors party thereto, Ares Capital Corporation, as a lender and as the administrative agent, and the other lenders party thereto
10.3	Fourth Amendment to Term Loan Credit Agreement and First Amendment to Security Agreement, dated July 28, 2020, by and among PetIQ, LLC, the guarantors party thereto, Ares Capital Corporation, as a lender and as the administrative agent, and the other lenders party thereto
10.4	Fourth Amendment to Amended and Restated Revolving Credit Agreement, dated May 14, 2020, by and among PetIQ, LLC, East West Bank, as a lender and as the administrative agent, the lenders party thereto and the other credit parties party thereto
10.5*	Fifth Amendment to Amended and Restated Revolving Credit Agreement, dated July 9, 2020, by and among PetIQ, LLC, East West Bank, as a lender and as the administrative agent, the lenders party thereto and the other credit parties party thereto
10.6	Sixth Amendment to Amended and Restated Revolving Credit Agreement and First Amendment to Security Agreement, dated July 28, 2020, by and among PetIQ, LLC, East West Bank, as a lender and as the administrative agent, the lenders party thereto and the other credit parties party thereto
10.7	Base Call Option Transaction, dated May 14, 2020
10.8	Additional Call Option Transaction, dated May 18, 2020
31.1*	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1*	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2*	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS*	Inline XBRL Instance Document
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document.
104	Cover Page Interactive Data File (formatted as inline XBRL with applicable taxonomy extension information contained in Exhibits 101.)

* Filed herewith

SIGNATURES

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

PETIQ, INC.

August 7, 2020

/s/ John Newland
John Newland
Chief Financial Officer

Exhibit 2.1

AMENDED AND RESTATED ASSET PURCHASE AGREEMENT

by and between

ELANCO US, INC.,

and

PETIQ, LLC,

and, for purposes of Section 9.16 only,

PETIQ, INC.

Dated as of June 21, 2020

TABLE OF CONTENTS

SCHEDULES

INDEX OF DEFINED TERMS

This AMENDED AND RESTATED ASSET PURCHASE AGREEMENT (this "Agreement") is made and executed as of June 19, 2020, by and between Elanco US, Inc., an Delaware corporation ("Seller"), and PetIQ, LLC, a Idaho limited liability company ("Buyer") and solely for purposes of Section 9.16, PetIQ, Inc., a Delaware corporation (the "Buyer Guarantor"). Seller and Buyer are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Bayer Aktiengesellschaft, a German stock corporation ("Bison"), and Seller have entered into that certain Share and Asset Purchase Agreement for the sale and purchase of Bison's animal health business, dated as of August 20, 2019 (as amended or otherwise modified from time to time, the "Bison Acquisition Agreement");

WHEREAS, the Parties entered into an Asset Purchase Agreement (the "Original Purchase Agreement"), dated as of January 19, 2020 (the "Execution Date");

WHEREAS, in order to comply with any applicable Proposed Consent Orders and Final Consent Orders (collectively, "Consent Orders") and to address the remedial purposes of such Consent Orders, the Parties desire to amend and restate the Original Purchase Agreement by entering into this Agreement on the terms and conditions set forth herein and the Parties desire that, at the Closing, the Divesting Entities sell to Buyer, and Buyer purchase from the Divesting Entities, the Purchased Assets, upon the terms and conditions hereinafter set forth; and

WHEREAS, the applicable Divesting Entities and Buyer intend to enter into the Ancillary Agreements at the Closing.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from this Agreement, the representations, warranties, conditions, agreements and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Certain Defined Terms. As used herein, the following terms shall have the following meanings:

1.1.1 "Accountant" means an accounting firm of national reputation (excluding each of Seller's and its Affiliates' and Buyer's and its Affiliates' respective regular outside accounting firms) that is mutually acceptable to Seller and Buyer; *provided*, *however*, if Seller and Buyer are unable to agree on such accounting firm within 10 days after a Party (or the Parties) decide to submit any dispute under Article 2 for resolution by the Accountant in accordance with the terms thereof or any such mutually selected accounting firm is unwilling or unable to serve, then Seller shall deliver to Buyer a list of three other accounting firms of national reputation that have not performed services for Seller or its Affiliates or Buyer or its Affiliates in the preceding three-year period, and Buyer shall select one of such three accounting firms.

1.1.2 "Accounts Receivable" means all accounts receivable, notes receivable and other indebtedness due and owed by any Third Party to Seller or any of its Affiliates arising from sales of the Products by or on behalf of Seller or its Affiliates prior to the Closing Date.

1.1.3 "Affiliate" means, with respect to a Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such first Person. For purposes of this definition, "control" and, with correlative meanings, the terms "controlled by" and "under common control with" mean (a) the possession, directly or indirectly, of the power to direct the management or policies of a business entity, whether through the ownership of voting securities, by Contract relating to voting rights or corporate governance, or otherwise or (b) the ownership, directly or indirectly, of more than 50% of the voting securities or other ownership interests of a business entity (or, with respect to a limited partnership or other similar entity, its general partner or controlling entity). Notwithstanding the foregoing, in no event shall any shareholder of Seller or any Affiliate of any shareholder of Seller (other than any subsidiary of Seller) be deemed an Affiliate of Seller for any purpose under this Agreement or any Ancillary Agreement.

1.1.4 "Ancillary Agreements" means the Bill of Sale, the Pharmacovigilance Agreement, the Quality Agreement, the Domain Name Assignment, the Trademark Assignment, the Transitional Manufacturing and Supply Agreement and the Transitional Services Agreement.

1.1.5 "Applicable Transition Period" means, as applicable: (a) in the case of Purchased Inventory and Transitional Inventory, on a Product-by-Product basis, the period commencing on the Closing Date and ending on the date as of which the Purchased Inventory of such Product delivered at Closing or the Transitional Inventory has been sold or expired; (b) in the case of Existing Stock (excluding Purchased Inventory, Transitional Inventory and Product labels and packaging), the period commencing on the Closing Date and ending on the date that is six months after the Closing Date; *provided that*, in the case of advertising and promotional materials for a Product contained within the Existing Stock or Transitional Inventory, including website content, the Applicable Transition Period means the period commencing on the Closing Date and ending on the earlier of (i) the date on which the Applicable Transition Period with respect to the packaging of such Product under subsection (c) below expires and (ii) the first anniversary of the Closing Date; or (c) in the case of Product labels and packaging, on a Product-by-Product basis, the period commencing on the Closing Date and ending on the later of the date that is six months following (i) receipt by Buyer or its Affiliates of labeling approval from a Governmental Authority for the relevant Product and (ii) the date on which all Purchased Product Registrations for such Product have been Transferred to Buyer or its Affiliates; *provided*, that under no circumstances will the Applicable Transition Period for any Product label or packaging for any Product expire later than the date that is 24 months after the Closing Date (with such date to extend to 30 months after the Closing Date with respect to any Purchased Inventory that has not been sold to a Third Party as of the last day in the 24th month following the Closing Date).

1.1.6 "Assumed Tax Liabilities" means any and all liabilities for (a) Taxes arising out of, in respect of or relating to the Product Business or the Purchased Assets for all Post-Closing Tax Periods, (b) Transfer Taxes for which Buyer is responsible pursuant to Section 5.8.2(a) and (c) all Taxes to the extent solely resulting from a Buyer Tax Act or attributable to

any breach by Buyer or any of its Affiliates of any covenant or other agreement hereunder or under any Ancillary Agreement. For the avoidance of doubt, Assumed Tax Liabilities shall exclude any Excluded Tax Liabilities.

1.1.7 "Bill of Sale" means the Bill of Sale and Assignment and Assumption Agreement, in substantially the form of Exhibit A.

1.1.8 "Bison Acquisition Closing" means the closing of the transactions contemplated by the Bison Acquisition Agreement.

1.1.9 "Business Day" means any day other than a Saturday, a Sunday or any day on which banking institutions in New York, New York are permitted or obligated by Law to remain closed.

1.1.10 "Buyer Material Adverse Effect" means any event, fact, condition, occurrence, change or effect that prevents or materially impedes or delays the consummation by Buyer of the transactions contemplated by this Agreement or the Ancillary Agreements.

1.1.11 "Buyer Regulatory Documentation" means all (a) documentation and materials referred to in clause (a) or (b) of the definition of Purchased Regulatory Documentation (without regard to the Closing Date limitations in clause (b) thereof) that are created following the Closing and (b) data (including clinical and pre-clinical data) referenced in any of the documentation and materials referred to in the preceding clause (a).

1.1.12 "Buyer Tax Act" means (a) any election under any provision of applicable Law effective for the Pre-Closing Tax Period that is made after the Closing by Buyer, any of its Affiliates, or any transferee or successor of Buyer or any of its Affiliates and (b) any other action taken, or failure to act, after the Closing and outside of the ordinary course of business, by Buyer, any of its Affiliates, or any transferee or successor of Buyer or any of its Affiliates, in each case, that increases the amount of liability for Taxes with respect to the Product Business or the Purchased Assets for any Pre-Closing Tax Period.

1.1.13 "Closing Date" means the date on which the Closing occurs in accordance with 2.6.1.

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

1.1.15 "Competition Authority" means the United States Federal Trade Commission and each other Governmental Authority having jurisdiction over the transactions contemplated by the Bison Acquisition Agreement under a Competition Law.

1.1.16 "Competition Law" means any Law of the United States or Judgment of any Governmental Authority that is designed or intended to prohibit, restrict or regulate actions that may have the purpose or effect of creating a monopoly, lessening competition or restraining trade.

1.1.17 "Concurrent Use Assets" means (a) the New Animal Drug Application number 141-205 for the concurrent use in dogs or cats of the products branded as PROGRAM

FLAVOR TABS (lufenuron) and CAPSTAR (nitenpyram) (the "Concurrent Use Registration"), (b) all documentation comprising such Concurrent Use Registration or the dossier therefor, and (c) to the extent owned by and in the possession or Control of any Divesting Entity and exclusively related to the Concurrent Use Registration, data (including clinical and pre-clinical data) referenced in any of the documentation and materials referred to in the preceding clauses (a) and (b), in each case (clauses (b) and (c)), excluding the Excluded Assets and all intellectual property rights of any Third Party contained or depicted therein.

1.1.18 "Confidentiality Agreement" means the confidentiality letter agreement, dated November 25, 2019, by and between Seller and Buyer.

1.1.19 "Confidential Data" means all data for which the Product Business is required by Law, Contract or privacy policy to safeguard or keep confidential or private.

1.1.20 "Contract" means any written contract, agreement, lease, sublease, license, sublicense or other legally binding commitment, undertaking or arrangement.

1.1.21 "Control" means, with respect to any intellectual property, intellectual property right, Product Registration or Purchased Regulatory Documentation, possession of the right, whether directly or indirectly, and whether by ownership, license or otherwise, to assign or grant a license, sublicense or other right to or under such intellectual property, intellectual property right, Product Registration or Purchased Regulatory Documentation, as provided for herein or in any Ancillary Agreement without violating the terms of any Contract or other arrangement with any Third Party.

1.1.22 "Copyrights" means all copyrights, whether registered or unregistered, and all registrations and applications for registration therefor and all extensions, restorations and renewals thereof and all rights in any copyrightable works, including all copyrights in works of authorship, including software, website content, webpage content, artwork, designs, drawings, photographs, videos, graphs, or any other audio-visual, textual or graphical works, and all derivatives and compilations thereof, and any and all moral rights therein.

1.1.23 "Disclosure Schedules" means the disclosure schedules of Seller delivered by Seller pursuant to this Agreement.

1.1.24 "Dispute" means any dispute, controversy or claim (of any and every kind or type, whether based on contract, tort, statute, regulation, or otherwise) arising out of, relating to, or in connection with this Agreement or any Ancillary Agreement or the transactions contemplated by this Agreement or any Ancillary Agreement, including any dispute as to the construction, validity, interpretation, enforceability or breach of this Agreement or any Ancillary Agreement.

1.1.25 "Divesting Entities" means Seller, and all Affiliates of Seller that, as of immediately prior to the Closing, have any right, title or interest in, to or under any Purchased Asset.

1.1.26 "Domain Name Assignment" means the Domain Name Assignment Agreement, in substantially the form of Exhibit B.

1.1.27 "Domain Names" means internet or global computing network addresses or locations, including all generic top-level domains (gTLDs) and country code top-level domains (ccTLDs) and social media accounts and handles.

1.1.28 "Encumbrance" means any mortgage, deed of trust, lien, license, pledge, hypothecation, restriction, easement, option, right of first refusal, security interest or other encumbrance.

1.1.29 "Excluded Assets" means (a) the Retained Names and Marks; (b) know-how (other than the Product Know-How); (c) all cash and all Accounts Receivable; (d) all Manufacturing-related assets of Seller or any of its Affiliates (other than to the extent included in the Purchased Contracts); (e) any refund of Taxes to which Seller is entitled to in Section 5.8.4; (f) all rights to insurance policies and insurance Contracts or practices of Seller or its Affiliates (including any captive insurance policies or practices), any refunds paid or payable in connection with the cancellation or discontinuation of such policies or practices, and any claims made under such policies; (g) any rights or interests exclusively or primarily relating to any Product in the applicable Territory outside of the applicable Field or outside of the applicable Territory; (h) all rights of Seller or its Affiliates under this Agreement, the Ancillary Agreements and any other agreements, certificates and instruments otherwise delivered in connection with this Agreement relating to the sale of the Product Business (or any portion thereof) or any of the Products; (i) the Shared Contracts listed in part (ii) of Schedule 2.3.3; (j) books, documents, records, files and other items prepared in connection with or relating to the negotiation and consummation of the transactions contemplated by this Agreement, the Bison Acquisition Agreement or the Ancillary Agreements or otherwise prepared in connection with the sale of the Products, including all (A) bids received from Third Parties and analyses relating to the Products or the Product Business, (B) confidentiality, joint defense or similar agreements with prospective purchasers of the Purchased Assets, the Products or the Product Business, and (C) strategic, financial or Tax analyses relating to the divestiture of the Purchased Assets, the Assumed Liabilities, the Products or the Product Business; (k) trade secrets (except to the extent included in the Product Know-How); (l) attorney work product, attorney-client communications and other items protected by established legal privilege, unless the books and records containing such items can be transferred without losing such privilege; (m) financial, Tax and accounting records to the extent not exclusively or primarily related to the Product Business; (n) electronic mail and similar electronic communications; and (o) the assets and rights of Seller or any of its Affiliates listed on Schedule 1.1.29.

1.1.30 "Excluded Liabilities" means, without duplication, (a) all liabilities of each Divesting Entity or any member of any consolidated, affiliated, combined or unitary group of which any Divesting Entity is a member for Taxes attributable to the Pre-Closing Tax Period, including any Excluded Tax Liabilities; (b) all Liabilities in respect of indebtedness for borrowed money owing or guaranteed by the Divesting Entities with respect to the Product Business (subject to Section 4.5); (c) all accounts payable of any Divesting Entity outstanding prior to the Closing Date with respect to the Product Business; (d) all Liabilities for Rebates not allocated to Buyer under Section 2.4.1 or Section 5.12; (e) all Liabilities arising out of Litigation against any Divesting Entity in respect of the Product Business existing as of the Closing Date; (f) all intercompany debts and obligations of the Divesting Entities; (g) all liabilities and obligations of the Divesting Entities with respect to the employment of their respective employees for

compensation and benefits owed or claimed to be owed by such employees of the Divesting Entities; (h) all liabilities and obligations related to or arising from a violation of environmental Law prior to the Closing Date related to the Manufacture of the Products; (i) all liabilities and obligations of Divesting Entities and their Affiliates thereof arising pursuant to the terms of this Agreement or any Ancillary Agreement; (j) all liabilities and obligations, whether presently in existence or arising after the Execution Date, relating to fees, commissions or expenses owed by Seller to any broker, finder, investment banker, accountant, attorney or other intermediary or advisor engaged by Seller in connection with the transactions arising from this Agreement or the Bison Acquisition Agreement; (k) the Divesting Entities' liabilities under Shared Contracts to be retained by the Divesting Entities in accordance with Section 2.3.3; and (l) all other liabilities and obligations of the Divesting Entities arising out of or related to the ownership, use, sale, license or other Exploitation of the Purchased Assets, in each case, arising prior to the Closing Date.

1.1.31 "Excluded Tax Liabilities" means, without duplication, all liabilities for (a) Taxes to the extent arising out of, in respect of, or relating to the Product Business or the Purchased Assets for Pre-Closing Tax Periods other than such Taxes resulting solely from a Buyer Tax Act or solely attributable to any breach by Buyer, any of its Affiliates or any of their respective transferees or successors of any covenant or other agreement hereunder or under any Ancillary Agreement, (b) to the extent not described under the immediately preceding clause (a), all Taxes of any Divesting Entity or any Affiliate thereof, including Taxes incurred by any Divesting Entity or any such Affiliate in connection with the consummation of the sale and transfer of the Purchased Assets hereunder or under any Ancillary Agreement, other than Transfer Taxes, and (c) Taxes with respect to any Pre-Closing Tax Period of a Person other than a Divesting Entity, Buyer or its Affiliates that is payable pursuant to any Shared Contracts or Purchased Contracts.

1.1.32 "Ex-Im Laws" means all U.S. Laws relating to export, reexport, transfer and import controls, including the Export Administration Regulations, the International Traffic in Arms Regulations and the customs and import Laws administered by U.S. Customs and Border Protection.

1.1.33 "Existing Patent" means any patent or patent application existing as of the Closing Date that is owned by or co-owned among Seller or any of its Affiliates or that Seller or any of its Affiliates have the right or ability to enforce as of the Closing Date or any time thereafter and any patent issuing from, or any continuation, continuation-in-part, divisional, reissue, reexamination, substitution or extension of, any of the foregoing, solely if and to the extent that any issued claim of any such patent or patent application covers or is practiced in the Manufacture by Seller or any of its Affiliates of any Product for Exploitation in the applicable Field in the applicable Territory or the Exploitation by Seller or any of its Affiliates of any Product or Product Improvement in the applicable Territory, in each case as of the Execution Date.

1.1.34 "Exploit" means (and, with correlative meanings, the terms "Exploited," "Exploitation" and "Exploiting" mean) to import, export, use, have used, sell, offer for sale, have sold, research, develop, commercialize, register, hold or keep (whether for disposal or

otherwise), transport, distribute, promote, market, or otherwise dispose of, but excludes to Manufacture or have Manufactured.

1.1.35 "Field" means, for each Product, each Field indicated on Schedule 1.1.35 with respect to such Product.

1.1.36 "Final Consent Order" means, to the extent applicable, a final and effective written Judgment issued by any applicable Competition Authority, including any subsequent modifications thereto, requiring Seller or the Divesting Entities to sell, assign, license or otherwise transfer certain assets relating to the animal health businesses of each of Bison and its Affiliates and Seller and the Divesting Entities in order for Bison and Seller to obtain regulatory clearance from any such Competition Authority to complete the transactions contemplated by the Bison Acquisition Agreement.

1.1.37 "Fraud" means, with respect to any Party or its respective Affiliates, common law fraud under New York Law with respect to the making of representations and warranties contained in Article 3 of this Agreement; *provided* that such fraud of such Party shall only be deemed to exist if (a), in the case of Buyer, Buyer or its Affiliates had actual knowledge (as opposed to imputed or constructive knowledge) that the representations and warranties made by Buyer or its Affiliates were actually breached when made or (b) in the case of Seller, to Seller's Knowledge, the representations and warranties made by Seller or were actually breached when made, as applicable, and shall exclude equitable fraud, promissory fraud, unfair dealing and any other fraud based claims.

1.1.38 "Fundamental Representations" means the representations and warranties set forth in Section 3.1.1 (Entity Status), Section 3.1.2 (Authority), Section 3.1.3(a) (Non-Contravention), Section 3.1.3 (No Broker), Section 3.1.6(a) (Title to Purchased Assets), Section 3.2.1 (Entity Status), Section 3.2.2 (Authority), Section 3.2.4 (No Broker) and Section 3.2.6 (Financial Capacity; Solvency).

1.1.39 "GAAP" means the United States generally accepted accounting principles.

1.1.40 "Governmental Authority" means any supranational, international, national, federal, state, local or foreign court (or any arbitrator or other tribunal having competent jurisdiction), administrative agency or commission or other governmental authority or instrumentality, domestic or foreign.

1.1.41 "IRS" means the Internal Revenue Service.

1.1.42 "Judgment" means any judgment, decision, order or decree of any Governmental Authority.

1.1.43 "Law" means any domestic or foreign, federal, state or local statute, law (including common law), treaty, Judgment, ordinance, rule, administrative interpretation, regulation or other requirement having the force of law of any Governmental Authority.

1.1.44 "Liability" or "Liabilities" means any debts, liabilities, obligations, commitments or claims, whether accrued or fixed, known or unknown, fixed or contingent, determined or determinable and whether or not the same would be required to be reflected in financial statements or disclosed in the notes thereto.

1.1.45 "Licensed Copyrights" means, with respect to a Product, all Copyrights Controlled by any Divesting Entity and used to Exploit such Product in the applicable Field in the applicable Territory as of or during the twelve months prior to the Closing Date, excluding the Purchased Copyrights; *provided,* that Licensed Copyrights do not include software.

1.1.46 "Licensed Product Know-How" means, (a) other than the Product Know-How, all technology, technical information, know-how and data, including inventions (whether patentable or not), patent disclosures, assays, discoveries, trade secrets, specifications, instructions, processes, manufacturing processes, formulae, formulations, chemical or biological manufacturing and control data and quality control and testing procedures, including all biological, chemical, pharmacological, biochemical, toxicological, pharmaceutical, physical, safety, quality control, preclinical and clinical data that are (i) identified or identifiable in a tangible form, (ii) as of the Closing Date, solely owned by or co-owned among the Divesting Entities, (iii) used by or on behalf of any Divesting Entity for or in connection with the Manufacturing of any Product for Exploitation in the applicable Field in the applicable Territory or the maintenance of any Purchased Product Registration at any time during the twelve months prior to or after the Closing Date and (iv) in the possession or Control of any Divesting Entity; and (b) Seller Know-How Improvements (as defined in the Transitional Supply Agreement); *provided*, that Licensed Product Know-How does not include any of such information that is (x) general Manufacturing know-how or (y) software and, for clarity, does not include any biological or chemical materials.

1.1.47 "Litigation" means any legal action, arbitration, mediation, hearing, proceeding, or suit (whether civil, criminal or administrative).

1.1.48 "Loss" or "Losses" means any losses, damages, deficiencies, assessments, Judgments, fines, penalties, amounts paid in settlement and reasonable costs and expenses incurred in connection therewith, including reasonable costs and expenses of suits and proceedings, and reasonable fees and disbursements of experts, accountants and counsel.

1.1.49 "Manufacture" means (and, with correlative meanings, the terms "Manufactured" and "Manufacturing" mean) all activities related to the production, manufacture, having manufactured, processing, filling, finishing, testing, packaging, labeling, shipping, storing and holding of any Product or any intermediate thereof prior to the distribution of any Product.

1.1.50 "Material Adverse Effect" means an event, fact, development, impact, circumstance, condition, occurrence, change or effect that would reasonably be expected to be materially adverse to the results of operations or financial or other condition of the Product Business, taken as a whole; *provided*, *however*, that none of the following, and no events, facts, conditions, occurrences, changes or effects resulting from the following, shall be deemed (individually or in combination) to constitute, or shall be taken into account in determining whether there has been, a "Material Adverse Effect": (a) Seller's and its Affiliates' compliance

with the terms and conditions of this Agreement, any Consent Order, or the requests or requirements of the staff of any applicable Competition Authority; (b) any requests or requirements of the staff of any Governmental Authority having jurisdiction over this Agreement under any applicable Competition Law; (c) political or economic conditions or conditions affecting the capital or financial markets generally, including the worsening of any existing conditions; (d) conditions generally affecting any industry or industry sector in which the Product Business operates or competes or in which any Product is Manufactured or Exploited, including increases in operating costs; (e) any change or prospective change in accounting requirements or applicable Law; (f) any hostility, act of war, sabotage, terrorism or military actions, or any escalation of any of the foregoing; (g) any hurricane, flood, tornado, earthquake or other natural disaster or force majeure event; (h) the public announcement, execution or delivery of the Original Purchase Agreement or this Agreement or the pendency or consummation of the transactions contemplated hereby, including any reduction in revenue, any disruption in (or loss of) supplier, distributor, customer, partner or similar relationships or any loss of employees resulting therefrom; (i) the failure of the Product Business to achieve any milestones, financial projections, predictions, forecasts or estimates of revenues for any period (*provided*, that the underlying causes of such failure shall not be excluded, unless otherwise excluded pursuant to this definition); (j) the taking of any action by Seller or any of its Affiliates that is expressly contemplated by this Agreement, any Proposed Consent Order or any Final Consent Order or that Buyer or any Competition Authority (or the staff thereof) has requested be taken; and (k) any act or omission by Buyer or any of its Affiliates; except, in each of clauses (c) through (g), for those conditions that have a materially disproportionate effect on the results of operations or financial or other condition of the Product Business, taken as a whole, relative to other Persons operating businesses similar to the Product Business (in which case only the incremental material disproportionate effect may be taken into account in determining whether there has been a Material Adverse Effect).

1.1.51 "Permitted Encumbrance" means any (a) statutory Encumbrance for Taxes not yet due and payable; (b) Encumbrance imposed by Law that does not or would not be reasonably expected to materially detract from the current value of, or materially interfere with, the present use and enjoyment of any Purchased Asset subject thereto or affected thereby in the ordinary course of business of the Product Business; (c) right, title or interest of a licensor or licensee under a non-exclusive license granted in the ordinary course of business that is evident on the face of a license (and not arising from a breach of such license); (d) Encumbrances securing indebtedness for borrowed money incurred by Seller or any of its Affiliates in connection with the Bison Acquisition Closing to the extent such Encumbrances are released at or prior to Closing and (e) Encumbrance disclosed on Schedule 1.1.51.

1.1.52 "Person" means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, corporation, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, or any other legal entity, including a Governmental Authority.

1.1.53 "Personal Information" means information that, alone or in combination with other information, is capable of identifying an individual or household or can be used to contact an individual, including name; Social Security number; government-issued identification numbers; health or medical information, including health insurance information; financial

account information; passport numbers; user names/email addresses in combination with a password or security code that would allow access to an online account; unique biometric identifiers (e.g., fingerprints, retinal scans, face scans, or DNA profile); employee ID numbers; date of birth; and Internet Protocol (IP) addresses; or any other data that constitutes personal information or personal data under applicable Law.

1.1.54 "Pharmacovigilance Agreement" means the Pharmacovigilance Agreement, in substantially the form of Exhibit C.

1.1.55 "Post-Closing Tax Period" means any Tax Period beginning after the Closing Date and the portion of any Straddle Tax Period that begins on the day after the Closing Date.

1.1.56 "Pre-Closing Tax Period" means any Tax Period ending on or before the Closing Date and the portion of any Straddle Tax Period that ends on the Closing Date.

1.1.1 "Privacy and Security Requirements" means, to the extent applicable to the Product Business, (a) any Laws in the Territory regulating the Processing of Personal Information including Section 5 of the Federal Trade Commission Act, all state Laws related to unfair or deceptive trade practices, the California Consumer Privacy Act and any implementing regulations therein (together, the "CCPA"), the Fair Credit Reporting Act ("FCRA"), the Controlling the Assault of Non-Solicited Pornography And Marketing Act of 2003 ("CAN-SPAM"), all Laws related to online privacy policies, the Telephone Consumer Protection Act ("TCPA"), the Illinois Biometric Information Privacy Act ("BIPA"), all Laws in the Territory related to faxes, telemarketing and text messaging, and all Laws related to breach notification; (b) policies adopted by the Divesting Entities and applicable to the Product Business relating to the PCI DSS or the Processing of Personal Information, including all such website and mobile application privacy policies and internal information security policies; and (e) the Payment Card Industry Data Security Standard issued by the PCI Security Standards Council, as it may be amended from time to time.

1.1.2 "Process" means the creation, collection, use (including for the purposes of sending telephone calls, text messages and emails), storage, maintenance, processing, recording, distribution, transfer, transmission, receipt, import, export, protection, safeguarding, disposal or disclosure or other activity performed upon data (whether electronically or in any other form or medium).

1.1.3 "Product" means each of the products set forth on Schedule 1.1.35, in each case, as sold by or on behalf of the Divesting Entities in the applicable Territory as of immediately prior to or at any time during the twelve months prior to the Closing in the applicable Field under the Trademarks for such products identified on such Schedule.

1.1.4 "Product Business" means the Exploitation by the Divesting Entities of the Products in the applicable Fields in the applicable Territories, but excluding the research, development, registration, storage, use, transport, import and export of any Product in the applicable Field in the applicable Territory in support of the Exploitation of such Product outside of the applicable Field in the applicable Territory or outside of the applicable Territory.

1.1.5 "Product Improvements" means all modifications, derivative works, translations, developments, enhancements and improvements of any Product, Product Know-How, Purchased Product Promotional Materials, Licensed Copyrights or Licensed Product Know-How conceived, created, developed, reduced to practice or acquired by or on behalf of Buyer or any of its then current Affiliates, solely to the extent used in connection with the Exploitation of the Products in the Field in the Territory, at any time after the Closing Date.

1.1.6 "Product Know-How" means (a) all trade secret rights in the Product formulae in the Territory that, as of the Closing Date, are solely owned by or co-owned among the Divesting Entities, in each case solely with respect to the Territory and the applicable Field and (b) all technology, technical information, know-how and data, including inventions (whether patentable or not), patent disclosures, assays, discoveries, trade secrets, specifications, instructions, processes, manufacturing processes, formulae, formulations, chemical or biological manufacturing control data and quality control and testing procedures, including all biological, chemical, pharmacological, biochemical, toxicological, pharmaceutical, physical, safety, quality control, preclinical and clinical data, that are (i) identified or identifiable in a tangible form, (ii) as of the Closing Date, solely owned by or co-owned among the Divesting Entities, (iii) used by or on behalf of any Divesting Entity exclusively for or exclusively in connection with the Manufacturing of any Product for Exploitation in the applicable Field in the applicable Territory or the maintenance of any Purchased Product Registration at any time during the twelve months prior to the Closing Date and (iv) in the possession or Control of any Divesting Entity; *provided*, that Product Know-How does not include any of such information that is general Manufacturing know-how and, for clarity, does not include any biological or chemical materials.

1.1.7 "Product Registration" means, with respect to a Product, any and all approvals, marketing authorizations, licenses, registrations (except manufacturing establishment registrations) or authorizations of any Governmental Authority necessary to commercially distribute, sell or market such Product in the applicable Fields in the applicable Territory or any applications to obtain such approvals, marketing authorizations, licenses, registrations or authorizations.

1.1.8 "Proposed Consent Order" means, to the extent applicable, a proposed written Judgment issued by any applicable Competition Authority requiring the Divesting Entities to sell, assign, license or otherwise transfer certain assets relating to the animal health businesses of each of Bison and its Affiliates and Seller and its Affiliates in order for Bison and Seller to obtain regulatory clearance from any such Competition Authority to complete the transactions contemplated by the Bison Acquisition Agreement.

1.1.9 "Purchase Price" means the Closing Payment, as adjusted pursuant to Section 2.5.3.

1.1.10 "Purchased Copyrights" means the Copyrights that are set forth on Schedule 1.1.10.

1.1.11 "Purchased Domain Names" means all Domain Names listed on Schedule 1.1.11 and all applications and registrations therefor.

1.1.12 "Purchased Intellectual Property" means the Product Know-How, the Purchased Copyrights, the Purchased Domain Names and the Purchased Trademarks.

1.1.13 "Purchased Inventory" means all inventory of Products in finished packaged form labeled and held for sale (and having at least twelve months of regulatory approved shelf life remaining as of the Closing Date) in the applicable Field and the applicable Territory, to the extent owned as of the Closing by any Divesting Entity and that has not been sold to a Third Party, including any wholesaler or distributor; *provided*, *however*, that the Purchased Inventory shall be limited on a SKU by SKU basis for each Product to quantities of such SKU for such Product that do not exceed six months' of the Divesting Entities inventory requirements for such SKU based on the Divesting Entities' average inventory levels for such SKU in the twelve months prior to the Closing Date. All forms of inventory not in saleable form (*e.f.*, blister cards with tablets, bulk tablets, printed packaging materials, API) are excluded.

1.1.14 "Purchased Product Promotional Materials" means (other than the Purchased Regulatory Documentation and the Purchased Product Records) all existing advertising, promotional and media materials, sales training materials, customer lists, other marketing data and materials, trade show materials and videos, in such form as maintained by the Divesting Entities, to the extent (a) exclusively or primarily used or held for exclusive or primary use in the Product Business at any time during the twelve months prior to the Closing Date, (b) owned and in the possession or Control of the Divesting Entities and (c) produced in the 12 months prior to the Closing Date, by the Divesting Entities, but excluding, in all cases, the Excluded Assets and all intellectual property rights of any Third Party contained or depicted therein.

1.1.15 "Purchased Product Records" means all books and records relating exclusively or primarily to the Manufacture of any Product for Exploitation in the applicable Field and in the applicable Territory or the Product Business (other than the Purchased Regulatory Documentation and Purchased Product Promotional Materials), in such form as maintained by the Divesting Entities, to the extent (a) owned and in the possession or Control of the Divesting Entities and (b) necessary to Exploit (but not Manufacture) the Products as Exploited by the Divesting Entities as of the Closing Date, but excluding, in all cases, the Excluded Assets and all intellectual property rights of any Third Party contained or depicted therein.

1.1.16 "Purchased Product Registrations" means the Product Registrations listed on Schedule 1.1.16.

1.1.17 "Purchased Regulatory Documentation" means, all (a) documentation comprising the Purchased Product Registrations and (b) to the extent owned by and in the possession or Control of, and in such form as maintained by, any Divesting Entity, exclusively or primarily related to any Product and the applicable Field and the applicable Territory for such Product and necessary to, or otherwise limiting the ability to, Exploit or Manufacture such Product in such Field and Territory, (i) correspondence and reports submitted to or received from Governmental Authorities, (ii) other dossiers or compilations necessary to obtain or maintain any Purchased Product Registrations with regard to such Product, (iii) literature safety reports and documents relating to good manufacturing practices or issues, animal clinical trials, animal

research, including laboratory and target animal research and all veterinary master files contained or referenced in the Purchased Product Registrations with regard to such Product and (iv) data (including clinical and pre-clinical data) referenced in any of the documentation and materials referred to in the preceding clauses (a), (b)(i) and (b)(ii), in each case (clauses (a) and (b)), excluding the Excluded Assets and all intellectual property rights of any Third Party contained or depicted therein.

1.1.18 "Purchased Trademarks" means all Trademarks that are listed on Schedule 1.1.18.

1.1.19 "Quality Agreement" means the Quality Agreement, in substantially the form of Exhibit D.

1.1.20 "Rebates" means rebates, price reductions or other lagged price concessions or coupon programs, in each case, based on purchase or utilization of units of a Product.

1.1.21 "Representatives" means, with respect to either Party, its officers, employees, agents, attorneys, consultants, advisors, and other representatives.

1.1.22 "Sanctions Laws" means all Laws relating to economic or trade sanctions that are administered or enforced by the United States (including by the U.S. Department of Treasury Office of Foreign Assets Control ("OFAC") or the U.S. Department of State), the European Union or its Member States, or the United Nations Security Council.

1.1.23 "Sanctioned Person" means any Person that is designated on the U.S. List of Specially Designated Nationals and Blocked Persons ("SDN List") maintained by OFAC, the European Union's Consolidated list of persons, groups, and entities subject to EU financial sanctions, or the UN Security Council's Consolidated Sanctions List, or that is 50 percent or more owned or controlled, directly or indirectly, by one or more such Persons.

1.1.24 "Security Breach" means any (i) unauthorized access, acquisition, disclosure, modification, deletion, or destruction of Personal Information or Confidential Data; or (ii) compromise to the availability and integrity of the operations of the IT systems owned and operated by the Product Business, including any ransomware attack affecting such IT systems.

1.1.25 "Seller Business" means (a) the Exploitation of the Products outside of the Territory, (b) the Manufacture of the Products worldwide, (c) the export, import, use, research, development, registration, holding or keeping (whether for disposal or otherwise), disposition or transport of the Products in the applicable Territory for Exploitation outside of the applicable Territory and (d) the Manufacture or Exploitation of any product other than the Products worldwide.

1.1.26 "Seller's Knowledge" means the actual knowledge (as opposed to imputed or constructive knowledge) of the individuals listed on Schedule 1.1.26.

1.1.27 "Straddle Tax Period" means any Tax Period that begins on or before and ends after the Closing Date.

1.1.28 "Tax" and "Taxes" means any and all domestic and foreign, federal, state, provincial, local, municipal and other taxes, fees, levies, duties, tariffs, imposts, and like assessments or charges of whatever kind, including taxes or other charges on, or measured by or with respect to, net or gross income, net or gross proceeds, gains, net or gross receipts, capital, franchise, windfall or other profits, withholding, real or personal property, intangible, real estate, environmental, license, employment, unemployment, social security, payroll, excise, use, sales, value added, goods and services, ad valorem, stamp, transfer, recording, registration, documentary, escheat, unclaimed property, capital gains, capital stock, user, leasing, lease, natural resources, gaming, estimated, severance, fuel, interest equalization, occupation, and the grant, subsidy, state aid or similar amount relating to Taxes and received or deemed received from any Governmental Authority, together with any interest, penalties and additions to such Taxes, and any penalties, interest and similar payments and fees imposed in respect of a failure to file any Tax Return in a timely, complete or correct manner, in each case, whether disputed or not.

1.1.29 "Tax Period" means, with respect to any Tax, the period with respect to which the amount of the liability for such Tax is determined by the Taxing Authority responsible for the administration of such Tax.

1.1.30 "Tax Proceeding" means any audit, examination, request for information, investigation, hearing, litigation, legal action, or administrative or judicial proceeding or contest relating to Taxes with a Governmental Authority.

1.1.31 "Tax Return" means any return, declaration, report, claim for refund, information return or statement relating to Taxes, including any schedule or attachment thereto or amendment thereof, filed or maintained, or required to be filed or maintained, in connection with the calculation, determination, assessment or collection of any Tax.

1.1.32 "Tax Sharing Agreement" means any agreement including any provision pursuant to which any Divesting Entity is obligated to indemnify any Person for, or otherwise pay, any Tax of another Person, or share any Tax benefit with another Person.

1.1.33 "Taxing Authority" means any Governmental Authority or any quasi-governmental body that administers, assesses or collects Taxes or Tax Returns.

1.1.34 "Territory" means the territories listed for each Product on Schedule 1.1.35.

1.1.35 "Third Party" means any Person other than Seller, Buyer and their respective Affiliates and permitted successors and assigns.

1.1.36 "Trademark" means all trademarks, service marks, trade names, brand names, sub-brand names, trade dress rights, product configuration rights, certification marks, collective marks, logos, taglines, slogans, designs or business symbols and all words, names, symbols, colors, shapes, designations or any combination thereof that function as an identifier of source or origin or quality, whether or not registered, and all statutory and common law rights therein, and all registrations and applications therefor and all goodwill associated with any of the foregoing.

1.1.37 "Trademark Assignment" means the Trademark Assignment, in substantially the form of Exhibit E.

1.1.38 "Transfer" and "Transferred" means, for a Product Registration in a country in the Territory, as applicable, (a) the assignment of rights relating to such Product Registration for the applicable Product in such country to Buyer or Buyer's nominee in accordance with applicable Law, (b) to the extent the Product Registration cannot be transferred because applicable Law requires the Product Registration transferee to apply in its own name for a new Product Registration, the issuance of a new Product Registration for such Product and the withdrawal or termination of such Purchased Product Registration, as applicable, for such Product in such country, each in accordance with applicable Law, or (c) in the event Buyer requests the withdrawal or termination of a Product Registration for such Product for such country or Seller or the applicable holder of a Product Registration withdraws or terminates such Product Registration in accordance with Section 5.5.4, the termination, withdrawal, cancelation or lapse of such Product Registration for such Product for such country in accordance with applicable Law.

1.1.39 "Transfer Taxes" means any and all transfer, documentary, stamp, stamp duty, registration, recording and other similar Taxes (including any penalties, interest and additions thereto) incurred or imposed in respect of the transfer of the Product Business or Purchased Assets, or the assumption of the Assumed Liabilities, pursuant to this Agreement.

1.1.40 "Transitional Manufacturing and Supply Agreement" means the Transitional Manufacturing and Supply Agreement to be entered into at the Closing between Seller and Buyer (or their respective Affiliates), in substantially the form of Exhibit F.

1.1.41 "Transitional Services Agreement" means the Transitional Services Agreement, in substantially the form of Exhibit G.

1.2 Construction. Except where the context otherwise requires, wherever used, the singular includes the plural, the plural the singular, the use of any gender shall be applicable to all genders and the word "or" is used in the inclusive sense (and/or). The table of contents and captions of this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The term "including" (or its variations) as used herein does not limit the generality of any description preceding such term. The language of this Agreement shall be deemed to be the language mutually chosen by the Parties and no rule of strict construction shall be applied against either Party. Unless otherwise specified or where the context otherwise requires, (a) references in this Agreement to any Article, Section, Schedule or Exhibit are references to such Article, Section, Schedule or Exhibit of this Agreement and references to this Agreement are references to this Agreement and all Exhibits and Schedules hereto; (b) references in any Section to any clause are references to such clause of such Section; (c) "hereof," "hereto," "hereby," "herein" and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement; (d) references to a Person are also to its permitted successors and assigns; (e) references to a Law include any amendment or modification to such Law and any rules, regulations or legally binding guidelines issued thereunder, in each case, as in effect at the

relevant time of reference thereto; (f) references to any agreement, instrument or other document in this Agreement refer to such agreement, instrument or other document as originally executed or, if subsequently amended, replaced or supplemented from time to time, as so amended, replaced or supplemented and in effect at the relevant time of reference thereto; (g) "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and such phrase does not mean simply "if"; (h) references to monetary amounts are denominated in United States Dollars; and (i) references to days (excluding Business Days) or months shall be deemed references to calendar days or months. As between the Parties, in the event of any conflict or difference of any kind between the provisions of any Ancillary Agreement, on the one hand, and the provisions of this Agreement (including the Exhibits or Schedules hereto), on the other hand, this Agreement shall control in all respects.

1.3 Consistency with Final Consent Orders. To the extent that any term or provision of this Agreement conflicts with any corresponding term or provision of any Final Consent Order, the Parties hereby agree that the terms or provisions of such Final Consent Order shall control the rights and obligations of the Parties, and the Parties hereby agree to negotiate in good faith to amend accordingly such term or provision of this Agreement; *provided* that (a) any such amendments shall be limited to the minimum extent necessary for this Agreement to comply with such Final Consent Order and (b) if any such amendments required by such Final Consent Order significantly alter the financial terms of the transactions contemplated hereby (which shall include, for the avoidance of doubt, any amendment that requires the transfer to Buyer of any asset other than those listed in Section 2.1.1 or any amendment that restricts the transfer to Buyer of any material Purchased Asset), then, without limitation of the rights of Seller under Section 8.1.4, the Parties agree to negotiate in good faith to seek to agree on mutually acceptable modifications (as determined by each Party in its sole judgment) to this Agreement (including to the Purchase Price) that are necessary or appropriate based on the nature of such amendments.

1.4 Disclosure Schedules. Disclosures in any section or subsection of the Disclosure Schedules are made generally and shall not only address the corresponding section or subsection of this Agreement, but also other sections or subsections of this Agreement to the extent that it is reasonably apparent from the text of such disclosure that such disclosure is applicable to such other sections or subsections. No reference to or disclosure of any matter or item in the Disclosure Schedules (a) shall be construed as an admission or indication that such matter or item is material or that such matter or item is required to be referred to or disclosed, nor shall it be deemed to establish a standard of materiality now or in the future (it being the intent that neither Seller nor any of its Affiliates shall be penalized for having disclosed more than may be required by the request); (b) represents a determination by Seller or any of its Affiliates that such matter or item did not arise in the ordinary course of business; (c) shall imply that such matter or item constitutes or would result in a Material Adverse Effect by the criteria set forth in this Agreement or (d) shall imply that disclosure of any such matter or item is required by Law or by any Governmental Authority. No dollar amount referenced herein is indicative of what is or is not material to Seller or its Affiliates.

ARTICLE 2
SALE AND PURCHASE OF ASSETS; LIABILITIES

2.1 Sale of Purchased Assets.

2.1.1 Purchase and Sale of Purchased Assets. Upon the terms and subject to the conditions of this Agreement and the Ancillary Agreements, at and effective as of the Closing, the Seller shall and shall cause the other Divesting Entities to sell, transfer, convey and assign to Buyer, and Buyer shall purchase and accept from the Divesting Entities, all of the Divesting Entities' right, title and interest in and to the following (collectively, the "Purchased Assets"), free and clear of any Encumbrances other than Permitted Encumbrances:

(a) the Contracts exclusively related to the Product Business, including those set forth on Schedule 2.1.1(a), in each case, excluding all (i) rights, claims or causes of action (including warranty claims) of Seller thereunder related to products supplied or services provided to the Divesting Entities prior to the Closing that are not included in the Purchased Assets and (ii) Accounts Receivable (such Contracts, the "Purchased Contracts");

(b) the Shared Contracts to be assigned to Buyer in accordance with Section 2.3.3;

(c) the Rebate, promotional and other similar programs related to the Product Business to be assigned to Buyer in accordance with Section 5.12;

(d) the Purchased Inventory;

(e) the Purchased Product Registrations;

(f) the Purchased Regulatory Documentation;

(g) the Purchased Product Records;

(h) the Purchased Product Promotional Materials;

(i) the Purchased Intellectual Property;

(j) all rights to claims, demands, causes of action or Litigation those set forth on Schedule 2.1.1(j); and

(k) all other assets specifically listed on Schedule 2.1.1(k).

2.1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement or any Ancillary Agreement, Buyer shall not acquire, pursuant to this Agreement or any Ancillary Agreement, the Excluded Assets, and the Purchased Assets shall not include, and Seller or its Affiliates shall retain following the Closing Date, the Excluded Assets.

2.2 Licenses.

2.2.1 Effective from and after the Closing, and subject to the terms and conditions of this Agreement, Buyer, on behalf of itself and its Affiliates, hereby grants to Seller and its current and future Affiliates (for so long as they remain Affiliates), a nonexclusive, perpetual, irrevocable, royalty-free license and non-transferable (except in connection with any assignment of this Agreement permitted under Section 9.6), right to use and right of reference in, to and under the Purchased Assets described in Sections 2.1.1(e) through (i) and Buyer Know-How Improvements (as defined in the Transitional Manufacturing and Supply Agreement), in each case, solely to the extent necessary or useful for Seller or its Affiliates to (a) exercise its or such Affiliates' respective rights or perform its or such Affiliates' respective obligations under this Agreement or any Ancillary Agreement or (b) conduct the Seller Business. Seller and such Affiliates shall have the right to grant (through multiple tiers) sublicenses and further rights of use and reference of their rights under this Section 2.2.1 solely to the extent necessary or useful for Seller and such Affiliates to (i) exercise its or such Affiliates' respective rights or perform its or such Affiliates' respective obligations under this Agreement or any Ancillary Agreement or (ii) conduct the Seller Business; *provided* that (A) the scope of each such sublicense is consistent with this Section 2.2.1 and (B) Seller shall be responsible for any use of the Purchased Assets or Buyer Know-How Improvements, by any sublicensee that violates this Section 2.2.1.

2.2.2 Effective from and after the Closing, and subject to the terms and conditions of this Agreement, Seller, on behalf of itself and the other Divesting Entities, hereby grants to Buyer and its current and future Affiliates (for so long as they remain Affiliates), nonexclusive, perpetual, irrevocable, royalty-free and non-transferable (except in connection with any assignment of this Agreement permitted under Section 9.6) license, with respect to each Product and all Product Improvements thereto, to the applicable Licensed Product Know-How, including the rights to reproduce, use, modify, create derivative works of, develop and improve such Licensed Product Know-How, solely to the extent necessary or useful for Buyer and such Affiliates to Manufacture such Product or Product Improvement thereto for Exploitation in the applicable Field and the applicable Territory or maintain the Purchased Product Registrations. Buyer and such Affiliates shall have the right to grant (through multiple tiers) sublicenses of their rights under this Section 2.2.2 solely to the extent necessary or useful for Buyer and such Affiliates to Manufacture such Product and Product Improvements thereto for Exploitation in the applicable Field and the applicable Territory or maintain the Purchased Product Registrations; *provided* that (a) the scope of each such sublicense is consistent with this Section 2.2.2 and (b) Buyer shall be responsible for any use of the Licensed Product Know-How by any such sublicensee under this Section 2.2.2 that violates this Section 2.2.2.

2.2.3 Effective from and after the Closing, and subject to the terms and conditions of this Agreement, Seller, on behalf of itself and the other Divesting Entities, hereby grants to Buyer and its current and future Affiliates (for so long as they remain Affiliates), a nonexclusive, perpetual, irrevocable, royalty-free and non-transferable (except in connection with any assignment of this Agreement permitted under Section 9.6) license, with respect to each Product and all Product Improvements thereto, to the Licensed Copyrights used as of the Closing Date, including the rights to reproduce, use, modify, create derivative works of, develop, improve, publicly perform, publicly display and distribute the Licensed Copyrights, to Exploit such Product and Product Improvements in the applicable Field in the applicable Territory solely to the extent necessary or useful for Buyer and its Affiliates to Exploit such Product and Product Improvements in the applicable Field in the applicable Territory. Buyer and its Affiliates shall

have the right to grant (through multiple tiers) sublicenses of their rights under this Section 2.2.3 solely to the extent necessary or useful for Buyer and its Affiliates to Exploit such Product and Product Improvements in the applicable Field in the applicable Territory; *provided* that (a) the scope of each such sublicense is consistent with this Section 2.2.3 and (b) Buyer shall be responsible for any use of the Licensed Copyrights by any sublicensee under this Section 2.2.3 that violates this Section 2.2.3.

2.2.4 Buyer and such Affiliates shall have the right to grant sublicenses of their rights under Section 2.2.2 and Section 2.2.3 to any acquirer of the Product Business, whether by a stock sale, an assets sale, a merger, a consolidation or otherwise, which sublicense will not relieve Buyer and its Affiliates of any of its obligations under this Agreement.

2.2.5 Effective from and after the Closing, and subject to the terms and conditions of this Agreement, Seller, on behalf of itself and the other Divesting Entities, hereby grants to Buyer and its current and future Affiliates (for so long as they remain Affiliates), a nonexclusive, perpetual, irrevocable, royalty-free and non-transferable (except in connection with any assignment of this Agreement permitted under Section 9.6) license and right of reference and use to the Concurrent Use Assets to use such Concurrent Use Assets to the extent necessary or useful for Buyer and its Affiliates to Exploit animal health products covered by the Concurrent Use Registration for use in cats or dogs in the Territory. Buyer and its Affiliates shall have the right to grant (through multiple tiers) sublicenses of their rights under this Section 2.2.4 to the extent necessary or useful for Buyer and its Affiliates to Exploit animal health products covered by the Concurrent Use Registration for use in cats or dogs in the Territory; *provided* that (a) the scope of each such sublicense is consistent with this Section 2.2.4 and (b) Buyer shall be responsible for any use of the Concurrent Use Assets by any sublicensee that violates this Section 2.2.4. Buyer acknowledges and agrees that (x) Seller and its Affiliates no longer Manufacture or Exploit, and shall have no obligation hereunder or otherwise to Buyer or any of its Affiliates to Manufacture or Exploit, the product branded as PROGRAM (lufenuron) in the Territory and (y) except to the extent of the license and right of reference grant in this Section 2.2.4, neither Buyer nor any of its Affiliates is acquiring any rights of any kind under this Agreement or any Ancillary Agreement to the product branded as PROGRAM (lufenuron) or any intellectual property or other rights related thereto.

2.3 Consents to Certain Assignments; Shared Contracts.

2.3.1 Notwithstanding anything to the contrary contained in this Agreement or any Ancillary Agreement, neither this Agreement nor any Ancillary Agreement shall constitute an agreement to sell, transfer, assign or deliver, directly or indirectly, any Purchased Asset, or any benefit arising thereunder, if an attempted direct or indirect sale, transfer, assignment or delivery thereof, without the consent of a Third Party (including a Governmental Authority, but specifically excluding any Competition Authority and any consent required to be obtained under any applicable Competition Law), would constitute a breach, default, violation or other contravention of the rights of such Third Party, would be ineffective with respect to any party to a Contract concerning such Purchased Asset or would in any way adversely affect the rights of the Divesting Entities under such Purchased Asset. Buyer agrees that none of Seller or any of its Affiliates shall have any Liability whatsoever to Buyer or any other Person arising out of or relating to the failure to obtain any such consent (a "Required Consent"), and no representation,

warranty or covenant of Seller herein shall be breached or deemed breached, and no condition shall be deemed not satisfied, as a result of such failure or any Litigation or investigation commenced or threatened by or on behalf of any Person arising out of or relating to the failure to obtain any such Required Consent.

2.3.2 If any Required Consent is not obtained prior to the Closing, subject to satisfaction of the conditions to Closing set forth in Article 6, the Closing shall nonetheless take place on the terms set forth herein and, thereafter, other than with respect to the Transfer of the Purchased Product Registrations (which is governed by Section 5.5 and the Transitional Services Agreement), Buyer and Seller shall use their respective commercially reasonable efforts to secure such Required Consent as promptly as practicable after the Closing and, for the period commencing on the Closing Date and ending on the earlier to occur of the expiration or termination of the applicable Purchased Asset and the date that is twelve months after the Closing Date, Seller shall provide or cause to be provided all commercially reasonable assistance to Buyer reasonably requested by Buyer to secure such Required Consent (*provided*, that neither Buyer nor Seller nor any of their respective Affiliates shall be required to pay money to any Third Party, commence any Litigation or offer or grant any accommodation (financial or otherwise) to any Third Party in connection with such efforts or assistance), or cooperate in good faith with Buyer (with each Party being responsible for its own out-of-pocket expenses) in any lawful and commercially reasonable arrangement proposed by Buyer under which (a) Buyer shall obtain (without infringing upon the legal rights of such Third Party or violating any Law) the economic rights and benefits under the applicable Purchased Asset with respect to which the Required Consent has not been obtained and (b) Buyer shall assume any related economic burden with respect to such Purchased Asset. Following the Closing, until such Required Consent is obtained, Buyer will, and will cause each of its Affiliates to use commercially reasonable efforts to cooperate with Seller and its Affiliates to enable them to comply with the terms of such Contract.

2.3.3 Prior to the Closing, Seller shall use its commercially reasonable efforts to identify to Buyer each Contract that is material and necessary to, but not exclusively used in, the Product Business or the Manufacture of the Products (each such Contract, together with each Contract that is listed on Schedule 2.3.3, a "Shared Contract"). Seller shall update Schedule 2.3.3 not less than three Business Days prior to the Closing Date to reflect all Shared Contracts so identified and whether each such Shared Contract will be (i) assigned to Buyer at the Closing, (ii) retained by the applicable Divesting Entity following the Closing (with no further obligation of Seller or its Affiliates to Buyer with respect to such Shared Contract from and after the Closing, except as may be provided otherwise in the Transitional Manufacturing and Supply Agreement) or (iii) otherwise addressed in accordance with this Section 2.3.3. Seller shall use its commercially reasonable efforts, prior to the Closing and for the period commencing on the Closing Date and ending on the earlier to occur of the expiration or termination of the applicable Shared Contract and the date that is twelve months after the Closing, to cause each Shared Contract (other than any Shared Contract referred to in the immediately preceding clause (i) or (ii)) to be appropriately amended and a new Contract to be entered into prior to, on or after the Closing Date so that Buyer shall be entitled to the economic rights and benefits, and shall be responsible for any related economic burden, relating to the Product Business or the Manufacture of the Products, as applicable, thereunder and Seller or its Affiliates shall be entitled to the economic rights and benefits, and shall be responsible for any related economic burden, relating

to the balance of the subject matter of such Shared Contract. If any such Shared Contract cannot be so amended (and a new Contract cannot be entered into) within such period, or if either of the foregoing would impair the benefits that either Buyer or Seller would expect to derive from such amended Shared Contract, then the Parties shall cooperate with each other to obtain for Buyer an arrangement to provide Buyer with the benefits of such Shared Contract in some other manner, including Seller's entering into such lawful arrangements with Buyer to place Buyer in substantially the same economic and Liability position as if such amendments and new Contract were entered into in accordance with the foregoing. The obligations of Seller pursuant to this Section 2.3.3 shall not extend beyond the remaining term of the applicable Shared Contract as of the Closing Date.

2.3.4 Nothing in this Section 2.3 shall require Buyer or Seller or their respective Affiliates to make any payment (except to the extent advanced, assumed or agreed in advance to be reimbursed by the other Party), incur any obligation or grant any concession in order to effect any transaction contemplated by this Section 2.3.

2.4 Liabilities.

2.4.1 Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, at the Closing, the Divesting Entities shall assign to Buyer and Buyer shall unconditionally assume from the Divesting Entities and pay, perform and discharge when due, any and all Assumed Liabilities. The term "Assumed Liabilities" means:

(a) all Assumed Tax Liabilities;

(b) all Liabilities arising out of or related to, including all Liabilities arising out of or relating to Litigation in respect of, (i) the Manufacture of any Product (other than any liabilities of Seller or any of its Affiliates under the Transitional Manufacturing and Supply Agreement), (ii) the Product Business, (iii) the ownership, use, sale, license or other Exploitation of the Purchased Assets or (iv) any unit of any Product sold by or on behalf of Buyer or any of its Affiliates in the applicable Territory, in each case (clauses (i) through (iv)), from and after the Closing Date;

(c) all Liabilities (i) to customers under purchase orders for units of Product that have not yet been shipped as of the Closing and (ii) for accounts payable with respect to the Product Business, in each case (clauses (i) through (ii)), from and after the Closing Date;

(d) all Liabilities for any rebates in respect of any units of any Product sold by or on behalf of Buyer or any of its Affiliates in the applicable Territory from and after the Closing Date; and

(e) all Liabilities for any returns or recalls in respect of any unit of Product that is returned or recalled in the applicable Territory from and after the Closing Date and that was sold on or after the Closing Date.

2.4.2 Excluded Liabilities. Buyer shall not assume the Excluded Liabilities or, other than the Assumed Liabilities, any other Liabilities of Seller or any of its Affiliates.

2.5 Consideration.

2.5.1 Purchase Price. Upon the terms and subject to the conditions of this Agreement, in consideration of the conveyances contemplated under Section 2.1 and the license grants under Section 2.2.2 and Section 2.2.3, Buyer shall, on the Closing Date, (a) pay to Seller, or if directed by Seller to pay to an Affiliate of Seller, to such Affiliate the sum of $95,000,000 plus the Estimated Inventory Value (together, the "Closing Payment") by wire transfer of immediately available funds to the account designated by Seller by written notice to Buyer at least two Business Days prior to the Closing Date, and (b) assume the Assumed Liabilities.

2.5.2 Allocation of Consideration. Buyer and Seller agree that, for purposes of Section 1060 of the Code, the Purchase Price and the Assumed Liabilities shall be allocated among the Purchased Assets as set forth on Schedule 2.5.2 (the "Allocation"). The Allocation shall be amended to reflect any adjustments to the Purchase Price or the Assumed Liabilities under this Agreement. The Allocation shall be consistent with the Estimated Inventory Value and shall be adjusted for any changes thereto to reflect the Closing Inventory Value. Each of Seller, Buyer and their respective Affiliates shall (a) prepare and file their respective Tax Returns (including IRS Form 8594) that are filed after the Closing Date as well as published financial statements prepared in accordance with GAAP on a basis consistent with the Allocation; (b) take no position inconsistent with the Allocation in any Tax Proceeding or otherwise in connection with their respective accounting or financial reporting unless otherwise required as a result of a change of applicable Law after the Execution Date or a contrary determination within the meaning of Section 1313 of the Code; (c) notify the respective other Party of any notice from any Taxing Authority disputing or reasonably expected to dispute the Allocation; and (d) use commercially reasonable efforts to defend the Allocation in any Tax Proceeding, unless otherwise required as a result of a change in applicable Law after the Execution Date or a contrary determination within the meaning of Section 1313 of the Code. Buyer and Seller shall cooperate fully, as and to the extent reasonably requested by the other applicable Party, and shall retain and (upon the other applicable Party's request) furnish or cause to be furnished to the other applicable Party, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax Return.

2.5.3 Post-Closing Inventory Value Adjustment.

(a) Estimated Inventory Value Statement. Not less than three Business Days nor more than five Business Days prior to the Closing Date, Seller shall cause to be prepared and delivered to Buyer a statement calculating in reasonable detail the estimated amount and value of the Purchased Inventory as of the Closing Date in accordance with Schedule 2.5.3 and the books and records of Seller (the "Estimated Inventory Value"). Notwithstanding anything in Schedule 2.5.3 or the books and records of Seller to the contrary, neither the Estimated Inventory Value nor the Closing Inventory Value shall ascribe any value to units of any Purchased Inventory that has less than twelve months of regulatory approved shelf life remaining as of the Closing Date.

(b) Closing Date Inventory Statement. Within 90 days after the Closing Date, Buyer shall cause to be prepared and delivered to Seller a statement (the "Closing

Date Inventory Statement") calculating in reasonable detail the actual amount and value of the Purchased Inventory as of the Closing Date in accordance with Schedule 2.5.3 (the "Closing Inventory Value").

(c) Objections; Resolutions of Disputes.

(i) Unless Seller notifies Buyer in writing within 30 days after Buyer's delivery of the Closing Date Inventory Statement (such 30-day period, the "Objection Period") of any good faith objection to the computation of the Closing Inventory Value set forth therein (a "Notice of Objection"), the Closing Date Inventory Statement shall be final and binding. Following the delivery of the Closing Date Inventory Statement and solely for purposes of Seller's review of the Closing Date Inventory Statement and preparation of any Notice of Objection, Buyer shall permit Seller and its Representatives to review the work papers of Buyer relating to the Closing Date Inventory Statement. Any Notice of Objection shall specify in reasonable detail each item that Buyer disputes, the amount in dispute for each such dispute and a description in reasonable detail of the basis for the objections set forth therein. Seller and Buyer acknowledge that the sole purpose of the determination of the Closing Inventory Value is to adjust the Purchase Price so as to reflect the difference between the Closing Inventory Value and the Estimated Inventory Value, and that in order to do so the Closing Inventory Value and the Estimated Inventory Value need to be calculated in the same manner, without regard to any changes in GAAP that become effective following Seller's calculation of the Estimated Inventory Value.

(ii) If Seller provides a Notice of Objection to Buyer within the Objection Period, Seller and Buyer shall, during the 30-day period following Buyer's receipt of the Notice of Objection (such 30-day period, the "Resolution Period"), attempt in good faith to resolve Seller's objections. During the Resolution Period, Buyer and its Representatives shall, in accordance with Section 2.5.3(e), be permitted to review the work papers of Seller and its accountants relating to the Notice of Objection and the basis therefor. If Seller and Buyer reach an agreement with respect to any of Seller's objections, such agreement shall be reduced to writing and shall be final and binding on the Parties. If Seller and Buyer are unable to resolve all such objections within the Resolution Period, the matters remaining in dispute shall be submitted to the Accountant. The Accountant shall be engaged pursuant to an engagement letter among Seller, Buyer and the Accountant on terms and conditions consistent with this Section 2.5.3(c). The Accountant shall be instructed, pursuant to such engagement letter, to resolve only those matters set forth in the Notice of Objection remaining in dispute and not to otherwise investigate any matter independently. Seller and Buyer each agree to furnish to the Accountant access to such individuals and such information, books and records as may be reasonably required by the Accountant to make its final determination (any such information, books and records shall be provided to the other Party prior to its submission or presentation to the Accountant). Seller and Buyer shall also instruct the Accountant to render its reasoned written decision as promptly as practicable but in no event later than 30 days from the date that the unresolved objections are submitted to the Accountant for review. With respect to each disputed line item, such decision, if not in accordance with the position of either Seller or Buyer, shall not be in excess of the higher, nor less than the lower, of the amounts advocated by Buyer in the Closing Date Inventory Statement or Seller in the Notice of Objection with respect to such disputed line item. Except as Seller and Buyer may otherwise agree, all communications between Seller and Buyer or any of

their respective Representatives, on the one hand, and the Accountant, on the other hand, shall be in writing with copies simultaneously delivered to the non-communicating Party. The resolution of disputed items by the Accountant shall be final and binding on the Parties (absent manifest error) and the determination of the Accountant shall constitute an arbitral award that is final, binding and non-appealable (absent manifest error) and upon which a Judgment may be entered by a court having jurisdiction thereover. The costs and expenses of the Accountant shall be borne by Buyer and Seller in inverse proportion to the difference between the Accountant's final determination and of the amounts advocated by Seller or Buyer with respect to such items, as applicable. For example, if (i) the Seller submits a Notice of Objection for $1,000, (ii) the Buyer contests only $500 of the amount claimed by the Seller, and (iii) the Accountant ultimately resolves the dispute by awarding the Seller $300 of the $500 contested, then the costs and expenses of the Accountant would be allocated 60% (*i.e.*, 300/500) to the Buyer and 40% (*i.e.*, 200/500) to the Seller.

(d) Adjustment Payment. Notwithstanding Section 9.1.2, within 10 Business Days after the date on which the Closing Date Inventory Statement (and the Closing Inventory Value contained therein) becomes final and binding on Seller and Buyer in accordance with Section 2.5.3(c), (i) if the Closing Inventory Value is more than $100,000 less than the Estimated Inventory Value, the Closing Payment shall be adjusted downward by the amount of such difference, and Seller shall pay the amount of such difference to Buyer, and (ii) if the Closing Inventory Value is more than $100,000 greater than the Estimated Inventory Value, the Closing Payment shall be adjusted upward by the amount of such excess, and Buyer shall pay the amount of such excess to Seller. Any payment under this Section 2.5.3(d) shall be made by wire transfer of immediately available funds to an account designated in writing by the payee (such designation to be made at least two Business Days prior to the date on which such payment is due).

(e) Access to Buyer's Books and Records. Following the Closing and until the date the Closing Date Inventory Statement has become final and binding pursuant to Section 2.5.3(c), Buyer shall (i) provide or cause to be provided to Seller and its Representatives access upon reasonable notice during normal business hours to the properties, books, Contracts, personnel and records of Buyer and its Affiliates, and Buyer's, its Affiliates' and its and their accountants' work papers relevant to the preparation of the Closing Date Inventory Statement and the adjustments contemplated by this Section 2.5.3, (ii) provide Seller, upon Seller's request, with copies of any such books, Contracts, records and work papers and (iii) cause its personnel to reasonably cooperate with Seller and respond to Seller's requests for information promptly with respect thereto; *provided*, *however*, that the Buyer and its Affiliates, including the Divesting Entities, shall not be required to provide any information the disclosure of which is restricted by Contract or applicable Law (including competition or antitrust Law) or which would, based on the advice of counsel, result in the waiver of any privileges (provided that Buyer shall cooperate to permit such disclosure in a manner consistent with the preservation of such privilege). The accountants of Buyer and its Affiliates shall not be obligated to make any work papers available to any Person under this Section 2.5.3 unless and until such Person has signed a customary confidentiality and hold harmless agreement relating to such access to work papers in form and substance reasonably acceptable to such accountants.

2.6 Closing.

2.6.1 Closing. Pursuant to the terms and subject to the conditions of this Agreement, the closing of the transactions contemplated hereby (the "Closing") shall take place at the Washington, D.C. office of Covington & Burling LLP, or remotely by electronic exchange of executed signature pages, at 10:00 a.m. Eastern time, on the first Business Day of the month following the date on which all conditions (other than those that by their terms are to be satisfied or taken at the Closing) set forth in Article 6 have been satisfied (or, to the extent permitted by applicable Law, waived by the Party entitled to the benefits thereof), but not earlier than July 1, 2020, or such other time, date and place as Buyer and Seller agree to in writing. Notwithstanding the foregoing, the Closing shall occur on or prior to the latest date by which the transactions contemplated by this Agreement must close under the Consent Order. The Closing shall be deemed to have occurred at 12:00 a.m., Eastern time, on the Closing Date, such that Buyer shall be deemed the owner of the Purchased Assets on and after the Closing Date.

2.6.2 Closing Deliveries.

(a) Except as otherwise indicated below, at the Closing, Seller shall, or shall cause the other Divesting Entities to (as applicable), deliver the following to Buyer:

(i) each of the Ancillary Agreements to which Seller or any Divesting Entity is a party, validly executed by a duly authorized Representative of Seller or the applicable Divesting Entity;

(ii) the tangible Purchased Assets; *provided*, that (A) delivery shall, unless the Parties otherwise mutually agree, be to the locations, in the formats and on the timeframes set forth in Schedule 2.6.2(a)(ii) or as otherwise set forth in this Agreement or the Transitional Services Agreement, and (B) the Divesting Entities shall have the right, on behalf of themselves and their Affiliates, licensees, sublicensees, licensors, sublicensors and distributors to (i) retain copies of the Purchased Regulatory Documentation, the Purchased Product Promotional Materials, the Purchased Product Records and the Purchased Contracts, in each case, as shall be reasonably required for them to comply with their respective legal, regulatory, stock exchange, Tax and financial reporting requirements, to exercise the rights provided under Section 2.2.1, and for any other reasonable business purpose, including in respect of Litigation and insurance matters, and (ii) prior to delivering or making available any Purchased Asset to Buyer in accordance with Section 2.1, redact from such Purchased Asset any information to the extent that (x) such information does not relate to the Manufacture of the Products or the Product Business or (y) such information constitutes any Excluded Assets; *provided, however*, that, notwithstanding the foregoing, the Divesting Entities shall not have the right to redact information from Purchased Regulatory Documentation or Purchased Product Registrations that is required to Manufacture or Exploit the Products in the applicable Field and in the applicable Territory;

(iii) a certificate, dated as of the Closing Date, validly executed by a duly authorized Representative of Seller, certifying that all of the conditions set forth in Section 6.1.1 and Section 6.1.2 have been satisfied; and

(iv) a properly executed, complete and correct IRS Form W-9 of Seller and any other Divesting Entity to which Buyer will make a payment at Closing.

(b) At the Closing, Buyer shall deliver the following to Seller:

(i) each of the Ancillary Agreements to which Buyer or its Affiliates is a party, validly executed by a duly authorized Representative of Buyer or its applicable Affiliate;

(ii) the Closing Payment (along with a U.S. Federal Reserve reference number or similar evidencing execution of each such payment); and

(iii) a certificate, dated as of the Closing Date, validly executed by a duly authorized Representative of Buyer, certifying that all of the conditions set forth in Section 6.2.1 and Section 6.2.2 have been satisfied.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Seller. Seller represents and warrants to Buyer, as of the Execution Date (except for the representations and warranties in Section 3.1.2 and Section 3.1.3, which also are made as of the date of this Agreement) and as of the Closing Date, as follows; *provided*, that Seller's representations and warranties do not apply to or cover any activities of Buyer or its Affiliates in connection with the Product Business.

3.1.1 Entity Status. Each Divesting Entity is a legal entity duly organized, validly existing and, where applicable, in good standing under the Laws of its jurisdiction of its organization or incorporation.

3.1.2 Authority.

(a) Each Divesting Entity has the requisite corporate power and authority to (i) own, use and operate the Purchased Assets as now owned, used and operated and to conduct the Product Business as now being conducted and (ii) enter into this Agreement and the Ancillary Agreements to which it will be a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated to be consummated by it hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements to which Seller will be a party and the consummation of the transactions contemplated to be consummated by it hereby and thereby have been duly authorized by all necessary corporate actions of Seller. This Agreement (assuming the due authorization, execution and delivery hereof by Buyer) constitutes, and each Ancillary Agreement to which Seller will be a party, when executed and delivered by Seller (assuming the due authorization, execution and delivery thereof by each other party thereto), will constitute, the valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar Laws of general application affecting or relating to the enforcement of creditors' rights generally, and subject to equitable principles of general applicability, whether considered in a proceeding at law or in equity (the "Enforceability Exceptions").

(b) Each Divesting Entity that will enter into an Ancillary Agreement has the requisite entity power and authority to perform its obligations under each Ancillary Agreement to which it will be a party and to consummate the transactions contemplated to be consummated by it thereby. The execution and delivery of the Ancillary Agreements to which any Divesting Entity will be a party and the consummation of the transactions contemplated to be consummated by it thereby will, by the Closing, have been duly authorized by all necessary organizational actions of such Divesting Entity. Each Ancillary Agreement, when executed and delivered by a Divesting Entity that will be a party thereto (assuming the due authorization, execution and delivery thereof by each other party thereto), will constitute the valid and legally binding obligation of such Divesting Entity, enforceable against such Divesting Entity in accordance with its terms, subject to the Enforceability Exceptions.

3.1.3 Non-Contravention. The execution, delivery and performance by Seller of this Agreement and the consummation of the transactions contemplated hereby and the execution, delivery and performance by each Divesting Entity of each Ancillary Agreement to which such Divesting Entity will be a party, and the consummation of the transactions contemplated thereby, do not and will not, directly or indirectly, with or without due notice or lapse of time or both (a) violate the articles of incorporation or bylaws or comparable organizational documents of such Divesting Entity, as applicable, (b) subject to obtaining the Consent Orders and obtaining the consents, permits and authorizations, giving the notices and making the filings referred to in Section 3.1.5(b), violate any Law or other restriction of any Governmental Authority in the Territory applicable to such Divesting Entity, as applicable, the Product Business or the Purchased Assets or violate any Judgment of a Governmental Authority to which any Divesting Entity is subject in respect of the Product Business, (c) require any consent by any Person under, violate, breach or constitute a default under or result in the termination, cancellation, acceleration, revocation, withdrawal, suspension, imposition of additional obligations or loss of rights under, result in any payment becoming due under, or otherwise give rise to any right on the part of any Person to exercise any remedy or obtain any relief under any of the terms, conditions or provisions of any Purchased Contract or (d) result in the creation or imposition of any Encumbrance (other than Permitted Encumbrances) upon any Purchased Asset, except, in the case of (b), (c) or (d), as would not reasonably be expected to be material to the Product Business, taken as a whole.

3.1.4 No Broker. There is no broker, finder or financial advisor acting or who has acted on behalf of Seller or any of its Affiliates that is entitled to receive any brokerage or finder's or financial advisory fee from Buyer or any of its Affiliates in connection with the transactions contemplated by this Agreement.

3.1.5 No Litigation; Consents.

(a) Except as set forth in Schedule 3.1.5 of the Disclosure Schedules, there is no, and during the past three years prior to the Execution Date there has not been any (i) Litigation pending or, to Seller's Knowledge, threatened in writing by or against any other Divesting Entity before any Governmental Authority in the Territory in respect of the Product Business or the Purchased Assets or (ii) Judgment (other than the Consent Orders) in the Territory to which Seller or any other Divesting Entity is subject in respect of the Product Business or the Purchased Assets, except, in each case ((i) and (ii) immediately above), for such Litigation and

Judgments that would not reasonably be expected to be material to the Product Business, taken as a whole.

(b) Except for (i) the Consent Orders, (ii) consents, permits or authorizations that if not received, or declarations, filings or registrations that if not made, would have a materially adverse impact on the Product Business, taken as a whole, (iii) consents, permits, authorizations, declarations, filings or registrations that have become applicable solely as a result of the specific regulatory status of Buyer or its Affiliates and (iv) items disclosed in Schedule 3.1.5(b) of the Disclosure Schedules, no notice to, filing with, permit of, authorization of, exemption by, or consent of, any Governmental Authority is required for Seller or any other Divesting Entity to consummate the transactions contemplated hereby or by the Ancillary Agreements.

3.1.6 Title; Sufficiency.

(a) The Divesting Entities collectively have good title to, or valid contract rights in, as applicable, the Purchased Assets (other than the Purchased Intellectual Property), free and clear of all Encumbrances other than Permitted Encumbrances.

(b) The Purchased Assets (assuming the receipt of all Required Consents), together with (i) the rights, assets and services provided or granted to Buyer or its Affiliates under this Agreement and the Ancillary Agreements, (ii) the employees, real property, tangible personal property, and general corporate, finance and support services (including quality, pharmacovigilance and supply chain management services) and functions provided by Seller and its Affiliates to the Product Business prior to the Closing and (iii) the Shared Contracts, constitute all of the assets and rights necessary, and are sufficient to enable Buyer, immediately following the Closing, to continue to conduct the Product Business in all material respects in the same manner as currently conducted by Seller immediately prior to the Closing. Except as previously disclosed to Buyer, there are no pipeline projects using nitenpyram as an active pharmaceutical ingredient being developed or in development in the five years prior to the Execution Date by the Divesting Entities for sale in the applicable Field and the applicable Territory.

3.1.7 Contracts. Each Purchased Contract and Shared Contract is in full force and effect and constitutes a legal, valid and binding agreement of the Divesting Entity party thereto and, to Seller's Knowledge, each other party thereto, enforceable in accordance with its terms, subject to the Enforceability Exceptions. Each Divesting Entity party to a Purchased Contract or Shared Contract is not and, to Seller's Knowledge, no other party thereto is, in default any material respect in the performance, observance or fulfillment of any obligation or covenant contained in such Purchased Contract or Shared Contract, as applicable. As of the Execution Date, no Divesting Entity has provided to or received from any other party to a Purchased Contract or Shared Contract written notice of any such alleged default. As of the Execution Date, no Divesting Entity has given any written notice to a Third Party that is a party to any Purchased Contract or Shared Contract to which such Divesting Entity is a party that it intends to terminate such Purchased Contract or Shared Contract and has not received any written notice from any such Third Party stating that such Third Party intends to terminate any Purchased Contract or Shared Contract, as applicable. To Seller's Knowledge, no event or

circumstance has occurred that, with or without notice or lapse of time or both, would constitute a default in any material respect under any Purchased Contract or Shared Contract, as applicable, or would cause or permit any revocation, withdrawal, suspension, acceleration, cancellation, termination, modification of or other changes of or to any right or obligation or the loss of any benefit thereunder. True and complete copies of all Purchased Contracts have been made available to Buyer, except to the extent such Contracts have been redacted to (a) enable compliance with Laws relating to antitrust or the safeguarding of data privacy, (b) comply with confidentiality obligations owed to Third Parties, or (c) exclude information not related to the Product Business or the Products and the applicable Field and applicable Territories. Solely for purposes of this Section 3.1.7, all references to a "Shared Contract" refer to the Contracts set forth on Schedule 2.3.3(i) and Schedule 2.3.3(iii).

3.1.8 Compliance with Law. The Divesting Entities, with respect to the operation of the Product Business and Purchased Assets, are and during the three years prior to the Execution Date have been in compliance with all applicable Laws. During the three years prior to the Execution Date, no Divesting Entity has received any written notices or other written communication from any Governmental Authority regarding any actual, alleged or potential noncompliance with applicable Law with respect to the Product Business or the Purchased Assets. The Divesting Entities hold all material licenses, franchises, permits, certificates, consents approvals, filings, registrations, exemptions, classifications, variances or other similar authorizations, documents or rights issued by applicable Governmental Authorities necessary for the lawful conduct of the Product Business or Manufacture of the Products for Exploitation in the applicable Territory (each, a "Permit" and collectively, the "Permits").

3.1.9 Anti-Corruption; Trade.

(a) During the past three years, no Divesting Entity or, to Seller's Knowledge, any Representative acting on behalf of a Divesting Entity, in each case, in connection with the Product Business or Manufacture of the Products for Exploitation in the applicable Territory, has, in violation in any material respect of the U.S. Foreign Corrupt Practices Act (15 U.S.C. §§ 78dd-1, et seq.) or any similar Anti-Corruption Laws that apply to the Product Business, offered, given, promised or authorized the giving of anything of value, directly or indirectly, to any Person, including any Government Official, for the purpose of influencing any action or decision of a Government Official in his or her official capacity to assist the Divesting Entities in obtaining or retaining business or any business advantage, or directing business to, any Person. For purposes of this Section 3.1.9, "Anti-Corruption Laws", means the U.S. Foreign Corrupt Practices Act of 1977 (the "FCPA") or any similar applicable Laws regarding corruption, bribery, ethical business conduct, or gifts, hospitalities, or expense reimbursements to public officials and private persons which are applicable in countries in which the Divesting Entities conduct the Product Business or Manufacture the Products and "Government Official" means: (a) any officer, employee or representative of any foreign Governmental Authority; (b) any officer, employee or representative of any public international organization; (c) any person acting in an official capacity for any foreign Governmental Authority identified above; and (d) any foreign political party, party official or candidate for political office.

(b) Neither the Divesting Entities nor, to Seller's Knowledge, any Representative acting on behalf of a Divesting Entity, in each case, in connection with the Product Business or the Manufacture of the Products for Exploitation in the applicable Territory is currently, or has in the past three years, in connection with the Product Business: (i) been or conducted business with a Sanctioned Person, (ii) operated in a country subject to a comprehensive embargo under Sanctions Laws or Ex-Im Laws (currently Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine) or conducted any dealings with the Government of Venezuela or any entity owned or controlled by the government of Venezuela, or (iii) been in violation of applicable Sanctions Laws or Ex-Im Laws.

(c) In the past three years, the Divesting Entities have not been, to Seller's Knowledge, the subject of any investigation, written inquiry or enforcement proceedings by any Governmental Authority regarding any violation or alleged violation under any Anti-Corruption Laws, Sanctions Laws, or Ex-Im Laws, and, to Seller's Knowledge, no such investigation, written inquiry or proceedings are pending or have been threatened.

3.1.10 Regulatory Matters.

(a) The Divesting Entities, collectively, are the registered holders of all Purchased Product Registrations. The Purchased Product Registrations are in full force and effect. No Litigation is pending or, to Seller's Knowledge, threatened in writing regarding the revocation of any Purchased Product Registration. As of the Execution Date, no Divesting Entity has received any written communication from any Governmental Authority threatening to withdraw or suspend any Purchased Product Registration that has not been withdrawn or otherwise remedied. No Divesting Entity is in material violation of the terms of any Purchased Product Registration.

(b) All units of Product Manufactured in the three years prior to the Execution Date were Manufactured in all material respects in accordance with the specifications contained in the applicable Purchased Product Registration and in accordance with applicable Law. During the three years prior to the Execution Date, there has not been any product recall, market withdrawal or replacement conducted by or on behalf of any Divesting Entity concerning the Products or, to Seller's Knowledge, any product recall, market withdrawal or replacement conducted by or on behalf of any Third Party due to any issues regarding the safety, quality or any manufacturing defect, impurity or adulteration in or of the Product, in each case, in the applicable Field in the applicable Territory. In the three years prior to the Execution Date, no Divesting Entity has received any written claim threatening or commencing Litigation as a result of any actual or alleged death or injury from use of any Product.

(c) During the three years prior to the Execution Date, no Divesting Entity, with respect to the Manufacture of the Products or the Product Business, has been subject to physical inspections or received written inspection reports from the U.S. Food and Drug Administration or any comparable applicable Governmental Authority in the Territory, in which such Governmental Authority has asserted or alleged in writing that the operations of such Divesting Entity were or are not in compliance with any applicable Laws.

3.1.11 Intellectual Property.

(a) Seller or one of the other Divesting Entities is the sole and exclusive owner of the Purchased Intellectual Property, free and clear of all Encumbrances (other than Permitted Encumbrances).

(b) Schedule 3.1.11(b) of the Disclosure Schedules sets forth, as of the Execution Date, a true and complete list of all Purchased Intellectual Property owned or purported to be owned by the Divesting Entities in the Territory that has been issued, registered or granted, or that is the subject of an application for registration, issuance or grant, and has not been abandoned or withdrawn, including the registration or application date, as applicable and the record owner ("Owned Registered Product IP"). All required maintenance fees, annuity fees or renewal fees for the Owned Registered Product IP that are due and payable prior to the Closing Date have been or will be paid prior to the Closing Date. All unexpired Owned Registered Product IP that has been issued, registered or granted is valid and enforceable. No loss or expiration of any such Owned Registered Product IP due to any act or omission of Seller, any of its Affiliates or any of the Divesting Entities is pending or, to Seller's Knowledge, threatened.

(c) The conduct of the Product Business and the Manufacture of Products for Exploitation in the applicable Field and in the applicable Territory, as currently conducted and Manufactured, respectively, by the Divesting Entities, does not infringe or misappropriate any Third Party's patent, trade secret, Copyright, Trademark or other intellectual property rights in the Territory, except as would not reasonably be expected to be material to the Product Business, taken as a whole, and (ii) as of the Execution Date, no Litigation is pending or threatened in writing against any Divesting Entity (A) based upon, challenging or seeking to deny or restrict the ownership, use, registration, validity or enforceability of any of the Purchased Intellectual Property or (B) alleging that the Divesting Entities' conduct of the Product Business and the Manufacture of the Products for Exploitation in the applicable Field and in the applicable Territory, infringes or misappropriates or otherwise violates the patent, trade secret, Copyright, Trademark or other intellectual property rights of any Third Party in the Territory, and no such claim has been asserted by any Third Party against any of the Divesting Entities in writing in the three years prior to the Execution Date.

(d) To Seller's Knowledge, as of the Execution Date, no Third Party is engaging in any activity that infringes or misappropriates or otherwise violates any Purchased Intellectual Property in the Territory, except as would not reasonably be expected to be material to the Product Business, taken as a whole, and, prior to the Execution Date, no such claim has been asserted by any Divesting Entity against any Person in writing, except as would not reasonably be expected to be material to the Product Business, taken as a whole, in the three years prior to the Execution Date.

(e) Except as would not reasonably be expected to be material to the Product Business, taken as a whole, the consummation of the transactions contemplated hereby will not result in the loss or impairment of the Buyer's right to own or use any Purchased Intellectual Property. Immediately subsequent to the Closing, and except as would not reasonably be expected to be material to the Product Business, taken as a whole, the Purchased Intellectual Property will be owned or available for use by the Buyer on terms and conditions

substantially identical in all material respect to those under which the Divesting Entities own or use the Purchased Intellectual Property immediately prior to the Closing.

(f) The Divesting Entities have taken commercially reasonable measures consistent with industry practice in the animal health industry to maintain the confidentiality and value of all confidential information used or held for use in connection with, and material to, the Manufacture of the Products or conduct of the Product Business and included in the Purchased Assets. To Seller's Knowledge, no trade secrets included in the Purchased Assets that are material to the Manufacture of the Products or conduct of the Product Business have been disclosed by the Divesting Entities to any Person except pursuant to valid non-disclosure or license agreements. The Divesting Entities have taken commercially reasonable measures consistent with industry practice in the animal health industry to ensure that any Purchased Intellectual Property that is currently used in and is material to the Manufacture of the Products or conduct of the Product Business and that has been conceived, developed or created for the Divesting Entities by any other Person is the subject of a valid and legally enforceable written agreement or other valid and legally enforceable arrangement with such Person with respect thereto transferring to the Divesting Entities such Person's right, title and interest therein and thereto.

(g) The Product Business is and, in the three years prior to the Execution Date, has been operated, in material compliance with all applicable Privacy and Security Requirements. The Product Business has not, in the three years prior to the Execution Date, experienced any Security Breaches, and none of the Divesting Entities has received, in the three years prior to the Execution Date, any notices or complaints in writing from any Person regarding such a Security Breach, in each case, except as would not be material to the Product Business, taken as a whole. In connection with the Product Business, to Seller's Knowledge, none of the Divesting Entities has received in the three years prior to the Execution Date, any notices or complaints in writing from any Person (including any Governmental Authority) regarding noncompliance with applicable Privacy and Security Requirements.

(h) Except as would not reasonably be expected to be material to the Product Business, taken as a whole, (i) the execution, delivery, or performance of this Agreement will not violate any applicable Privacy and Security Requirements and (ii) the Divesting Entities, with respect to the Product Business, have in place reasonable physical, technical and administrative safeguards consistent with industry standards that are designed to protect Personal Information processed by or on behalf of the Divesting Entities in the conduct of the Product Business from unauthorized access by any Person, and to ensure compliance in all material respects with all applicable Privacy and Security Requirements. The Divesting Entities, with regard to the Product Business, have in place commercially reasonable data back-up or contingency operations plans consistent with industry standards.

3.1.12 Product Financial Information.

(a) Seller has made available to Buyer or its Representatives the annual net sales, cost of goods sold, and gross margin for each of the Products in the Territory for the calendar years ending December 31, 2017 and 2018 and for the nine months ending September 30, 2019 (the "Financial Information"). Such Financial Information presents fairly

and accurately in all material respects the net sales, cost of goods sold, and gross margin for the Products in the applicable Fields and in the applicable Territory as of the dates, and for the periods, indicated therein, and was prepared from and in accordance with the accounting books and records of the Divesting Entities. The accounting books and records of the Divesting Entities were maintained in accordance with GAAP during the calendar years ended December 31, 2017 and 2018 and for the nine months ending September 30, 2019.

(b) Since September 30, 2019 until the Execution Date, there has not been any event, change, occurrence or state of circumstances or facts which, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect.

3.1.13 Taxes.

(a) There are no Encumbrances for Taxes on the Purchased Assets other than Permitted Encumbrances.

(b) The Divesting Entities have timely filed all material Tax Returns to the extent relating solely to the Products Business or Purchased Assets that were due in accordance with applicable Laws. All such Tax Returns are true, correct, and complete in all material respects. All Taxes shown as due and payable with respect to such Tax Returns have been timely paid to the appropriate Governmental Authority and the Divesting Entities have no liability for any delinquent Taxes (whether or not relating to a Tax Return) to the extent relating solely to the Products Business or Purchased Assets.

(c) No Purchased Contract or Shared Contract includes a Tax Sharing Agreement (other than a Tax Sharing Agreement entered into in the ordinary course of business that is not primarily related to Taxes but which typically includes in that type of contract Tax sharing responsibilities (such as paying real estate Taxes in leases or grossing up for withholding Taxes in a credit agreement)).

(d) No audits or other proceedings are in progress or pending, or to Seller's Knowledge, threatened with respect to any Tax Return or Taxes of any Divesting Entity with respect to the Products Business or Purchased Assets.

(e) No Purchased Asset represents an interest in a partnership for any applicable Tax purpose.

3.1.14 Purchased Inventory. The Purchased Inventory (a) is of a good and merchantable quality and is usable or saleable in the ordinary course of the Product Business (other than any Purchased Inventory as to which no value is ascribed in accordance with Section 2.5.3), (b) complies in all material respects with applicable Law and the specifications therefor included in the Purchased Regulatory Documentation, and (c) was Manufactured in all material respects with applicable Law and applicable Product Registrations. The Purchased Inventory is, and will be, in quantities sufficient for the normal operation of the Product Business in the ordinary course of business. None of the Purchased Inventory is obsolete or expired or held on a consignment basis (other than any Purchased Inventory as to which no value is ascribed in accordance with Section 2.5.3).

3.1.15 Material Customers; Material Suppliers.

(a) Schedule 3.1.15(a) of the Disclosure Schedules sets forth (i) a true and complete list of the names of the top twenty customers of the Product Business (the "Material Customers") based on the consolidated gross revenue per customer for the twelve months ended December 31, 2019. Since December 31, 2018 until the Execution Date, no Material Customer has made any written threat to (i) cancel or otherwise terminate its relationship with a Divesting Entity with respect to the Product Business, (ii) materially decrease its purchase of units of the Product or (iii) materially change the terms (whether related to payment, timing of payment, price or otherwise) with respect to its purchase of units of the Product (whether as a result of the consummation of the transactions contemplated hereby or otherwise). No Material Customer has any right to any credit or refund for units for Product Supplied or services rendered or to be rendered by the Divesting Entities as part of the Product Business other than pursuant to normal course credit or refund policies of the Divesting Entities with regard to the Product Business.

(b) Schedule 3.1.15(b) of the Disclosure Schedules sets forth (i) a true and complete list of the names of the top five suppliers of the Product Business (the "Material Suppliers"), based on the consolidated gross expenditure per supplier for the twelve months ended December 31, 2019. Since December 31, 2018 until the Execution Date, no Material Supplier has made any written threat to (i) cancel or otherwise terminate its relationship with a Divesting Entity with respect to the Product Business, or (ii) materially change the terms (whether related to payment, timing of payment, price or otherwise) with respect to its purchase of goods or services as applicable (whether as a result of the consummation of the transactions contemplated hereby or otherwise).

3.1.16 Affiliate Contracts. Section 3.1.16 of the Disclosure Schedules set forth a list of any Purchased Contract that a Divesting Entity or an Affiliate of a Divesting Entity will be a party to following the assignment of any Contract to Buyer in accordance with this Agreement.

3.2 Representations and Warranties of Buyer. Buyer represents and warrants to Seller, as of the Execution Date (except for the representations and warranties in Section 3.2.2 and Section 3.2.3, which also are made as of the date of this Agreement) and as of the Closing Date, as follows:

3.2.1 Entity Status. Each of Buyer and each Affiliate of Buyer that is specified to be a party to any Ancillary Agreement is a legal entity duly organized, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its organization or incorporation.

3.2.2 Authority.

(a) Buyer has the requisite limited liability company power and authority to enter into this Agreement and the Ancillary Agreements to which it will be a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated to be consummated by it hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements to which Buyer will be a party and the consummation of the transactions contemplated to be consummated by it hereby and thereby have been duly

authorized by all necessary limited liability company actions of Buyer. This Agreement (assuming the due authorization, execution and delivery hereof by Seller) constitutes, and each Ancillary Agreement to which Buyer will be a party, when executed and delivered by Buyer (assuming the due authorization, execution and delivery thereof by each other party thereto), will constitute, the valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to the Enforceability Exceptions.

(b) Each Affiliate of Buyer that will enter into an Ancillary Agreement has the requisite entity power and authority to perform its obligations under each Ancillary Agreement to which it will be a party and to consummate the transactions contemplated to be consummated by it thereby. The execution and delivery of the Ancillary Agreements to which any Affiliate of Buyer will be a party and the consummation of the transactions contemplated to be consummated by it thereby will, by the Closing, have been duly authorized by all necessary organizational actions of such Affiliate. Each Ancillary Agreement, when executed and delivered by an Affiliate of Buyer that is a party thereto (assuming the due authorization, execution and delivery thereof by each other party thereto), will constitute the valid and legally binding obligation of such Affiliate, enforceable against such Affiliate in accordance with its terms, subject to the Enforceability Exceptions.

3.2.3 Non-Contravention. The execution, delivery and performance by Buyer of this Agreement and of each Ancillary Agreement to which it will be a party, and the consummation of the transactions contemplated thereby, and the execution, delivery and performance by each Affiliate of Buyer of each Ancillary Agreement to which such Affiliate will be a party, and the consummation of the transactions contemplated thereby, do not and will not (a) violate the articles of incorporation or bylaws or comparable organizational documents of Buyer or such Affiliate, as applicable, (b) subject to obtaining the Consent Orders and obtaining the consents, permits and authorizations, giving the notices and making the filings referred to in Section 3.2.5(b), violate any Law or other restriction of any Governmental Authority applicable to Buyer or such Affiliate, as applicable, or violate any Judgment of a Governmental Authority to which Buyer or any of its Affiliates is subject or (c) violate, breach or constitute a default under or result in the termination or cancellation of any material Contract to which Buyer or any of its Affiliates is a party, except, in the case of (b) or (c), for such violations, breaches, defaults or terminations that would not reasonably be expected to constitute a Buyer Material Adverse Effect.

3.2.4 No Broker. There is no broker, finder or financial advisor acting or who has acted on behalf of Buyer or any of its Affiliates that is entitled to receive any brokerage or finder's or financial advisory fee from Seller or any of its Affiliates in connection with the transactions contemplated by this Agreement.

3.2.5 No Litigation; Consents.

(a) As of the Execution Date, (i) there is no Litigation pending or, to the knowledge of Buyer, threatened in writing against Buyer or any of its Affiliates before any Governmental Authority, and (ii) there is no Judgment of a Governmental Authority to which Buyer or any of its Affiliates is subject, except, in each case ((i) and (ii) immediately above) for

such Litigation and Judgments that would not reasonably be expected to constitute a Buyer Material Adverse Effect.

(b) Except for (i) the Consent Orders, (ii) consents, permits or authorizations that if not received, or declarations, filings or registrations that if not made, would not reasonably be expected to constitute a Buyer Material Adverse Effect, and (iii) consents, permits, authorizations, declarations, filings or registrations that have become applicable solely as a result of the specific regulatory status of Seller or its Affiliate, no notice to, filing with, permit of, authorization of, exemption by, or consent of, any Governmental Authority or other Person is required for Buyer to consummate the transactions contemplated hereby or by the Ancillary Agreements.

3.2.6 Financing; Solvency.

(a) Notwithstanding anything in this Section 3.2.6 or elsewhere in this Agreement, Buyer affirms, represents and warrants that its obligations hereunder are not in any way contingent or otherwise subject to (i) the consummation of any financing arrangements or the obtaining of any financing by Buyer or any other Person or (ii) the availability of financing to Buyer or any other Person. Buyer acknowledges and agrees that the obtaining any financing is not a condition to Closing.

(b) Buyer and its Affiliates, as of the Closing Date will have, together with cash on hand, all of the funds necessary for the payment of the full consideration payable hereunder and to make all other payments required to be made by Buyer or its Affiliates in connection with the transactions contemplated hereby and by the Ancillary Agreements and to pay all fees and expenses of Buyer and its Affiliates incurred in connection with the transactions contemplated under this Agreement and the Ancillary Agreements.

(c) After giving effect to the transactions contemplated hereby, including the payment of the Purchase Price and all other amounts required to be paid by Buyer and its Affiliates in connection with the consummation of the transactions contemplated hereby and the occurrence of any financing, and assuming the accuracy of all of Seller's representations and warranties in all respects, Buyer will not (i) be insolvent (because (A) Buyer's financial condition is such that the sum of its debt is greater than the fair value of its assets, (B) the present fair saleable value of Buyer's assets will be less than the amount required to pay Buyer's probable liability on its debts as they become absolute and matured or (C) Buyer is unable to pay all of its debt as and when they become due and payable), (ii) have unreasonably small capital with which to engage in its business or (iii) have incurred or plan to incur debts beyond its ability to pay as they become absolute and matured.

3.3 Exclusivity of Representations.

3.3.1 Buyer, together with and on behalf of its Affiliates and Representatives, acknowledges and agrees that, except for the express representations and warranties of Seller contained in Section 3.1 or in any Ancillary Agreement, (a) Buyer is acquiring the Purchased Assets on an "as is, where is" basis and (b) neither Seller nor any of its Affiliates has made any representation or warranty either express or implied whatsoever herein or otherwise related to

this Agreement, any Ancillary Agreement, any Product, the Product Business, the Purchased Assets, the Assumed Liabilities or the transactions contemplated hereby or by any Ancillary Agreement, individually or collectively, either in fact or by operation of Law, by statute or otherwise, otherwise, including any warranty as to quality, non-infringement, fitness for a particular purpose, merchantability, condition of the Purchased Assets, the operation of the Product Business by Buyer or its Affiliates after the Closing, the probable success or profitability of the Product Business after the Closing or as to any other matter. Buyer, together with and on behalf of its Affiliates and Representatives, specifically disclaims that it is or they are relying upon or have relied upon any such other representations or warranties that may have been made by any Person, and Buyer, together with and on behalf of its Affiliates and Representatives, acknowledges and agrees that Seller and its Affiliates have specifically disclaimed and do hereby specifically disclaim any such other representation or warranty made by any Person.

3.3.2 Buyer acknowledges and agrees that, except to the extent provided in any Representation and Warranty Insurance Policy obtained by it with respect to the transactions contemplated hereby ("R&W Policy") or a claim for Fraud, neither it nor any other Buyer Indemnitee shall have any claim or right to recourse, except as pursuant to Article 7 hereof with respect to any information, documents, or materials furnished to or for Buyer or any of its Affiliates or Representatives by Seller or any of its Affiliates or any of their respective Representatives, including any information, documents, or material made available to Buyer or any of its Affiliates or Representatives in any "data room", management presentation, "teaser", information memorandum, or any other form in connection with this Agreement, any Ancillary Agreement, the Product, the Product Business, the Purchased Assets, the Assumed Liabilities or the transactions contemplated by this Agreement or any Ancillary Agreement.

3.3.3 Buyer has received and may continue to receive from Seller and its Affiliates certain estimates, projections, plans, budgets and other forecasts for the Product Business or Products. Buyer acknowledges that these estimates, projections, forecasts, plans and budgets, and the assumptions on which they are based, were prepared for specific purposes and may vary significantly from each other. Further, Buyer acknowledges that there are uncertainties inherent in attempting to make such estimates, projections, forecasts, plans and budgets, that Buyer is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections, forecasts, plans and budgets so furnished to it (including the reasonableness of the underlying assumptions) and that Buyer is not relying on any estimates, projections, forecasts, plans or budgets made available or otherwise furnished by Seller or its Affiliates, and Buyer shall not, and shall cause each other Buyer Indemnitee not to, hold any such Person liable with respect thereto (whether in warranty, contract, tort (including negligence or strict liability) or otherwise).

ARTICLE 4
PRE-CLOSING COVENANTS

4.1 Access and Information.

4.1.1 During the period commencing on the Execution Date and ending on the earlier to occur of (a) the Closing and (b) the termination of this Agreement in accordance with Article 8 (the "Pre-Closing Period"), Seller shall afford Buyer and its Representatives continued

reasonable access through an electronic data room to the books and records of Seller, to the extent maintained exclusively or primarily in connection with the Product Business (other than the Excluded Assets and Excluded Liabilities), in each case for the sole purposes of facilitating the Closing and facilitating the preparation for the transition of the Product Business to Buyer; *provided*, *however*, that such access shall not unreasonably disrupt Seller's ordinary course operations. Notwithstanding anything to the contrary contained in this Agreement, Seller shall not be required to disclose any information or provide any such access if such disclosure or access could, in Seller's reasonable judgment, (i) violate applicable Law (including the Consent Orders) or any binding agreement entered into prior to the Closing Date (including any confidentiality agreement with a Third Party to which Seller is a party), (ii) jeopardize any attorney/client privilege or other established legal privilege, unless the books and records can be shared without losing such privilege, or (iii) disclose any trade secrets not included in the Purchased Intellectual Property; *provided*, that Seller shall use commercially reasonable efforts to make such disclosure or provide such access in a manner that does not result in the occurrence of any of the items described in the preceding clauses (i) through (iv) (including through the sharing of books and records on an outside counsel basis or under a "clean team" arrangement). All requests for information made pursuant to this Section 4.1.1 shall be directed to such person or persons as may be designated by Seller, and Buyer shall not directly or indirectly contact any director or Representative of Seller or any of its Affiliates without the prior approval of such designated person(s). The auditors and independent accountants of any of the Divesting Entities shall not be obligated to make any work papers available to any Person under this Agreement unless and until such Person has signed a customary confidentiality and hold harmless agreement relating to such access to work papers in form and substance reasonably acceptable to such auditors or independent accountants. If so reasonably requested by Seller, Buyer shall, and shall cause its Affiliates (as applicable) to, enter into a customary joint defense agreement with Seller or its Affiliates with respect to any information to be provided to Buyer pursuant to this Section 4.1.1.

4.1.2 Buyer acknowledges and agrees that certain records may contain information relating to Seller or its Affiliates and that prior to making any such records available to Buyer, Seller or its Affiliates may redact any information to the extent that (x) such information does not relate to the Manufacture of the Products for Exploitation in the applicable Field and applicable Territory or the Product Business or (y) such information constitutes any Excluded Assets; *provided*, *however*, that, notwithstanding the foregoing, the Divesting Entities shall not have the right to redact information from Purchased Regulatory Documentation or Purchased Product Registrations that is required to Manufacture or Exploit the Products.

4.1.3 During the Pre-Closing Period, except in the ordinary course of Buyer's business as distributor and reseller of the Products, Buyer hereby agrees it will not contact, and it shall cause its Affiliates and Representatives to not contact, any licensor, licensee, competitor, supplier, distributor or customer of Seller or Bison with respect to the Bison Acquisition Agreement, Products, the Purchased Assets, the Product Business, this Agreement, the Ancillary Agreements or the transactions contemplated hereby or thereby, without the prior written consent of Seller, which consent may be withheld in Seller's sole and absolute discretion.

4.2 Ordinary Course of Business.

4.2.1 During the Pre-Closing Period, except (a) as set forth in Schedule 4.2 or as otherwise contemplated by this Agreement or any Ancillary Agreement, (b) as required by applicable Law (including the Consent Orders), (c) as required by the terms of the Bison Acquisition Agreement (to the extent not resulting in any adverse impact on the Purchased Assets or Assumed Liabilities) that is available to Buyer, (d) for any actions taken by Seller that are reasonably necessary to consummate the transactions contemplated by this Agreement or any Ancillary Agreement or the Bison Acquisition Agreement (to the extent not resulting in any adverse impact on the Purchased Assets or Assumed Liabilities), or (e) as Buyer shall otherwise consent in writing (which consent shall not be unreasonably withheld, conditioned or delayed), (x) Seller shall, and shall cause the other Divesting Entities to, use its and their respective reasonable best efforts to conduct the Product Business in the ordinary course, including with respect to the maintenance of manufacturing facilities and relationships with suppliers, customers and distributors of the Product Business (*provided* that no action taken or not taken by the Divesting Entities in order to comply with any of clauses (i) through (xi) below shall be deemed a breach of this clause (x)) and (y) not take any of the following actions in respect of the Products or Product Business, as applicable:

(i) acquire (by merger, exchange, consolidation, purchase of stock, shares, assets or otherwise) any Person or asset, other than any acquisition which is not reasonably expected to impair in any material respect the operating cash flows of the Product Business;

(ii) sell, transfer, lease, license or otherwise dispose of any material Purchased Assets other than (A) pursuant to existing Contracts disclosed to Buyer or (B) assets at the end of their useful lives or out of redundancy or (C) sales of inventory in the ordinary course of business;

(iii) subject any Purchased Assets to any Encumbrance, other than a Permitted Encumbrance;

(iv) (A) amend, terminate, assign or waive any material provision under any Purchased Contract or (B) enter into any Contract that would be a Purchased Contract and that has a contract value of more than $100,000;

(v) abandon, fail to maintain or assign any Purchased Intellectual Property;

(vi) waive, release, assign, settle or compromise any material Litigation relating to the Purchased Assets or the Assumed Liabilities;

(vii) enter into any Contract with respect to the Product Business that would limit or restrict Buyer or its Affiliates, as owners of the Purchased Assets following the Closing, from engaging in any business in any geographic area;

(viii) intentionally or recklessly damage, destroy or permit any loss of any material Purchased Asset;

(ix) waive, release or assign any material rights or claims of any Purchased Asset held by a Divesting Entity;

(x) increase sales of the Products to such customers in a manner inconsistent with the ordinary course of business or past practices that constitutes "trade loading" or similar sales activities that would reasonably be expected to, through an over-supply of such Products to customers, materially reduce sales of the Products to customers after the Closing, taking into account any general fluctuations of commercial and market circumstances (it being understood that ordinary course price adjustments and promotional activities generally result in fluctuations in levels of sales and inventory levels and, provided they are consistent with past practices, would not constitute a breach of this Section 4.2.1(x)); or

(xi) commit to agree or take, or enter into any Contract to do any of the foregoing.

4.2.2 Nothing contained in this Agreement is intended to give Buyer or its Affiliates, directly or indirectly, the right to control or direct the Product Business prior to the Closing, and nothing contained in this Agreement is intended to give Seller or its Affiliates, directly or indirectly, the right to control or direct Buyer's operations. Prior to the Closing, each of Buyer, on the one hand, and Seller, on the other hand, shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Affiliates' respective operations.

4.3 Obligation to Consummate the Transaction.

4.3.1 Subject to this Section 4.3 and Section 4.4, each Party shall use its reasonable best efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable to the extent permissible under applicable Law, to consummate and make effective the transactions contemplated by this Agreement and to ensure that the conditions set forth in Article 6 are satisfied, insofar as such matters are within the control of either of the Parties. Without limiting the generality of the foregoing, during the Pre-Closing Period, commencing as soon as reasonably practicable after the Execution Date, Seller shall use its reasonable best efforts (not requiring the payment of money) to obtain the consents, permits and authorizations, make the filings and issue the notices (in each case, if any) disclosed in Schedule 3.1.3 of the Disclosure Schedules or Schedule 3.1.5(b) of the Disclosure Schedules. Prior to the Closing, Buyer shall cooperate with Seller, upon the request of Seller, in connection with Seller obtaining any such consent, permit or authorization, making such filings and issuing such notices; *provided*, that such cooperation shall not include any requirement of Buyer or any of its Affiliates to pay money to any Third Party, commence any Litigation or offer or grant any accommodation (financial or otherwise) to any Third Party in connection with such efforts. In addition to the foregoing, Buyer agrees, subject to any applicable obligations of confidentiality, to provide such evidence as to its financial capability, resources and creditworthiness as may be reasonably requested by any Third Party whose consent is sought hereunder.

4.3.2 Nothing in this Agreement shall obligate Seller or any of its Affiliates to take any action with respect to the Bison Acquisition Closing or the consummation of the transactions contemplated by the Bison Acquisition Agreement. Subject to Section 4.4, neither

Seller nor its Affiliates nor Buyer nor its Affiliates shall be required to pay or commit to pay any amount to (or incur any obligation in favor of), commence any Litigation or offer or grant any accommodation (financial or otherwise) to any Person from whom any consent may be required in order for the Closing to occur.

4.4 Governmental Consents.

4.4.1 Buyer and Seller shall, and shall cause their respective Affiliates to, use their respective reasonable best efforts to (a) promptly (and in any event, prior to Closing) obtain from the requisite Governmental Authorities any consents or Judgments that may be or become necessary or advisable for its execution and delivery of, and the performance of its obligations pursuant to, this Agreement and the Ancillary Agreements, (b) cooperate fully with each other in promptly seeking to obtain all such consents or Judgments and (c) promptly make all necessary filings, and thereafter make any other advisable submissions, with respect to this Agreement and the transactions contemplated hereby required under any applicable Law, including all filings with applicable Competition Authorities needed to obtain clearance or approval for the transactions contemplated by this Agreement and the Ancillary Agreements.

4.4.2 Where reasonably requested by Seller, Buyer shall (a) provide Seller and its Representatives with draft copies of all submissions and communications to or with applicable Governmental Authorities or other persons in relation to obtaining any consent or Judgment at such time as will allow Seller a reasonable opportunity to provide comments on such submissions and communications before they are submitted or sent and provide Seller and its Representatives with copies of all such submissions and communications in the form submitted or sent, and (b) where permitted by the applicable Governmental Authorities or other Person concerned, allow persons nominated by Seller to attend all meetings with applicable Governmental Authorities or other Persons and, where appropriate, to make oral submissions at such meetings.

4.4.3 Buyer understands that Buyer, this Agreement, the Ancillary Agreements and the transactions contemplated hereby and thereby are subject to the prior approval of applicable Competition Authorities and that Seller is entering into this Agreement and the Ancillary Agreements to comply with Consent Orders from such Competition Authorities in connection with the transactions contemplated by the Bison Acquisition Agreement. As promptly as practicable after the Execution Date, each Party shall, and shall cause its Affiliates to (as applicable), (a) promptly prepare and furnish all necessary information and documents reasonably requested by applicable Competition Authorities, each other Party or its Representatives in connection with the transactions contemplated by this Agreement and the Ancillary Agreements, (b) use its and their respective reasonable best efforts to demonstrate to applicable Competition Authorities that Buyer is an acceptable acquiror of the Product Business and that Buyer will compete effectively in conducting the Product Business, and (c) cooperate with the other Party in obtaining all necessary or advisable approvals of applicable Competition Authorities. In the event that any applicable Competition Authority disapproves of any provision of this Agreement or the Ancillary Agreements, and the proposed applicable Consent Order is withheld pending modification of any such provision or Buyer's commitment to alter its business, Buyer and Seller shall, subject to Buyer's obligations under Section 4.4.5 below, modify accordingly such provision of this Agreement or the Ancillary Agreements in good faith;

provided that (x) any such modifications shall be limited to the minimum extent necessary to address the issues raised by such Competition Authority and (y) if any such modifications required by such Competition Authority significantly alter the financial terms of the transactions contemplated hereby (which shall include, for the avoidance of doubt, any amendment that requires the transfer to Buyer of any asset other than the Purchased Assets or actions that Buyer may be required to undertake or agree to undertake to comply with Section 4.4.5 below), then, without limitation of the rights of Seller under Section 8.1.4 the Parties agree to negotiate in good faith to seek to agree on mutually acceptable modifications to this Agreement or any Ancillary Agreement as are necessary or appropriate based on the nature of the modifications required by such Competition Authority.

4.4.4 Buyer, on the one hand, and Seller, on the other hand, will, and will cause their respective Affiliates to, coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other may reasonably request in connection with this Section 4.4.

4.4.5 Buyer agrees to vigorously contest and resist any action, including legislative, administrative or judicial action, and to have vacated, lifted, reversed or overturned any Judgment (whether temporary, preliminary or permanent) that is in effect and that restricts, prevents or prohibits the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements, including by vigorously pursuing all available avenues of administrative and judicial appeal and all available legislative action. Without limiting the foregoing and notwithstanding anything in this Agreement to the contrary, Buyer shall take any and all steps necessary or advisable to avoid the entry of or have lifted, vacated or terminated any order of a Governmental Authority or other action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement. Notwithstanding anything herein to the contrary, Buyer shall not be required to take or agree or commit to take any action, including any sale, divestiture, or disposition, or to limit or agree to limit its freedom of action or that of its Affiliates in any respect except with respect to Buyer's and its Affiliate's pipeline product related to nitenpyram oral flea tablet or any assets related to any such pipeline product.

4.4.6 Buyer shall not, and shall cause its Affiliates not to, enter into any transaction or any Contract to effect any transaction (including any merger or acquisition) that would reasonably be expected to make it more difficult, or to increase the time required, to obtain from the requisite Governmental Authorities any consents or Judgments that may be or become necessary or advisable for its execution and delivery of, and the performance of its obligations pursuant to, this Agreement and the Ancillary Agreements.

4.5 Seller Guarantees. Buyer acknowledges that in the course of conduct of the Product Business, Seller and its Affiliates may have entered into various arrangements in which guarantees, letters of credit, bonds or similar arrangements were issued by Seller or its Affiliates to support or facilitate the Product as set forth on Schedule 4.5 (the "Seller Guarantees.") From and after the Closing, Buyer shall use commercially reasonable efforts to obtain replacement guarantees for each of the Seller Guarantees, which will include a guarantor other than Seller or any of its Affiliates.

4.6 Financing.

(a) Buyer shall, and shall cause its Affiliates to, use their respective reasonable best efforts to obtain financing sufficient to pay the full consideration payable hereunder and to make all other payments required to be made by Buyer and its Affiliates (the "Minimum Financing") as promptly as practicable following the Execution Date. Buyer and its Affiliates shall not take any actions that could reasonably be expected to (A) materially delay or prevent the funding of the Purchase Price on the Closing Date or (B) otherwise prevent, impede or materially delay the Closing.

(b) Buyer shall keep Seller informed on a current basis and in reasonable detail of the status of its efforts to obtain the Minimum Financing. Without limiting the generality of the foregoing, if Buyer believes for any reason in good faith that it will not be able to obtain all or any portion of the Minimum Financing, or if any portion of the Minimum Financing otherwise becomes unavailable or Buyer becomes aware of any event or circumstance that would reasonably be expected to make any portion of the Minimum Financing become so unavailable. Buyer shall, and shall cause its Affiliates to, use their respective reasonable best efforts to arrange or obtain in replacement thereof alternative financing from alternative sources in an amount sufficient to obtain the Minimum Financing. Buyer shall deliver to Seller complete and accurate copies of all Contracts or other arrangements pursuant to which any source shall have committed to provide any portion of the Minimum Financing.

(c) Prior to the Closing, Seller shall, and shall cause its Affiliates to, use their respective commercially reasonable efforts to provide to Buyer, at Buyer's sole expense, all cooperation reasonably requested by Buyer that is necessary, proper or advisable in connection with the arrangement of debt financing from one or more debt financing sources (the "Debt Financing") (in each case, *provided*, that (i) such requested cooperation does not unreasonably interfere with the business or ongoing operations of Seller or any of its Affiliates and (ii) except as required for Seller to comply with its obligations under Section 5.17, Seller and its Affiliates shall not be required to provide or create any financial information with respect to the Product Business not maintained by them in the ordinary course of business); *provided, however*, that none of Seller nor any of its Affiliates shall be required to (A) execute any agreement, certificate, document or instrument in connection therewith, (B) pay any commitment or other fee or incur any cost, expense or other liability that is not simultaneously reimbursed by Buyer in connection with the Debt Financing prior to the Closing, (C) provide cooperation to the extent that it could reasonably be expected to conflict with or violate any applicable Law or result in a breach of, or a default under, any Contract to which Sellers or their respective Affiliates is a party or (D) breach, waive or amend any terms of this Agreement, and no person that is a director or officer of Seller or any of its Affiliates shall be required to take any action in such capacity with respect to the Debt Financing (or any alternative financing). Buyer shall, promptly upon request by Seller, reimburse, or cause its Affiliates to reimburse, Seller for all reasonable and documented out-of-pocket costs and expenses incurred by Seller and its Affiliates in connection with such cooperation, including any costs and expenses of its Representatives to perform due diligence in connection with the arrangement of the Debt Financing, whether before or after the Execution Date. Buyer shall indemnify and hold harmless the Seller Indemnitees, from and against, and compensate and reimburse the Seller Indemnitees for, any and all Losses incurred by any Seller Indemnitee to the extent arising out of or related to the arrangement of the Debt Financing and any information utilized in connection therewith.

(d) All non-public information provided by or on behalf of Seller or its Affiliates to Buyer, its Affiliates or its Representatives pursuant to this Section 4.6 or otherwise in connection with the Debt Financing is subject to the terms of Section 5.4.

ARTICLE 5
ADDITIONAL COVENANTS

5.1 Cooperation in Litigation and Investigations.

5.1.1 Subject to Section 5.4 and except as set forth in any Ancillary Agreement, from and after the Closing Date until the third anniversary of the Closing Date, Buyer and Seller shall reasonably cooperate with each other in the defense or prosecution of any Litigation, examination or audit instituted prior to the Closing or that may be instituted thereafter against or by either Party or its Affiliates relating to or arising out of the conduct of the Product Business or the Exploitation or Manufacture of the Products prior to or after the Closing (other than Litigation between Buyer and Seller or their respective Affiliates arising out of the transactions contemplated hereby or by the Ancillary Agreements). In connection therewith, and except as set forth in any Ancillary Agreement, from and after the Closing Date until the third anniversary of the Closing Date, each of Seller and Buyer shall make available to the other Party and its Representatives during normal business hours and upon reasonable prior written notice, but without unreasonably disrupting its business, all records to the extent relating to the Purchased Assets, the Assumed Liabilities or the Excluded Liabilities held by it or its Affiliates and reasonably necessary to permit the defense or investigation of any such Litigation, examination or audit (other than Litigation between Buyer and Seller or their respective Affiliates arising out of the transactions contemplated hereby or by the Ancillary Agreements, with respect to which applicable rules of discovery shall apply).

5.1.2 Buyer shall, and shall cause its Affiliates to, preserve and retain all records referred to in Section 5.1.1 for the length of time contemplated by their respective standard record retention policies and schedules. After the Closing Date, Buyer shall, and shall cause its Affiliates to, on the one hand, and Seller shall, and shall cause the other Divesting Entities to, on the other hand, grant to the other such access to financial records and other information in their possession related to their conduct of the Product Business and such cooperation and assistance, in each case, as shall be reasonably required to enable them to complete their legal, regulatory, stock exchange and financial reporting requirements and for any other reasonable business purpose, including in respect of Litigation and insurance matters (other than in connection with any Litigation between or among the Parties hereto or their respective Affiliates arising out of the transactions contemplated hereby or by the Ancillary Agreements, with respect to which applicable rules of discovery shall apply). Buyer, on the one hand, and Seller, on the other hand, shall promptly reimburse the other for such other's reasonable out-of-pocket expenses associated with requests made by such first Party under this Section 5.1.2, but no other charges shall be payable by the requesting Party to the other Party in connection with such requests.

5.1.3 Notwithstanding the obligations in this Section 5.1, Seller shall not be required to make available such documents if such disclosure could, in Seller's reasonable judgment, (a) violate applicable Law (including the Consent Orders) or any binding agreement entered into prior to the Closing Date (including any confidentiality agreement to which Seller or any of its Affiliate is a party), (b) jeopardize any attorney/client privilege or other established legal privilege or (c) disclose any trade secrets (*provided* that Seller shall use commercially reasonable efforts to make such disclosure in a manner that does not result in the occurrence of any of the items described in the preceding clauses (a) through (c)) (such as the entry into a joint defense agreement or other arrangement to avoid loss of attorney-client privilege). The Party requesting any cooperation or books and records under this Section 5.1 shall pay the reasonable out-of-pocket costs and expenses of providing such cooperation (including legal fees and disbursements) incurred by the Party providing such cooperation and by its officers, directors, employees and agents, and any applicable Taxes in connection therewith.

5.2 Further Assurances.

5.2.1 Each of Seller and Buyer shall, at any time or from time to time after the Closing, at the request and expense of the other, execute and deliver to the other all such instruments and documents or further assurances as the other may reasonably request in order to (a) vest in Buyer all of Seller's right, title and interest in and to the Purchased Assets as contemplated hereby, (b) effectuate Buyer's assumption of the Assumed Liabilities and (c) grant to each Party all rights contemplated herein to be granted to such Party under the Ancillary Agreements; *provided*, *however*, that after the Closing, apart from such foregoing customary further assurances, neither Seller nor Buyer shall have any other obligations except as specifically set forth and described herein or in the Ancillary Agreements. Without limitation of the foregoing, except as expressly set forth herein or in the Ancillary Agreements, neither Seller nor Buyer shall have any obligation to assist or otherwise participate in the amendment or supplementation of the Purchased Product Registrations or otherwise to participate in any filings or other activities relating to the Purchased Product Registrations other than as necessary to effect the assignment thereof to Buyer in connection with the Closing pursuant to this Agreement.

5.2.2 Promptly, but in no event later than 30 days after the Closing Date, Seller shall prepare, execute and, if required under applicable Law, have notarized (or, as applicable, cause the applicable Divesting Entities to prepare, execute and, if required under applicable Law, have notarized) all intellectual property assignments not constituting Ancillary Agreements required to transfer to Buyer the Owned Registered Product IP. As between Seller and Buyer, Buyer shall be responsible for filing such intellectual property assignments and other instruments of transfer with applicable Governmental Authorities. Buyer shall be responsible for paying all costs and expenses associated with such transfer and filings, including filing fees.

5.2.3 After the Closing Date, at Buyer's request, Seller shall at its expense, and shall cause the other Divesting Entities to (as applicable) unlock the Purchased Domain Names and furnish to Buyer or the applicable domain name registrar, any authorization code or other information required by each applicable Internet domain name registrar for the Purchased Domain Names to transfer the rights in, and control over, the Purchased Domain Names to Buyer or its designee.

5.3 Publicity.

5.3.1 No public announcement related to this Agreement or the transactions contemplated herein will be issued without the approval of Seller and Buyer, which approval shall not be unreasonably withheld, conditioned or delayed, except any public disclosure which either Seller or Buyer, in its good faith judgment, believes is required by applicable Law or by any stock exchange on which its securities or those of its Affiliates are listed. If either Party, in its good faith judgment, believes such disclosure is required, such Party shall use its commercially reasonable efforts to consult with the other Party and its Representatives, and to consider in good faith any revisions proposed by the other Party or its Representatives, as applicable, prior to making (or prior to any of its Affiliates making) such disclosure, and shall limit such disclosure to only that information which is legally required to be disclosed. Notwithstanding the foregoing, without the approval of the other Party, Buyer and Seller and their respective Affiliates may, following the Execution Date and subject to the other terms and conditions of this Agreement (including Section 5.4), (a) communicate with Competition Authorities regarding this Agreement and the Ancillary Agreements and the transactions contemplated hereby or thereby, (b) communicate with Governmental Authorities, make internal announcements to their respective Affiliates and their and their Affiliates' respective employees (and Seller and its Affiliates may communicate with their customers, suppliers, distributors or other Persons engaged in the Product Business regarding this Agreement, the Ancillary Agreements and the transactions contemplated hereby or by the Ancillary Agreements, in a manner consistent with the terms of this Agreement, including in order to obtain consents of or from any such Person necessary or desirable to effect the consummation of the transactions contemplated hereby or by the Ancillary Agreements), and (c) make public announcements and engage in public communications regarding this Agreement, the Ancillary Agreements and the transactions contemplated hereby or by the Ancillary Agreements (in the case of this clause (c), to the extent such announcements or communications are consistent with a communications plan agreed upon by Seller and Buyer or the Parties' prior public communications made in compliance with this Section 5.3).

5.3.2 If Buyer or any of its Affiliates, based on the advice of its counsel, determines that this Agreement or any Ancillary Agreement must be publicly filed with a Governmental Authority, then Buyer or its applicable Affiliate, prior to making any such filing, shall provide Seller and its counsel with a redacted version of this Agreement (and any Ancillary Agreement) that it intends to file, consider in good faith any comments provided by Seller or its counsel and use commercially reasonable efforts to ensure the confidential treatment by such Governmental Authority of those sections specified by Seller or its counsel for redaction and confidentiality.

5.3.3 Notwithstanding any other provision of this Agreement, the requirements of this Section 5.3 shall not apply to any disclosure by Seller, Buyer, or any of their respective Affiliates of any information concerning this Agreement, any Ancillary Agreement or the transactions contemplated hereby or by any Ancillary Agreement in connection with any Dispute between the Parties or their respective Affiliates.

5.3.4 Buyer shall include, and use commercially reasonable efforts to maintain, a hyperlink on each primary gTLD domain/ URL that Buyer may use to Exploit the Products in

the Territory, the placement and form of such hyperlink to be reasonably acceptable to Seller, to re-direct Internet traffic from users outside the Territory seeking information about the Product to such domains/ URLs as Seller may designate in writing.

5.4 Confidentiality.

5.4.1 The Confidentiality Agreement shall govern the respective rights and obligations of the Parties and their respective Affiliates and Representatives with respect to Evaluation Material (as defined in the Confidentiality Agreement) during the Pre-Closing Period. From and after the Closing, all Confidential Information provided by one Party (or its Representatives or Affiliates) (collectively, the "Disclosing Party") to the other Party (or its Representatives or Affiliates) (collectively, the "Receiving Party") shall be subject to and treated in accordance with the terms of this Section 5.4. As used in this Section 5.4, "Confidential Information" means (a) all information disclosed to the Receiving Party by the Disclosing Party in connection with this Agreement or any Ancillary Agreement, including all information with respect to the Disclosing Party's licensors, licensees or Affiliates, (b) all information (if any) disclosed to the Receiving Party by the Disclosing Party under the Confidentiality Agreement, (c) the terms of this Agreement and any Ancillary Agreement and (d) all memoranda, notes, analyses, compilations, studies and other materials prepared by or for the Receiving Party to the extent containing or reflecting the information in the preceding clause (a), (b) or (c); *provided* that the terms of this Agreement and the Ancillary Agreements shall be deemed to be both Buyer Confidential Information and Seller Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include information that, in each case as demonstrated by competent written documentation:

(i) was already known to the Receiving Party other than under an obligation of confidentiality, at the time of disclosure by the Disclosing Party;

(ii) became generally available to the public or otherwise part of the public domain after its disclosure to the Receiving Party other than through any act or omission of the Receiving Party in breach of this Agreement or the Confidentiality Agreement;

(iii) is subsequently disclosed to the Receiving Party by a Third Party without obligations of confidentiality with respect thereto; or

(iv) is independently developed by the Receiving Party without reference, reliance, or incorporation of Confidential Information.

5.4.2 The Confidentiality Agreement shall expire and be of no further force and effect upon the Closing solely with respect to the Confidential Information (but in no other respect); *provided*, *however*, such expiration of the Confidentiality Agreement shall in no way prejudice or adversely affect Seller's or its Affiliate's ability after the Closing to seek damages, or any other remedy available to Seller or its Affiliates, with respect to a violation by Buyer (or its Affiliates or Representatives) of the Confidentiality Agreement relating to Evaluation Material (as defined therein) prior to the Closing.

5.4.3 From and after the Closing, all Confidential Information obtained by Seller (or its Affiliates or Representatives) from Buyer (or its Affiliates or Representatives) and

all Confidential Information relating exclusively to the Product Business, the Purchased Assets and the Assumed Liabilities (the "Buyer Confidential Information") shall be deemed to be Confidential Information disclosed by Buyer to Seller or its Affiliates or Representatives for purposes of this Section 5.4 (and shall not be subject to Section 5.4.1(i)) and, during the period from the Closing through the third anniversary of the Closing Date (the "Confidentiality Period"), shall be used by Seller or its Affiliates or Representatives solely as required to (a) perform their respective obligations or exercise or enforce their respective rights and remedies, or to the extent reasonably necessary or useful to exploit their respective benefits, under this Agreement or any Ancillary Agreement, (b) conduct the Seller Business to the extent consistent with Section 2.2.1, (c) in connection with any Litigation or (d) comply with applicable Law or their respective regulatory, stock exchange, Tax or financial reporting requirements (each of (a) through (d), a "Seller Permitted Purpose"), and for no other purpose. During the Confidentiality Period, Seller shall (i) not disclose, or permit any of its Affiliates to disclose, any of the Buyer Confidential Information to any Person except those Persons to whom such disclosure is necessary in connection with any Seller Permitted Purpose and who are advised of the confidential nature of the Confidential Information and directed to comply with the confidentiality and non-use obligations under this Section 5.4; and (ii) treat, and cause its Affiliates to treat, the Buyer Confidential Information as confidential, using the same degree of care as Seller normally employs to safeguard its own confidential information from unauthorized use or disclosure, but in no event less than a reasonable degree of care; *provided, however*, that with respect to any Buyer Confidential Information that is a trade secret under applicable Law, neither Seller nor its Affiliates or Representatives, as the case may be, shall disclose or permit the disclosure of, such trade secret for the period of time that it is considered a trade secret under applicable Law. Seller shall be responsible for any use or disclosure of Buyer Confidential Information by any of Seller's Affiliates or Representatives that would breach this Section 5.4 if such Affiliate or Representative was a party hereto.

5.4.4 During the Confidentiality Period, all Confidential Information obtained by Buyer (or its Affiliates or Representatives) from Seller (or its Affiliates or Representatives) other than the Buyer Confidential Information (the "Seller Confidential Information") shall be used by Buyer or its Affiliates or Representatives solely as required (a) to perform their respective obligations or exercise or enforce their respective rights and remedies, or to the extent reasonably necessary or useful to exploit their respective benefits, under this Agreement or any Ancillary Agreement, (b) to conduct the Product Business, (c) in connection with any Litigation or (d) to comply with applicable Law or their respective regulatory, stock exchange, Tax or financial reporting requirements (each of (a) through (d), a "Buyer Permitted Purpose"), and for no other purpose. During the Confidentiality Period, Buyer shall (i) not disclose, or permit any of its Affiliates to disclose, any of the Seller Confidential Information to any Person except those Persons to whom such disclosure is necessary in connection with a Buyer Permitted Purpose to the extent such Persons are advised of the confidential nature of the Confidential Information and directed to comply with the confidentiality and non-use obligations under this Section 5.4; and (ii) treat, and cause its Affiliates to treat, Seller Confidential Information as confidential, using the same degree of care as Buyer normally employs to safeguard its own confidential information from unauthorized use or disclosure, but in no event less than a reasonable degree of care; *provided, however*, that with respect to any Seller Confidential Information that is a trade secret under applicable Law, neither Buyer nor its Affiliates or Representatives, as the case may be, shall disclose or permit the disclosure of, such trade secret for the period of time that it is

considered a trade secret under applicable Law. Buyer shall be responsible for any use or disclosure of Seller Confidential Information by any of Buyer's Affiliates or Representatives that would breach this Section 5.4 if such Affiliate or Representative was a party hereto.

5.4.5 In the event either Party or any of its Affiliates or Representatives is requested pursuant to, or required by, applicable Law to disclose any of the other Party's Confidential Information (*i.e*., Seller Confidential Information or Buyer Confidential Information, as applicable), such Party will notify the other Party in writing in accordance with Section 7.3.2(b) so that such other Party may seek a protective order or other appropriate remedy or, in such other Party's sole discretion, waive compliance with the confidentiality provisions of this Agreement. Each Party will, and will cause its Affiliates to, cooperate in all reasonable respects in connection with any reasonable actions to be taken for the foregoing purpose. In any event, the Party (or the Affiliate or Representative of a Party) requested or required to disclose such Confidential Information may furnish it as requested or required pursuant to applicable Law (subject to any such protective order or other appropriate remedy) without liability hereunder, *provided* that such Person furnishes only that portion of the Confidential Information which such Person is advised by an opinion of its counsel is legally required, and such Person exercises reasonable efforts to obtain reliable assurances that confidential treatment will be accorded such Confidential Information.

5.4.6 Subject to compliance with Section 5.4.5, nothing in this Section 5.4 shall be construed as preventing or in any way inhibiting either Party or any of their respective Affiliates or Representatives from complying with applicable Law governing activities and obligations undertaken pursuant to this Agreement or any Ancillary Agreement in any manner which it reasonably deems appropriate.

5.5 Regulatory Transfers.

5.5.1 As soon as practicable after the Execution Date and in any event within 30 days prior to the Closing Date, Buyer and Seller shall agree on a timetable and plan for the Transfer of the Purchased Product Registrations to Buyer and its Affiliates (the "Transfer Plan"), taking into account regulatory procedures relating to the Transfer of the Purchased Product Registrations. Buyer and Seller shall (and shall cause their respective Affiliates to) use their respective commercially reasonable efforts, in accordance with the Transfer Plan, to (a) cooperate with one another and (b) complete and execute all documentation required, in each case, to effect the Transfer of the Purchased Product Registration at Closing or as soon as reasonably practicable following the Closing. Buyer and Seller shall prepare and file all documents necessary to Transfer the Purchased Product Registrations as promptly and as diligently as possible in accordance with the Transfer Plan. In each case, the filing Party shall use commercially reasonable efforts to provide the non-filing Party with advanced drafts of any documents to be filed with a Governmental Authority pursuant to this Section 5.5.1 and give the non-filing Party the right and a reasonable amount of time to review and comment on the same prior to filing. The filing Party shall consider in good faith any reasonable comments timely provided by the non-filing Party.

5.5.2 Each Party that files (or causing the filing of) the documents with a Governmental Authority to Transfer a Purchased Product Registration will (a) promptly notify

the non-filing Party upon the making of any of its submissions to any Governmental Authority for the Transfer of such Purchased Product Registration (providing copies thereof) and the expected approval date (if any is communicated or indicated to the filing Party by the Governmental Authority); (b) provide the non-filing Party with material status updates as to such transfers on an ongoing basis and promptly notify the other Party of any material communication (whether written or oral) from a Governmental Authority in relation to a Transfer and give the non-filing Party reasonable notice of all meetings and telephone calls with any Governmental Authority expected to have a material impact upon a Transfer and give the non-filing Party a reasonable opportunity to participate at each such meeting or telephone call; and (c) notify the non-filing Party in writing of the effectiveness of the Transfer of such Purchased Product Registration and the applicable Transfer Date, promptly following the applicable Governmental Authority's approval of such transfer.

5.5.3 Each Party shall bear its own costs and expenses in connection with the Transfer of the Purchased Product Registrations to Buyer or its designee; *provided*, *however*, that Buyer shall be responsible for the payment of any filing or similar fees payable to the applicable Governmental Authorities with respect to the Transfer of the Purchased Product Registrations.

5.5.4 Unless otherwise required by applicable Law and subject to Section 5.5.6, from the Closing Date until the relevant Transfer Date for such Purchased Product Registration, Seller shall or shall cause the applicable Divesting Entity to use commercially reasonable efforts to maintain or cause to be maintained in force each Purchased Product Registration. Unless otherwise required by applicable Law and as may be agreed between the Parties, each Divesting Entity shall use commercially reasonable efforts to progress or cause to be progressed any pending application filed prior to the Closing Date for a Purchased Product Registration, at Buyer's cost.

5.5.5 Each Party shall, and shall cause its Affiliates to, provide such reasonable assistance to the other Party as is necessary for the other Party to make any filings contemplated to be made by it under this Section 5.5; *provided*, that in connection with the activities contemplated by this Section 5.5, neither Seller nor any of its Affiliates shall be required to (a) conduct any additional studies or research or generate any additional data, (b) reformat any Purchased Regulatory Documentation in connection with the activities contemplated under this Section 5.5; or (c) take any actions to change the status of a Purchased Product Registration.

5.5.6 Transfer of legal title to the Purchased Product Registrations that will be transferred to Buyer or any of its Affiliates or designees shall be effective as of the applicable Transfer Date. If, despite Seller complying with its obligations hereunder, any Purchased Product Registration has not been transferred to Buyer or its designee on or before the first anniversary of the Closing Date or, if later, on or before the date specified in the Transfer Plan for the Transfer of such Purchased Product Registration, Seller or the applicable Third Party Product Registration holder shall have the right to withdraw or terminate such Purchased Product Registration. Seller shall provide written notice to Buyer of any such withdrawal or termination.

5.6 Regulatory Responsibilities.

5.6.1 Post Transfer Date Regulatory Responsibilities. Except as required by a Party to comply with applicable Law or to exercise its rights and obligations hereunder or under any Ancillary Agreement, from and after the date on which the Purchased Product Registrations for a jurisdiction in the Territory are Transferred (each such date, a "Transfer Date"), Buyer or its applicable Affiliate shall have the sole right and responsibility for (and shall bear all costs and expenses of) (a) preparing, obtaining and maintaining all Product Registrations, (b) taking all actions, paying all fees, and conducting communications with Governmental Authorities of competent jurisdiction for each Product in the Field in such jurisdiction with respect to the Purchased Product Registrations, including preparing and filing all reports (including adverse event reports) with applicable Governmental Authorities, (c) taking all actions and conducting all communications with Third Parties in respect of Product sold pursuant to the Purchased Product Registrations in the Field in the Territory, including responding to all complaints in respect thereof, (d) investigating and reporting all adverse events in respect of Product sold pursuant to the Purchased Product Registrations and (e) handling and responding to all customer complaints and inquiries related to Product sold in the Field in the Territory. Without limitation of the foregoing, promptly following the Closing, but in any event within such periods required by applicable Law, Buyer shall obtain, with respect to each jurisdiction in the Territory, such Product Registrations as are necessary for Buyer's own Product labeling and shall comply with such Product Registrations upon receipt thereof. The Parties' respective rights and obligations with respect to the Purchased Product Registrations and communications with regulatory authorities related to the Products prior to each applicable Transfer Date shall be as set forth in the Transitional Services Agreement.

5.6.2 Right of Reference. Effective from and after the Closing, Buyer hereby grants to Seller, on behalf of itself and its Affiliates, licensees, sublicensees, licensors and distributors, a perpetual, irrevocable, worldwide, exclusive, royalty-free and non-transferable license and right of reference (with a right to grant sublicenses and further rights of reference) to the Buyer Regulatory Documentation and Purchased Regulatory Documentation, as may be necessary or useful to (a) exercise Seller's and its Affiliates' respective rights and perform its or their respective obligations under this Agreement or any Ancillary Agreement and (b) conduct the Seller Business. Promptly following Seller's or its applicable Affiliate's, licensee's, sublicensee's or distributor's request therefor, Buyer shall (i) provide to such Person copies of the Buyer Regulatory Documentation or Purchased Regulatory Documentation as shall be reasonably requested by such Person solely for purposes of (A) exercising Seller's or its Affiliates' respective rights or performing its or their respective obligations under this Agreement or any Ancillary Agreement or (B) conducting the Seller Business; and (ii) provide to Seller or its applicable Affiliate, licensee, sublicensee or distributor and to any Governmental Authority specified by such Person a letter, in the form reasonably requested by such Person, acknowledging that such Person has the rights of reference to the Buyer Regulatory Documentation and Purchased Regulatory Documentation granted pursuant to this Section 5.6.1 or such other rights of reference granted pursuant to Section 2.2.

5.6.3 Conduct of Business. Subject to the terms of this Agreement, the Transitional Services Agreement, and the Transfer Plan, Buyer is hereby granted permission to conduct the Product Business for its own account under the Purchased Product Registrations held by the Divesting Entities as of the Closing Date during the period from the Closing Date until the date on which all Purchased Product Registrations have been Transferred. The Parties shall

comply with the provisions of the Transitional Services Agreement with respect to the conduct of the Product Business and the performance of the regulatory obligations of the holder of the Product Registrations during such period.

5.7 Use of Retained Names and Marks.

5.7.1 Acknowledgement. Buyer hereby acknowledges that Seller or its Affiliates or its or their licensors own all right, title and interest in and to the company names, trade names, logos, trade dress and other Trademarks set forth on Schedule 5.7.1, together with all variations, translations, transliterations and acronyms thereof and all company names, Trademarks, domain names, social media handles and all other identifiers and other identifiers of source or goodwill containing, incorporating or associated with any of the foregoing (collectively, the "Retained Names and Marks"), and that, except as expressly provided below, neither Buyer nor any of its Affiliates shall have any right to use the Retained Names and Marks in connection with the Manufacture of the Products or conduct of the Product Business. Buyer further acknowledges that it has no rights in any of the Retained Names and Marks, and that it is not acquiring any rights, directly or indirectly, to use the Retained Names and Marks, except as expressly provided herein.

5.7.2 Right of Use. Buyer and its current and future Affiliates (for as long as they remain Affiliates) shall, during the Applicable Transition Period, be entitled to use (and shall have a limited nonexclusive, non-transferable license to use, without the right to sublicense, the Retained Names and Marks used therein or thereon), solely in connection with the operation of the Product Business as operated immediately prior to the Closing, all of the Product Business' existing stocks of signs, invoices, advertisements and promotional materials and all website content, Purchased Inventory, Transitional Inventory and other documents and materials in existence and used by Seller or its Affiliates in the Product Business as of the Closing, and contained in the Purchased Assets (collectively, the "Existing Stock") and, if and to the extent there is not a sufficient quantity of Purchased Inventory or any Existing Stock for Buyer's conduct of the Product Business prior to obtaining, on a Product-by-Product basis, (a) labeling approval from a Governmental Authority for the relevant Product and (b) the date on which all Purchased Product Registrations for such Product have been Transferred to Buyer or its Affiliates, to use Existing Stock and, if reasonably necessary, create and use a reasonable number of copies of Existing Stock, solely as reasonably necessary to Exploit Product Manufactured after the Closing ("Transitional Inventory") and conduct the Product Business with respect to such Transitional Inventory prior to receipt of such approval and Transfer of such Purchased Product Registrations, in each case, containing the Retained Names and Marks. Upon Seller's request, Buyer shall promptly execute all assignment, transfer and other documents, and take all steps, in each case, that are necessary or desirable to confirm, effectuate or otherwise evidence Seller's and its Affiliates' or any of its or their licensors' rights, title and interests in and to, and control over, the Retained Names and Marks, including any registration or application thereof.

5.7.3 Use Limitations. Except as expressly provided in this Section 5.7, no other right to use the Retained Names and Marks or, except to the extent provided in the Purchased Intellectual Property, any other Trademark of Seller or its Affiliates (or any of its or their licensors) is granted by Seller or its Affiliates to Buyer or its Affiliates, whether by implication or otherwise, and nothing hereunder permits Buyer or its Affiliates to use the

Retained Names and Marks in any manner, other than in connection with the Existing Stock and Transitional Inventory as set forth in this Section 5.7, or to register or seek to register, or to permit any Third Party to register or to seek to register, any of the Retained Names and Marks or any other Trademark of Seller or its Affiliates not transferred to Buyer or its Affiliates pursuant to this Agreement in any jurisdiction. Buyer shall ensure that all use of the Retained Names and Marks in connection with the Product Business after the Closing, as provided in this Section 5.7, shall (i) be only with respect to the Purchased Inventory and other goods and services of a level of quality equal to or greater than the quality of goods and services with respect to which Seller and its Affiliates used the Retained Names and Marks in connection with the Product Business immediately prior to the Closing, (ii) be used in the same form and manner in which Seller and its Affiliates used the Retained Names and Marks in connection with the Product Business immediately prior to the Closing and (iii) comply with all applicable Laws. Any and all goodwill generated by the use of the Retained Names and Marks as permitted under this Section 5.7 shall inure solely to the benefit of Seller and its Affiliates (or its or their licensors), and if Buyer or its Affiliates obtains any goodwill, right, title or interest in or to any of the Retained Names and Marks, Buyer (on behalf of itself and its Affiliates) shall assign and hereby irrevocably assigns to Seller or its Affiliates all such goodwill, rights, title and interests. In any event, Buyer shall not, and shall cause its Affiliates not to, use the Retained Names and Marks in any manner that may damage or tarnish the reputation of Seller or its Affiliates or the goodwill associated with the Retained Names and Marks, or take any action that may adversely affect Seller's or its Affiliates' (or its or their licensor(s)') rights in any of the Retained Names and Marks or the validity, enforceability or distinctiveness of any of the Retained Names and Marks or any registrations or applications therefor.

5.7.4 Termination of Transitional Licenses. Promptly following the Applicable Transition Period or the earlier termination of the license granted under this Section 5.7, (a) Buyer shall cause the removal or obliteration of all Retained Names and Marks from such Existing Stock and Transitional Inventory, or cease using such Existing Stock and Transitional Inventory, and (b) Buyer shall, and shall cause its Affiliates and distributors to, destroy (and provide proof of such destruction to Seller) all then remaining Purchased Inventory or Transitional Inventory at Buyer's sole cost and expense; provided that nothing herein requires Buyer to remove or obliterate any Retained Names and Marks from, or destroy, any Purchased Inventory or Transitional Inventory that is in the field for distribution. Following the Applicable Transition Period, Buyer shall cease all use of any of the Retained Names and Marks and it shall not, and shall cause its Affiliates not to, adopt, use, register or seek to register any Trademarks that are confusingly similar to any of the Retained Names and Marks (including the trade dress used with the Products prior to the Closing Date) with respect to the Products or the Product Business. After the Applicable Transition Period or the earlier termination of the rights of Buyer under this Section 5.7, all rights of Buyer to use the Retained Names and Marks will automatically terminate and Buyer promptly will cease using any Existing Stock.

5.7.5 Responsibility for Third Party Claims. Buyer agrees that none of Seller or its Affiliates (or any of its or their licensors) shall have any responsibility for claims by Third Parties arising out of, or relating to, the use by Buyer or its Affiliates of any Retained Names and Marks after the Closing in violation of this Agreement.

5.7.6 Remedies. Notwithstanding anything in this Agreement to the contrary, Buyer hereby acknowledges and agrees that, in the event of any breach or threatened breach of this Section 5.7, Seller, in addition to any other remedies available to Seller and its Affiliates under applicable Law, shall be entitled: (a) to terminate any rights of Buyer under this Section 5.7 to the extent that Buyer commits a material breach of this Section 5.7 and such material breach continues unremedied for a period of 30 days after Seller provides written notice to Buyer describing the nature of the material breach; provided that if the breach cannot be remedied within 30 days and Buyer is diligently pursuing a remedy, Buyer shall have an additional 30 day period to cure the breach, and such cure may consist of cessation of the allegedly breaching activity; and (b) subject to such cure period, to seek a preliminary injunction, temporary restraining order or other equitable relief restraining Buyer and any of its Affiliates from any such breach or threatened breach and Seller shall not be required to provide any bond or other security in connection with any such injunction, order or other relief.

5.8 Certain Tax Matters.

5.8.1 Withholding Taxes. Except as required by a change in Law occurring after the Execution Date or with regard to a failure to deliver an IRS Form W-9 as required by Section 2.6.2(a)(iv), the amounts payable under this Agreement by Buyer (or any Affiliate thereof) to Seller shall be paid free and clear of any deduction or withholding on account of Taxes. If Buyer determines that withholding is required due to a change in Law occurring after the Execution Date, Buyer shall provide Seller with reasonable notice of any such proposed deduction and withholding prior to making any deduction and withholding of any amount payable to Seller and shall consult in good faith with Seller to reduce or eliminate the amount of such deduction and withholding.

5.8.2 Transfer Taxes and Straddle Tax Periods.

(a) All amounts payable hereunder or under any Ancillary Agreement are exclusive of all Transfer Taxes. Buyer, on the one hand shall be responsible and liable for 50% of all Transfer Taxes and Seller, on the other hand, shall be responsible and liable for 50% of all Transfer Taxes. The Party (or its Affiliate) customarily filing a Tax Return with respect to any Transfer Tax shall, at its own expense, file such Tax Return (and other documentation) with respect to the relevant Transfer Tax, and, if required by applicable Law, the non-filing Party shall join in the execution of such Tax Return (and other documentation). The Parties shall reasonably cooperate with each other to file all Tax Returns required by applicable Laws related to such Transfer Taxes, to minimize any Transfer Taxes, and to issue valid invoices for Transfer Taxes due under this Agreement or any Ancillary Agreement in accordance with applicable Law. If Seller, or an Affiliate of Seller, is the filing Party, it shall provide Buyer with evidence that the relevant Transfer Taxes are required to be paid, and Buyer shall pay to Seller 50% of the amount of the relevant Transfer Tax due and payable at least three Business Days prior to the due date for the filing of the relevant Tax Return. If Buyer or Seller desires to avail itself with respect to any Purchased Asset of any available exemption from Transfer Tax, it shall deliver to the other (or the relevant Affiliate, if applicable) the appropriate exemption certificate, properly completed and, if applicable, validly executed, no later than five Business Days prior to the Closing Date. Notwithstanding the foregoing, Buyer shall be responsible and liable for any sales, use, value added, goods and services, and similar turnover or gross margin Taxes (including any penalties,

interest and additions thereto) incurred or imposed in respect of the transactions contemplated by this Agreement ("Indirect Taxes"), *provided*, *however*, that upon Buyer's reasonable request, Seller shall reasonably cooperate with Buyer to obtain any legally permissible exemption from Indirect Taxes.

(b) In the case of any Tax with respect to the Product Business or the Purchased Assets that is assessed with respect to a Straddle Tax Period: (A) in the case of property, ad valorem and other similar Taxes and any Taxes imposed on a periodic basis, the amount of Taxes attributable to the Pre-Closing Tax Period shall equal the amount of such Tax for the entire Straddle Tax Period multiplied by a fraction the numerator of which is the number of days in the portion of the Straddle Tax Period ending on the Closing Date and the denominator of which is the total number of days in such Straddle Tax Period; and (B) in the case of all other Taxes, the amount of Taxes attributable to the portion of the Straddle Tax Period ending on the Closing Date shall be determined based on an interim closing of the books as of the close of business on the Closing Date; *provided*, *however*, that for purposes of clause (B), exemptions, allowances, or deductions that are calculated on a periodic basis (including depreciation and amortization deductions) shall be apportioned between the Pre-Closing Tax Period and the Post-Closing Tax Period in proportion to the number of days in each such period. The paying Party shall be entitled to reimbursement from the non-paying Party for the amount of such Tax for which the non-paying Party is responsible under this Section 5.8.2(b). The paying Party shall promptly upon payment of such Tax to the applicable Taxing Authority furnish a statement to the non-paying Party setting forth the amount of reimbursement to which the paying Party is entitled under this Section 5.8.2(b), together with such supporting evidence as is reasonably necessary to calculate the amount for which the non-paying Party is responsible under this Section 5.8.2(b). The non-paying Party shall promptly reimburse the paying Party, but in no event later than five Business Days after receipt of such statement.

(c) Seller, at its sole cost and expense, shall timely file all Tax Returns to be filed prior to the Closing with respect to the Purchased Assets or Product Business and timely pay all Taxes required to be paid prior to the Closing with respect to the Purchased Assets or Product Business.

5.8.3 Cooperation and Exchange of Information. Each of Seller and Buyer shall (a) provide the other Party with such assistance as may reasonably be requested by the other (subject to reimbursement of reasonable out-of-pocket expenses) in connection with the preparation of any Tax Return or conduct of any Tax Proceeding relating to Liability for Taxes in connection with the Product Business or the Purchased Assets, (b) retain all records relating to Taxes with respect to the Purchased Assets for all Tax Periods ending on or prior to the Closing Date until the expiration of the statutes of limitation (including any extensions thereof) for the Tax Period or Tax Periods to which such records relate, (c) provide the other Party with any records or other information that may be relevant to such Tax Return or Tax Proceeding, (d) inform the other Party of any final determination of any such Tax Proceeding that affects any amount required to be shown on any Tax Return of the other Party for any Tax Period, and (e)

provide any information necessary or reasonably requested to allow Buyer to comply with any information reporting requirements contained in the Code or other applicable Tax Laws.

5.8.4 Tax Refunds. Seller shall be entitled to all refunds in respect of any Excluded Tax Liability (other than refunds of any Excluded Tax Liability that a Buyer Indemnitee has paid and Seller has not indemnified the Buyer Indemnitee for under this Agreement), and to the extent that Buyer receives a refund that is for the benefit of Seller, Buyer shall promptly pay over such refund (without interest, other than interest received from the applicable Governmental Authority, and net of all reasonable out-of-pocket expenses and costs and Taxes actually incurred by Buyer in obtaining such refund) to Seller. All refunds for Taxes relating to the Product Business or Purchased Assets for a Post-Closing Tax Period (determined in accordance with Section 5.8.2(b) in the case of Taxes relating to a Straddle Tax Period) shall be for the benefit of Buyer, and to the extent that Seller receives a refund for a Tax that is for the benefit of Buyer, Seller shall promptly pay such refund (net of all reasonable out-of-pocket expenses and costs and Taxes incurred in obtaining such refund) to Buyer.

5.8.5 Survival of Covenants. The covenants contained in this Section 5.8 shall survive until 60 days after the expiration of the applicable statute of limitations (including extensions thereof).

5.9 Accounts Receivable and Payable.

5.9.1 Accounts Receivable. The Parties acknowledge and agree that all Accounts Receivable outstanding on the Closing Date shall remain the property of Seller or its Affiliates and shall be collected by Seller or its Affiliates in the ordinary course of business subsequent to the Closing. In the event that, subsequent to the Closing, Buyer or an Affiliate of Buyer receives any payments from any obligor with respect to an Account Receivable, then Buyer shall, or shall cause its applicable Affiliate to, within 60 days after receipt of such payment, remit the full amount of such payment to Seller. In the case of the receipt by Buyer or any of its Affiliates of any payment from any obligor of both Seller or any of Seller's Affiliates (with respect to the Product Business), on the one hand, and Buyer or any of Buyer's Affiliates, on the other hand, then, unless otherwise specified by such obligor, such payment shall be applied first to amounts owed to Buyer or its applicable Affiliate with the excess, if any, remitted to Seller. Any account payable with respect to the Product Business outstanding prior to the Closing shall be paid (or, if applicable, disputed) by the Seller in the ordinary course of business. In the event that, subsequent to the Closing, Seller or any of its Affiliates receives any payments from any obligor with respect to an account receivable of Buyer or any of its Affiliates for any period after the Closing Date, then Seller shall, or shall cause its applicable Affiliate to, within 60 days after receipt of such payment, remit the full amount of such payment to Buyer. In the case of the receipt by Seller or any of its Affiliates of any payment from any obligor of both Seller or any of Seller's Affiliates (with respect to the Product Business), on the one hand, and Buyer or any of Buyer's Affiliates, on the other hand, then, unless otherwise specified by such obligor, such payment shall be applied first to amounts owed to Seller or its applicable Affiliate with the excess, if any, remitted to Buyer.

5.9.2 Accounts Payable. In the event that, subsequent to the Closing, Buyer or an Affiliate of Buyer receives any invoices from any Third Party with respect to any account

payable of the Product Business outstanding prior to the Closing, then Buyer shall, or shall cause its applicable Affiliate to, within 60 days after receipt of such invoice, provide such invoice to Seller. In the event that, subsequent to the Closing, Seller or any of its Affiliates receives any invoices from any Third Party with respect to any account payable of Buyer or any of its Affiliates for any period after the Closing, then Seller shall, or shall cause its applicable Affiliate to, within 30 days after receipt of such invoice, provide such invoice to Buyer.

5.10 Wrong Pockets.

5.10.1 Assets. For a period of up to one year after the Closing Date, if either Buyer or Seller becomes aware that any (i) of the Purchased Assets or (ii) Copyright, Domain Name or Trademark, in each case, that is owned as of the Closing Date solely by or jointly among the Divesting Entities and exclusively relates to the Product Business ("Wrong Pockets IP") has not been transferred to Buyer or that any of the Excluded Assets has been transferred to Buyer, it shall promptly notify the other Party in writing and the Parties shall, as soon as reasonably practicable, ensure that such asset is transferred, with any necessary prior Third Party consent or approval, to (a) Buyer, in the case of any Purchased Asset which was not transferred to Buyer at the Closing or any Wrong Pockets IP; or (b) Seller, in the case of any Excluded Asset which was transferred to Buyer at the Closing. From and after the transfer to Buyer of any Wrong Pockets IP, such Wrong Pockets IP shall constitute a Purchased Asset and all Liabilities related to or any Liabilities out of the ownership, use, sale, license or other Exploitation of such Wrong Pockets IP (to the extent arising from and after such transfer date) shall constitute Assumed Liabilities and be assumed, paid, performed or discharged when due by Buyer.

5.10.2 Payments. Subject to Section 5.9.1, if, on or after the Closing Date, either Party shall receive any payments or other funds due to the other pursuant to the terms of this Agreement or any Ancillary Agreement, then the Party receiving such funds shall, within 60 days after receipt of such funds, forward such funds to the proper Party. The Parties acknowledge and agree that, subject to Section 5.9.1, there is no right of offset regarding such payments and a Party may not withhold funds received from Third Parties for the account of the other Party in the event there is a dispute regarding any other issue under this Agreement or any of the Ancillary Agreements.

5.11 Product Returns. Buyer shall have sole responsibility for accepting and processing all returns following the Closing of units of Products sold and for disbursing refunds and credits in respect thereof (whether any such units of Product was sold prior to, on or after the Closing Date). If any units of Product that were sold in the Territory are received as returns by Seller or any of its Affiliates following the Closing, Seller shall, or shall cause its Affiliates to, ship such units of Product to Buyer or its designee, at Seller's sole cost and expense. In the event that, on or after the Closing Date, a customer makes a claim against Seller or Buyer (or any of their respective Affiliates) in connection with a return of Product (which may be in the form of invoice deductions for amounts associated with such returned units of Product) for which the other Party is responsible pursuant to Section 2.4, then such other Party shall reimburse the Party that received (or whose Affiliate received) such claim for any such customer claims within 30 days after the Party that received (or whose Affiliates received) such claim notifies such other Party of any such customer claim.

5.12 Rebates. Seller shall, and shall cause its applicable Affiliates to, (a) either assign to Buyer at the Closing or terminate prior to the Closing, as mutually agreed between the Parties as promptly as practicable after the Execution Date, each Rebate, promotional and other similar program relating to the sale of Products in the Territory and (b) with respect to each such program that is terminated pursuant to clause (a), within a reasonable period of time after the Closing, pay all amounts owing and accrued under each such program to the applicable customer. In the event that, on or after the Closing Date, Seller or Buyer (or any of their respective Affiliates) receives any request for a Rebate for which the other Party is responsible pursuant to this Section 5.12 or Section 2.4, then, at the option of Party that receives (or whose Affiliate receives) such Rebate request, either (x) the Party that receives (or whose Affiliate receives) such Rebate request shall submit such request to the other Party for payment by the other Party or (y) the Party that receives (or whose Affiliate receives) such Rebate request shall pay the amount of such Rebate and the other Party shall promptly (and in any event no later than 30 days following the receiving Party's request) reimburse the other Party for the amount thereof.

5.13 Notification to Customers. Seller and Buyer shall agree on, and document in writing, the method, content and timing of notifications of the Closing to customers, both direct and indirect, of the Product Business. Seller and Buyer acknowledge and agree that such notifications are intended to provide sufficient advance notice of the sales of the Purchased Assets and assumption of the Assumed Liabilities and the plans associated therewith, with the objective of minimizing any disruption of the Closing.

5.14 **Unauthorized Exploitation**. Except to the extent required to perform their respective obligations under this Agreement or any Ancillary Agreement, Buyer shall not, and shall cause its Affiliates, licensees, sublicensees and distributors not to, Exploit any Product or use any of the Purchased Assets to Exploit any Product outside of the applicable Field in the applicable Territory or outside of the applicable Territory. Notwithstanding the foregoing, Buyer shall be in violation of this Section 5.14 if such customers in fact sell any Product sold to them by Buyer or its Affiliates outside of the Territory.

5.15 **Covenant Not to Sue**.

(a) Effective as of the Closing, Buyer, on behalf of itself, its Affiliates and its and their respective transferees, successors and assigns (collectively, the "Buyer Group"), hereby irrevocably and perpetually covenants that no member of the Buyer Group shall, directly or indirectly, bring any Litigation against Seller or any of its Affiliates or any of its or their licensees, sublicensees, distributors or agents (collectively, the "Seller Group"), or commence, knowingly aid or prosecute or cause to be commenced, knowingly aided or prosecuted any action, suit, proceeding or other Litigation against any member of the Seller Group alleging that such Person or any member of the Seller Group is Exploiting any Product (or any product that contains the same active pharmaceutical ingredient as, and is substantially similar to, a Product) outside of the applicable Territory or Manufacturing any Product anywhere in the world for Exploitation outside of the applicable Territory. Buyer shall bind any assignee or transferee of any of the Purchased Assets and any (sub)licensee with respect to the Products to adhere to the foregoing as if such assignee, transferee or (sub)licensee were Buyer hereunder. Nothing in this Section 5.15 shall prohibit Buyer from exercising any remedies available to it under this

Agreement or any Ancillary Agreement as a result of any breach hereof or thereof by any Divesting Entity.

(b) Effective as of the Closing, Seller, on behalf of itself, its Affiliates and its and their respective transferees, successors and assigns (collectively, the "Divesting Group"), hereby irrevocably and perpetually covenants that no member of the Divesting Group shall, directly or indirectly, bring any Litigation against Buyer or any of its Affiliates or any of its or their licensees, sublicensees, distributors or agents (collectively, the "Buyer Covenantees"), or commence, knowingly aid or prosecute or cause to be commenced, knowingly aided or prosecuted any action, suit, proceeding or other Litigation against any member of the Buyer Covenantees based on any claim that the Exploitation of the Products in the applicable Field and in the applicable Territory or the Manufacture of the Products for Exploitation in the applicable Field and in the applicable Territory, in each case in substantially the manner in which the Divesting Entities Exploited the Products in the applicable Field and in the applicable Territory or Manufactured, as of or prior to the Closing Date, infringes any Existing Patent. Seller shall bind any assignee or transferee of any Existing Patent to the foregoing as if such assignee, transferee or (sub)licensee were Seller hereunder. Nothing in this Section 5.15 shall prohibit Seller from exercising any remedies available to it under this Agreement or any Ancillary Agreement as a result of any breach hereof or thereof by Buyer or any of its Affiliates.

5.16 **Non-Compete**. Notwithstanding anything to the contrary herein, as a material inducement to Buyer to enter into this Agreement, in respect of each Product, except as required to perform their respective obligations under the Ancillary Agreements, the Seller, the other Divesting Entities and their Affiliates shall not commercially sell or offer for sale, whether directly or indirectly through sublicensees, distributors, or other agents, an animal health pharmaceutical product that has nitenpyram as an active pharmaceutical ingredient in the Territory in the Field ("Restricted Activity") during the period from the Closing until the third anniversary of the Execution Date. Seller acknowledges that a violation of this Section 5.16 may cause Buyer irreparable harm which may not be adequately compensated for by money damages. Seller therefore agrees that in the event of any actual or threatened violation of this Section 5.16, Buyer shall be entitled, in addition to other remedies that it may have, to seek a temporary restraining order and to seek preliminary and final injunctive relief against Seller or its Affiliates to prevent any violations of this Section 5.16, without the necessity of posting a bond. Notwithstanding the foregoing, Seller and its Affiliates may, without violating this Section 5.16, (a) Manufacture animal health pharmaceutical products containing nitenpyram as an active pharmaceutical ingredient and sell such products to customers of their manufacturing business in the Territory to the extent such products are sold solely to customers for subsequent distribution and sale outside of the Territory (*provided*, that, Seller shall be in violation of this provision if such customers in fact sell such products sold to them by Seller or its Affiliates in the Territory) and (b) acquire or combine with (whether through merger, stock purchase, purchase of assets or otherwise) any Person engaged in any Restricted Activity or continue any Restricted Activities in the Territory that are engaged in by any Person that is acquired by or combined with Seller or any of its Affiliates after the Execution Date (whether through a merger, consolidation, acquisition or other business combination) if such Restricted Activities generated less than 10% of such Person's aggregate consolidated EBITDA in the last completed fiscal year prior to such acquisition or combination and Seller ceases such Restricted Activity during the three year

period covered by this Section 5.16 or uses commercially reasonable efforts to promptly divest such Restricted Activity.

5.17 **Financial Statements**. To the extent that Buyer or Buyer Guarantor is required by Form 8-K of the U.S. Securities and Exchange Commission (the "SEC") to file financial statements with respect to the Product Business with the SEC in connection with Buyer's acquisition of the Product Business, Seller will use commercially reasonable efforts to deliver to Buyer as soon as practicable after the Closing Date, but not later than 60 days following the Closing Date, audited and unaudited financial statements for the Product Business as of the dates and for the periods required to be filed by Buyer or Buyer Guarantor with the SEC under applicable Law (the "Product Business Financial Statements"). As promptly as practicable following the Execution Date, Buyer shall or shall cause Buyer Guarantor to request a waiver (the "Financial Statements Waiver") from the staff of the SEC to permit the Product Business Financial Statements to be "abbreviated financial statements" (as described in Section 2065 of the Financial Reporting Manual of the Division of Corporation Finance of the SEC), and Buyer shall notify Seller promptly following its receipt of the staff's response to such Financial Statements Waiver request. The Product Business Financial Statements will be prepared in accordance with (a) the books and records of the Divesting Entities and (b) subject to any Financial Statements Waiver received by Buyer or Buyer Guarantor, Regulation S-X to comply with the requirements of Rule 3-05 and GAAP. Subject to Buyer's entry into customary confidentiality agreements with Seller's auditors, Seller agrees to provide the Buyer with (i) a reasonable opportunity to review and comment on drafts of the Product Business Financial Statements and (ii) reasonable access in accordance with and subject to the provisions of Section 5.1 to the documents, schedules and work papers of Seller that are reasonably necessary for purposes of such review. Buyer and its Affiliates shall be solely responsible for any information they file with or furnish to the SEC and shall promptly pay or reimburse Seller for all audit and other out-of-pocket costs and expenses reasonably incurred by Seller and its Affiliates in connection with complying with this Section 5.17.

ARTICLE 6
CONDITIONS PRECEDENT

6.1 Conditions to Obligations of Buyer. The obligation of Buyer to complete the transactions contemplated by this Agreement is subject to the satisfaction or waiver by Buyer at or prior to the Closing of the following additional conditions:

6.1.1 Representations and Warranties. The representations and warranties of Seller contained in Section 3.1, other than the Fundamental Representations included in Section 3.1, shall be true and correct (disregarding any materiality or Material Adverse Effect qualifications within such representations and warranties) in all respects at and as of the Closing Date as if made at and as of such date (except that those representations and warranties that address matters only as of a particular date need only be true and correct as of such date), except for breaches of such representations and warranties that would not reasonably be expected to constitute a Material Adverse Effect, and each Fundamental Representation included in Section 3.1 shall be true and correct in all but immaterial respects at and as of the Closing Date as if made at and as of such date (except that those representations and warranties that address matters

only as of a particular date need only be true and correct in all but immaterial respects as of such date);

6.1.2 Covenants. Seller shall have performed and complied in all material respects with all material covenants, agreements and obligations required to be performed or complied with by it on or prior to the Closing Date;

6.1.3 No Material Adverse Effect. Since the Execution Date, no Material Adverse Effect shall have occurred and be continuing; and

6.1.4 Closing Deliveries. Seller shall have delivered to Buyer each of the items listed in Section 2.6.2(a).

6.2 Conditions to Obligations of Seller. The obligation of Seller to complete the transactions contemplated by this Agreement is subject to the satisfaction or waiver by Seller at or prior to the Closing of the following additional conditions:

6.2.1 Representations and Warranties. The representations and warranties of Buyer contained in Section 3.2, other than the Fundamental Representations included in Section 3.2, shall be true and correct (disregarding any materiality or Buyer Material Adverse Effect qualifications within such representations and warranties) in all respects at and as of the Closing Date as if made at and as of such date (except that those representations and warranties that address matters only as of a particular date need only be true and correct as of such date), except for breaches of such representations and warranties that would not reasonably be expected to constitute a Buyer Material Adverse Effect, each Fundamental Representation included in Section 3.2 shall be true and correct in all but immaterial respects at and as of the Closing Date as if made at and as of such date (except that those representations and warranties that address matters only as of a particular date need only be true and correct in all material respects as of such date);

6.2.2 Covenants. Buyer shall have performed and complied in all material respects with all material covenants, agreements and obligations required to be performed or complied with by it on or prior to the Closing Date;

6.2.3 Closing Deliveries. Buyer shall have delivered to Seller each of the items listed in Section 2.6.2(b) and Seller shall have received the Closing Payment; and

6.2.4 Competition Authority Preliminary Approval. The Federal Trade Commission shall have issued Proposed Consent Order(s) or Final Consent Order(s) relating to the transactions contemplated by the Bison Acquisition Agreement, and such Proposed Consent Order(s) or Final Consent Order(s) shall include, or the Federal Trade Commission shall have otherwise communicated (whether by separate Judgment or other form of communication, as is customary), (a) a requirement that the Divesting Entities divest the Purchased Assets, (b) approval of Buyer as an acquiror of the Purchased Assets and (c) approval of the terms and conditions under which Buyer will acquire the Purchased Assets pursuant to this Agreement and the Ancillary Agreements.

6.3 Frustration of Closing Conditions. With respect to the conditions to Buyer's and Seller's respective obligations to consummate the transactions contemplated by this Agreement as provided hereunder and each such Party's right to terminate this Agreement as provided in Section 8.1, neither Buyer nor Seller may rely on the failure of any condition set forth in this Article 6 to be satisfied if such failure was caused by such Party's failure to act in good faith or to use its reasonable best efforts to cause the conditions to be satisfied.

ARTICLE 7
INDEMNIFICATION

7.1 Indemnification.

7.1.1 Indemnification by Seller. Following the Closing, but subject to the provisions of this Article 7 and Section 9.10, Seller shall indemnify and hold harmless Buyer and its Affiliates and Buyer's and its Affiliates' respective officers, directors and employees (collectively, "Buyer Indemnitees") from and against, and compensate and reimburse the Buyer Indemnitees for, any and all Losses incurred by any Buyer Indemnitee solely to the extent arising out of or related to:

(a) any breach of any representation or warranty made by Seller in this Agreement or any certificate delivered pursuant hereto;

(b) any Excluded Liability; or

(c) any failure of Seller to perform or any breach by Seller of any of its covenants or agreements contained in this Agreement.

7.1.2 Indemnification by Buyer. Following the Closing, but subject to the provisions of this Article 7 and Section 9.10, Buyer shall indemnify and hold harmless Seller and its Affiliates and Seller's and its Affiliates' respective officers, directors and employees (collectively, "Seller Indemnitees") from and against, and compensate and reimburse the Seller Indemnitees for, any and all Losses incurred by any Seller Indemnitee solely to the extent arising out of or related to:

(a) any breach of any representation or warranty made by Buyer in this Agreement or in any certificate delivered pursuant hereto;

(b) any Assumed Liability, except to the extent Seller or any Affiliate of Seller is liable to Buyer for such Losses under the Transitional Manufacturing and Supply Agreement; or

(c) any failure of Buyer to perform or any breach by Buyer of any of its covenants, agreements or obligations contained in this Agreement that are to be performed following the Closing.

7.1.3 Materiality. For purposes of (x) determining whether there has been a breach of any representation or warranty contained in Article 3 and (y) calculating the Losses hereunder pursuant to such breach of any representation or warranty, the parties shall disregard

any materiality or Material Adverse Effect qualifications in the representations and warranties in Article 3.

7.2 Survival.

(a) All representations and warranties of Seller and Buyer contained in this Agreement or in any certificate delivered pursuant to this agreement shall survive the Closing for a period of twelve months after the Closing Date

(b) All of the covenants or agreements contained in this Agreement which by their terms are to be performed at or prior to the Closing Date shall survive the Closing Date for a period of twelve months after the Closing Date. All of the covenants or agreements contained in this Agreement that by their terms contemplate performance after the Closing Date shall survive the Closing until the earliest of (A) the time at which such agreements or covenants are fully performed in accordance with this Agreement, (B) the expiration of the term of the undertaking set forth in such agreements and covenants and (C) the expiration of the applicable statute of limitations; and

(c) The period for which a representation, warranty, covenant or agreement survives the Closing is referred to in this Agreement as the "Applicable Survival Period". Notwithstanding any provision to the contrary contained in this Agreement, in the event notice of a claim for indemnification under Section 7.1 is given within the Applicable Survival Period, the covenant or agreement that is the subject of such indemnification claim shall survive with respect to such claim until such claim is finally resolved.

7.3 Claim Procedure.

7.3.1 Indemnification Claim Procedure for Direct Claims.

(a) Except as provided in Section 7.3.2 with respect to Third Party Claims, in the event of a claim made by a Buyer Indemnitee or a Seller Indemnitee (the "Indemnified Party"), the Indemnified Party shall give reasonably prompt written notice to the other Party (the "Indemnifying Party"), which notice (an "Indemnification Certificate") shall: (i) state that the Indemnified Party has paid or properly accrued or reasonably anticipates that it will have to pay or accrue Losses that are subject to indemnification pursuant to Section 7.1.1 or Section 7.1.2, as applicable, (ii) specify in reasonable detail (to the extent known by the Indemnified Party) the individual items and amounts of such Losses, the date each such item was paid or properly accrued, or the basis for such anticipated Liability, and a description of the basis of such Indemnified Party's claim for indemnification and (iii) to the extent practicable, include any other material details pertaining thereto, along with copies of the relevant documents evidencing such claim and the basis for indemnification sought; *provided, however*, that the failure to give reasonably prompt notice shall not relieve the Indemnifying Party of its indemnification obligation under this Agreement with respect to such claim except to the extent that the Indemnifying Party is actually prejudiced by any delay in receiving such notice.

(b) Following receipt of an Indemnification Certificate from an Indemnified Party, the Indemnifying Party shall have 30 days following delivery of the Indemnification Certificate to make such investigation of the claims in such Indemnification

Certificate as the Indemnifying Party reasonably deems necessary or desirable. For purposes of such investigation, the Indemnified Party agrees to reasonably cooperate and assist the Indemnifying Party or its Representatives in connection with such investigation. If the Indemnifying Party objects to any claim made in the Indemnification Certificate, the Indemnifying Party shall deliver to the Indemnifying Party a written statement setting forth all such objections and the bases therefor within such 30-day period.

(c) If an Indemnifying Party so objects in writing to any claim or claims made in any Indemnification Certificate, the Indemnifying Party and the Indemnified Party shall attempt in good faith for a period of 20 days following the Indemnified Party's receipt of such objection notice to agree upon the respective rights of such parties with respect to each of such claims. If agreement on all of such disputed claims is not reached after such 20-day period of good faith negotiation, either the Indemnifying Party or the Indemnified Party may initiate the dispute resolution proceedings provided in Section 9.1.2 in accordance with the terms of this Agreement.

7.3.2 Third Party Claim Procedure.

(a) In the event an Indemnified Party becomes aware of a claim made by a Third Party (including any action, suit or proceeding commenced or threatened to be commenced by any Third Party) (each a "Third Party Claim") that such Indemnified Party reasonably believes may result in an indemnification claim pursuant to Section 7.1, such Indemnified Party shall promptly as practicable after becoming aware of such claim notify the Indemnifying Party in writing of such claim (such notice, the "Claim Notice"). The Claim Notice shall be accompanied by supporting documentation submitted by the Third Party making such claim and shall describe in reasonable detail (to the extent known by the Indemnified Party) the facts constituting the basis for such Third Party Claim and the amount of the claimed damages; *provided*, *however*, that no delay or failure on the part of the Indemnified Party in delivering a Claim Notice shall relieve the Indemnifying Party from any Liability hereunder except to the extent of any Loss or Liability caused by or arising out of such delay or failure.

(b) Within 45 days after receipt of any Claim Notice, the Indemnifying Party may, upon written notice thereof to the Indemnified Party, assume control of the defense of the Third Party Claim referred to therein at the Indemnifying Party's sole cost and expense (which shall be subject to Section 7.4) with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall, subject to this Section 7.3.2, diligently conduct such defense, appeal or settlement (including the making of all filings and responses due during such time) during the period prior to the assumption of such defense, appeal or settlement proceeding by the Indemnifying Party, or the expiration of such 45-day notice period. If the Indemnifying Party does not so assume control of the defense of such Third Party Claim, the Indemnified Party shall control the defense of such Third Party Claim. The Party not controlling the defense of such Third Party Claim (the "Non-Controlling Party") may participate therein at its own expense; *provided*, *however*, that if the Indemnifying Party assumes control of the defense of such Third Party Claim and the Indemnifying Party and the Indemnified Party have materially conflicting interests or different defenses available with respect to such Third Party Claim that cause the Indemnified Party to hire its own separate counsel with respect to such proceeding, the reasonable fees and expenses of a single counsel to the Indemnified Party shall be considered

"Losses" for purposes of this Agreement. The Person controlling the defense of such Third Party Claim (the "Controlling Party") shall keep the Non-Controlling Party reasonably advised of the status of such claim and the defense thereof and shall consider in good faith recommendations made by the Non-Controlling Party with respect thereto. The Non-Controlling Party shall furnish the Controlling Party with such information as it may have with respect to such Third Party Claim (including copies of any summons, complaint or other pleading that may have been served on such party and any written claim, demand, invoice, billing or other document evidencing or asserting the same) and shall otherwise cooperate with and assist the Controlling Party in the defense of such Third Party Claim; *provided*, that neither the Controlling Party nor the Non-Controlling Party will be required to furnish any such information which would (in the reasonable judgment of such party upon advice of counsel) be reasonably likely to (a) waive any privileges, including the attorney-client privilege, held by such party or any of its Affiliates or (b) breach any duty of confidentiality owed to any Person (whether such duty arises contractually, statutorily or otherwise) or any Contract with any other Person or violate any applicable Law (*provided*, that such party shall use commercially reasonable efforts to obtain any required consents and take such other reasonable action (such as the entry into a joint defense agreement or other arrangement to avoid loss of attorney-client privilege) to permit such access).

(c) Neither the Indemnified Party nor the Indemnifying Party shall agree to any settlement of, or the entry of any Judgment arising from, any Third Party Claim without the prior written consent of the other such party, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, *however*, that the consent of the Indemnified Party shall not be required with respect to any such settlement or Judgment if the Indemnifying Party agrees in writing to pay or cause to be paid any amounts payable pursuant to such settlement or Judgment (net of the applicable deductible amount specified in Section 7.4.1) and such settlement or Judgment includes no admission of liability or wrongdoing by or other obligation on the part of the Indemnified Party and includes a complete release of the Indemnified Party from further Liability with respect to such Third Party Claim. Whether or not the Indemnifying Party has assumed or controls the defense, appeal or settlement proceedings with respect to a Third Party Claim, such Indemnifying Party will not be obligated to indemnify the Indemnified Party hereunder for any settlement entered into or any Judgment that was consented to without the Indemnifying Party's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).

(d) Notwithstanding the foregoing, the Indemnifying Party shall not have the right to assume the defense of such Third Party Claim, if (i) the claim seeks only an injunction or other equitable relief, (ii) the Indemnifying Party shall not have assumed the defense of such Third Party Claim in accordance with Section 7.3.2(b) or (iii) if the Third Party Claim involves a criminal matter.

7.3.3 Payment. In the event that the Indemnifying Party agrees to or is determined to have an obligation to reimburse the Indemnified Party for Losses as provided in this Article 7, the Indemnifying Party shall, subject to the provisions of this Article 7, including Section 7.4, promptly (but, in any event, within 30 days) following such agreement or determination pay such amount to the Indemnified Party by wire transfer of immediately available funds to the account specified in writing by the Indemnified Party.

7.4 Limitations on Indemnification.

7.4.1

(a) The provisions for indemnity under Section 7.1.1(c) or Section 7.1.2(c) shall be effective only for any individual claim or series of related claims arising from the same facts and circumstances where the Loss exceeds $25,000.

(b) Seller shall be obligated to indemnify Buyer Indemnitees as set forth in Section 7.1.1(a) only if and to the extent the aggregate of all Losses for which Seller is liable under Section 7.1.1(a) exceeds $475,000, in which event Seller shall be required to pay and be liable for all Losses in excess of $475,000 incurred by the Buyer Indemnitees for which Sellers are liable under Section 7.1.1(a); *provided* that Seller's aggregate liability under Section 7.1.1(a) shall not exceed $475,000 in the aggregate (the "Cap").

(c) Absent Fraud or Willful Breach, notwithstanding anything in this Agreement to the contrary, in no event shall Seller have liability under this Agreement or in connection with the transactions contemplated hereby or thereby for any amount exceeding, in the aggregate, the Purchase Price.

7.4.2 The Indemnified Party shall take use commercially reasonable efforts to mitigate any Losses incurred by such Party upon and after becoming aware of any event or condition that would reasonably be expected to give rise to any indemnification rights hereunder; provided, that the availability of such insurance shall not preclude a claim or recovery on a timely basis against an Indemnified Party. The amount of Losses recovered by an Indemnified Party under Section 7.1.1 or Section 7.1.2, as applicable, shall be reduced by (a) any amounts actually recovered by the Indemnified Party from a Third Party in connection with such claim and (b) the amount of any insurance proceeds paid to the Indemnified Party relating to such claim, in each case ((a) and (b)), net of the Indemnified Party's costs of recovery, including any insurance premium increases or loss of coverage resulting therefrom. Buyer shall use its commercially reasonable efforts to collect insurance proceeds for any Loss that is subject to indemnification by Seller under Section 7.1.1. If any amounts referenced in the preceding clauses (a) and (b) are received after payment by the Indemnifying Party of the full amount otherwise required to be paid to an Indemnified Party pursuant to this Article 7, the Indemnified Party shall repay to the Indemnifying Party, promptly after such receipt, any amount that the Indemnifying Party would not have had to pay pursuant to this Article 7 had such amounts been received prior to such payment.

7.4.3 For the avoidance of doubt, no Indemnified Party shall be entitled to indemnification under this Article 7 in respect of any Loss to the extent (a) the amount of such Loss was taken into account in the calculation of the Purchase Price pursuant to Section 2.5.3 or (b) such Indemnified Party has been previously indemnified or reimbursed in respect of such Loss pursuant to any other provision of this Agreement or any Ancillary Agreement.

7.5 Tax Treatment of Indemnification Payments. All payments made pursuant to this Article 7 shall be treated as adjustments to the Purchase Price for all Tax purposes, unless otherwise required by applicable Law.

7.6 Exclusive Remedy.

7.6.1 Except as expressly provided for in this Agreement (including in Section 2.5.3, Section 4.6, Section 5.8.2 and Section 9.9) and except for claims for Fraud, (a) Buyer acknowledges and agrees that, following the Closing, the remedies provided for in this Article 7 shall be the sole and exclusive remedies for any and all claims and damages available to the Buyer Indemnitees arising out of or relating to this Agreement, the Product Business, the Purchased Assets, the Assumed Liabilities or the transactions contemplated hereby, including the negotiation of this Agreement, any alleged non-disclosure or misrepresentations made hereunder or in any certificate delivered under Section 2.6.2 and Buyer's and its Affiliates' due diligence investigation with respect to the transactions contemplated hereby; and (b) subject to the indemnification provisions set forth in this Article 7, Buyer hereby waives, on behalf of itself and each other Buyer Indemnitee, any and all rights, claims and causes of action, whether based on or in warranty, contract, tort (including negligence or strict liability), that any such Person may have against Seller or any of its past, present or future Affiliates, Representatives, incorporators, members, partners, stockholders, successors or assigns (and any past, present or future Affiliate, Representative, incorporator, member, partner, stockholder, successor or assign of any of the foregoing) (each such Person, a "Released Party"), in each case to the extent such rights, claims and causes of action arise out of or relate to this Agreement, the Product Business, the Purchased Assets, the Assumed Liabilities or the transactions contemplated hereby, including the negotiation of this Agreement, any alleged non-disclosure or misrepresentations made hereunder or in any certificate delivered under Section 2.6.2 and Buyer's and its Affiliates' due diligence investigation with respect to the transactions contemplated hereby (collectively, "Released Claims") and subject to Buyer's rights pursuant to an Ancillary Agreement or the R&W Policy. Except as expressly provided for in this Agreement (including under this Article 7, in Section 2.5.3, in Section 4.6, in Section 5.8.2 and in Section 9.9) and except for claims for Fraud, Buyer hereby irrevocably agrees, on behalf of itself and each other Buyer Indemnitee, to refrain from directly or indirectly asserting, or assisting any other Person's assertion of, any right, claim or demand or commencing (or causing to be commenced) any Litigation of any kind, in any court or before any tribunal, against any Released Party based upon any Released Claim. Buyer, on behalf of itself and each other Buyer Indemnitee, hereby waives any rights it may have under any Law which provides that a general release does not extend to claims which the releasing Party does not know or suspect to exist in its favor at the time of executing the release, which if known by it may have materially affected its settlement.

7.6.2 Except to the limited extent set forth in Section 8.2.3, notwithstanding anything to the contrary contained in this Agreement, no breach of any representation, warranty, covenant or agreement contained herein shall, after the consummation of the transactions contemplated by this Agreement, give rise to any right on the part of Buyer, on the one hand, or Seller, on the other hand, to rescind this Agreement or any of the transactions contemplated hereby.

7.6.3 No Released Party other than Seller shall have any liability, whether based on or in warranty, contract, tort (including negligence or strict liability) or otherwise, for any Liabilities of Seller arising under, in connection with or related to this Agreement or for any claim based on, in respect of or by reason of the transactions contemplated hereby, including any alleged non-disclosure or misrepresentations made by any such Persons.

7.6.4 Except in the case of claims for Fraud, Buyer, on behalf of itself and each other Buyer Indemnitee, acknowledges and agrees that the sole and exclusive source of recovery for the Buyer Indemnitees with respect to a breach or inaccuracy of any representation or warranty of Seller in this Agreement or in any certificate delivered under Section 2.6.2 in excess of the Cap shall be to make a claim against a R&W Policy. Neither Seller nor any of its Affiliates shall have any direct or indirect Liability in connection with a R&W Policy and each insurer providing a R&W Policy shall waive in such policy all claims of subrogation against Seller or any of its Affiliates except in the case of Fraud.

7.6.5 This Section 7.6 shall not affect either Party's or any Affiliate of either Party's ability to exercise any rights or remedies available to such Person under any Ancillary Agreement with respect to claims arising under such Ancillary Agreement.

7.7 Setoff Rights. Except as expressly permitted under this Agreement, neither Party shall have any right of setoff of any amounts due and payable, or any Liabilities arising, under this Agreement against any other amounts due and payable under this Agreement or any amounts due and payable, or any Liabilities arising, under any Ancillary Agreement. The payment obligations under each of this Agreement and the Ancillary Agreements remain independent obligations of each Party, irrespective of any amounts owed to any other Party under this Agreement or the respective Ancillary Agreements.

ARTICLE 8
TERMINATION

8.1 Termination. Prior to the Closing, this Agreement may be terminated, and the transactions contemplated hereby abandoned:

8.1.1 by the mutual written agreement of Buyer and Seller;

8.1.2 by written notice delivered by either Buyer or Seller to the other, if the Closing shall not have occurred on or prior to December 31, 2020 (the "End Date") (other than due to a breach of any representation or warranty hereunder of the Party seeking to terminate this Agreement or as a result of the failure on the part of such Party to comply with or perform any of its covenants, agreements or obligations under this Agreement and other than as a result of any closing condition in favor of the non-terminating Party not being satisfied, which closing condition has been waived by the non-terminating Party); *provided*, *however*, that (A) right to terminate this Agreement under this Section 8.1.2 shall not be available to any Party whose failure to perform any of its obligations under this Agreement has been the cause of, or resulted in, the failure of the Closing not to have occurred on or before the End Date and (B) Buyer shall not have the right to terminate this Agreement pursuant to this Section 8.1.2 during the pendency of any proceeding brought by Seller for specific performance of this Agreement;

8.1.3 by written notice delivered by Buyer to Seller, if (a) there has been a breach by Seller of a representation or warranty of Seller contained in this Agreement or (b) there shall be a breach by Seller of any covenant, agreement or obligation of Seller in this Agreement, and such breach described in clause (a) or (b) would result in the failure of a condition set forth in Section 6.1.1 or Section 6.1.2 that has not been waived by Buyer, or in the

case of a breach of any covenant or agreement, is not cured upon the earlier to occur of (i) the 30th day after written notice thereof is given by Buyer to Seller and (ii) the day that is five Business Days prior to the End Date; provided, that Buyer may not terminate this Agreement pursuant to this Section 8.1.3 if Buyer is in breach of its representations, warranties, covenants or agreements contained in this Agreement and such breach would result in the conditions to Closing set forth in Section 6.2.1 or 6.2.2 not being satisfied (other than those conditions that (x) by their terms are to be satisfied at the Closing or (y) the failure of which to be satisfied is attributable primarily to a breach by Seller of its representations, warranties, covenants or agreements contained in this Agreement).

8.1.4 by written notice delivered by Seller to Buyer, if

(a) (i) there has been a breach by Buyer of a representation or warranty of Buyer contained in this Agreement or (ii) there shall be a breach by Buyer of any covenant, agreement or obligation of Buyer in this Agreement, and such breach described in clause (i) or clause (ii) would result in the failure of a condition set forth in Section 6.2.1 or Section 6.2.2 and has not been waived by Seller, or in the case of a breach of any covenant or agreement (excluding Section 4.4.5), is not cured upon the earlier to occur of (A) the 30th day after written notice thereof is given by Seller to Buyer and (B) the day that is five Business Days prior to the End Date; *provided*, that Seller may not terminate this Agreement pursuant to this Section 8.1.4(a) if Seller is in breach of its representations, warranties, covenants or agreements contained in this Agreement and such breach would result in the conditions to Closing set forth in 6.1.1 or Section 6.1.2 not being satisfied (other than those conditions that (x) by their terms are to be satisfied at the Closing or (y) the failure of which to be satisfied is attributable primarily to a breach by Buyer of its representations, warranties, covenants or agreements contained in this Agreement);

(b) (i) all of the conditions set forth in Section 6.1 have been satisfied and remain satisfied (other than those conditions that (A) by their terms are to be satisfied at the Closing or (B) the failure of which to be satisfied is attributable primarily to a breach by Buyer of its representations, warranties, covenants or agreements contained in this Agreement), (ii) Seller has confirmed by notice to Buyer that all conditions set forth in Section 6.2 have been satisfied or that it is willing to waive any unsatisfied conditions set forth in Section 6.2 and (iii) the transactions contemplated hereunder shall not have been consummated within one Business Day after delivery of such notice, and Seller stood ready, willing and able to consummate the transactions contemplated hereunder during such period;

(c) subject to the Parties' rights and obligations under this Agreement, Seller and Buyer have been informed orally or Seller or Buyer shall have been informed in writing by any applicable Competition Authority (or the staff thereof) that this Agreement or the Ancillary Agreements are determined by any applicable Competition Authority (or the staff thereof) to be an inadequate remedy under any Competition Law with respect to the transactions contemplated by the Bison Acquisition Agreement;

(d) Buyer is not approved as an acceptable purchaser by any applicable Competition Authority or the staff of any applicable Competition Authority informs both Seller and Buyer orally or informs Seller or Buyer in writing that the staff of such

Competition Authority will not recommend approval of Buyer as an acquiror of the Purchased Assets;

(e) if any applicable Competition Authority (including the staff thereof) informs Seller or Buyer that such Competition Authority (including the staff thereof) will require the transfer to Buyer of any material asset other than those that are Purchased Assets; or

(f) the Bison Acquisition Agreement shall have been terminated pursuant to its terms.

8.2 Procedure and Effect of Termination.

8.2.1 Notice of Termination. Termination of this Agreement by either Buyer or Seller shall be by delivery of a written notice to the other. Such notice shall state the termination provision in this Agreement that such terminating Party is claiming provides a basis for termination of this Agreement. Termination of this Agreement pursuant to the provisions of Section 8.1 shall be effective upon and as of the date of delivery of such written notice as determined pursuant to Section 9.2.

8.2.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 8.1 by Buyer or Seller, this Agreement shall be terminated and have no further effect, and there shall be no liability hereunder on the part of Seller, Buyer or any of their respective Affiliates, except that Section 3.3 (*Exclusivity of Representations*), Section 5.3 (*Publicity*), Section 7.6.3 (*Nonrecourse*), Section 8.2.2 (*Effect of Termination*), Section 8.2.4 (*Withdrawal of Certain Filings*) and Article 9 (*Miscellaneous*) shall survive any termination of this Agreement. For the avoidance of doubt, in the event of termination of this Agreement pursuant to Section 8.1, the Parties shall not enter into any of the Ancillary Agreements or have any obligations thereunder. Nothing in this Section 8.2.2 shall relieve either Party of Liability for Fraud or Willful Breach by either Party of any covenant or agreement of such Party contained herein prior to the termination hereof. "Willful Breach" means a material breach that is a consequence of a deliberate act undertaken, or a deliberate failure to act, which the breaching party actually knew would, or would reasonably be expected or likely to, result in a material breach of this Agreement. In the event of the termination of this Agreement pursuant to Section 8.1.4(f) by Seller, Seller shall reimburse Buyer for its reasonable and documented out-of-pocket cost and expenses incurred in connection with its due diligence investigation and the negotiation of the transactions contemplated by this Agreement promptly following Seller's receipt of an invoice for and reasonable documentation evidencing such costs and expenses; *provided* Seller will not be responsible for reimbursing the Buyer more than $500,000 under this Section 8.2.2. Except in the case of Fraud or Willful Breach, in the event that Seller reimburses Buyer for expenses under this Section 8.2.2, such reimbursement shall be Buyer's and its Affiliates' sole and exclusive monetary remedy with respect to, and shall be deemed to be liquidated damages for, any and all Losses suffered or incurred by Buyer or its Affiliates in connection with the termination of this Agreement and the transactions contemplated hereby, and neither Buyer nor any of its Affiliates shall be entitled to bring or maintain any Litigation against Seller or any of its Affiliates arising out of or in connection with termination of this Agreement and the transactions contemplated hereby.

8.2.3 Rescission. If at any time, any applicable Competition Authority formally notifies Seller that Buyer is not an acceptable acquiror of the Purchased Assets, then each of Seller and Buyer shall have the right immediately to rescind this Agreement, and the provisions of Section 8.2.2 and Section 8.2.4 shall be applicable as if a termination of this Agreement had occurred and Seller shall return to Buyer any delivered portions of the Purchase Price, and neither Seller nor any of its Affiliates shall have any other Liability to Buyer or otherwise resulting from such termination.

8.2.4 Withdrawal of Certain Filings. If the transactions contemplated by this Agreement are terminated as provided herein, (a) Buyer promptly shall, and shall cause each of its Affiliates and Representatives to, return to Seller or destroy (such destruction to be confirmed in writing between the Parties), all (i) documents, materials and other information (including all Evaluation Material (as defined in the Confidentiality Agreement)) received from Seller, any of its Affiliates or any of Seller's or its Affiliates' respective Representatives relating to the transactions contemplated by this Agreement or the Ancillary Agreements, whether so obtained before or after the execution hereof and (ii) documents, memoranda, notes, studies and analyses prepared by Buyer, its Affiliates or their respective Representatives that contain, incorporate or are derived from the documents, materials or other information referred to in the preceding clause (i); (b) all information received by Buyer or its Affiliates or Representatives with respect to the businesses of Seller and its Affiliates (including the Products and the Product Business) shall be treated in accordance with the Confidentiality Agreement, which shall remain in full force and effect notwithstanding the termination of this Agreement; and (c) Buyer and Seller shall, as soon as practicable, but in no event more than 30 days after such termination, to the extent practicable, withdraw all filings, applications and other submissions relating to the transactions contemplated by this Agreement filed or submitted on behalf of such Party with any Governmental Authority or other Person.

ARTICLE 9
MISCELLANEOUS

9.1 Governing Law, Dispute Resolution, Jurisdiction.

9.1.1 Governing Law. This Agreement shall be governed by and construed, and all Disputes relating to or arising out of this Agreement or the transactions contemplated hereby shall be resolved, in accordance with the Laws of the State of New York, excluding any conflicts or choice of Law rule or principle that would otherwise refer construction or interpretation of this Agreement or the resolution of any Dispute relating to or arising out of this Agreement or the transactions contemplated hereby to the Law of another jurisdiction.

9.1.2 Arbitration. Except as otherwise provided herein (including Section 2.5.3), the parties to any Dispute hereunder shall attempt to resolve such Dispute through good faith negotiations between senior executive officers of such parties (or their respective designees) with the authority to settle such Dispute. A Party shall notify the other Party promptly in writing of any Dispute to be referred to such senior executive officers (or their respective designees) for attempted resolution. If such Dispute cannot be resolved through such negotiations within 30 Business Days following the date on which Notice of such Dispute is delivered, any party to such Dispute wishing to initiate mediation may do so within 30 days thereafter or within such

other time period as the parties to the Dispute may agree. Any such mediation shall be conducted in accordance with the Mediation Procedures for Business Disputes of The International Institute for Conflict Prevention and Resolution as in effect on the date of such mediation. If no party to the Dispute issues a notice of mediation within such 30-day (or other agreed upon) period, or if the parties fail to settle such Dispute within 30 days following a notice of mediation, any such party shall have the right to submit the Dispute to resolution by final and binding arbitration. For the avoidance of doubt, except as otherwise expressly provided herein, no Party may seek a binding determination of a Dispute except through arbitration as provided for in this Section 9.1.2. The following provisions shall apply to arbitration proceedings pursuant to this Section 9.1.2:

(i) The place of arbitration will be New York, New York. The arbitration will be conducted in the English language and all documents filed or otherwise provided as part of the arbitration shall be in the English language.

(ii) The arbitral proceedings shall be carried out in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC"). The arbitral tribunal shall be composed of (A) a sole arbitrator if the monetary value of the Dispute is $5,000,000 (or its currency equivalent) or less, and (B) three arbitrators if the monetary value of the Dispute is greater than $5,000,000 (or its currency equivalent) or if the relief sought includes any which is not monetary in nature. In the case of a sole arbitrator, the parties to the Dispute shall endeavor to mutually agree upon the identity of such arbitrator within 30 days after the date on which the respondent(s)' answer is filed in the arbitration. If there are to be three arbitrators, the claimant(s) and respondent(s) shall each nominate one arbitrator within 30 days after the date on which the respondent(s)' answer is filed and the two arbitrators will endeavor within the following 30 days to agree upon the third arbitrator who shall be the chairman of the arbitral tribunal. If any arbitrator is not nominated pursuant to the two immediately preceding sentences, the ICC shall appoint such arbitrator. Any monetary counterclaim of a party must be included in such party's answer, failing which, such claim cannot be made or considered by the arbitral tribunal.

(iii) Each party to a Dispute shall have the right to have recourse to and shall be bound by the Emergency Arbitrator procedure of the ICC in accordance with its Rules for the Emergency Arbitrator.

(iv) The parties to the Dispute shall submit true copies of all documents considered relevant with their respective statement of claim or defense and any counterclaim or reply. Further, the arbitral tribunal, at its own initiative or upon the request of a party to the Dispute may decide to require the submission of additional specific documents or specific, narrow and well-defined classes of documents that the arbitral tribunal considers relevant to the case and material to the outcome of an issue in the Dispute. In matters of document production, the arbitral tribunal and the parties shall be guided by the 2010 International Bar Association Rules on the Taking of Evidence in International Arbitration, with the intent of the parties to limit document production to what is essential in order to resolve the Dispute. The arbitral tribunal shall not have the power to award, nor shall the arbitral tribunal award, any punitive, indirect, incidental or consequential damages or awards for diminution in value or lost profits (however any such award is denominated). The arbitral tribunal is

authorized to take any interim measures as it considers necessary, including the making of interim orders or awards or partial final awards. An interim order or award may be enforced in the same manner as a final award using the procedures specified below. Further, the arbitral tribunal is authorized to make pre- or post-award interest at applicable statutory interest rates during the relevant period.

(v) The written award of the arbitral tribunal shall be final and binding. Except to the extent set forth in the following sentence, each Party hereby waives irrevocably and unconditionally any right to appeal such arbitration award and its rights to any form of review or recourse to any court or other judicial authority, in each case to the extent such rights may be waived. Notwithstanding anything to the contrary herein, each Party retains the right to seek judicial assistance (A) to compel arbitration; (B) to obtain interim measures of protection pending or during arbitration, including injunctive relief and declarations of specific performance pursuant to Section 9.9 and (C) to enforce any decision of the arbitral tribunal, including the final award. Judgment upon the award rendered by the arbitral tribunal may be entered by any court having jurisdiction thereof.

(vi) All arbitration costs and fees (including the costs of legal representation and witness expenses) incurred by the prevailing party or parties to a Dispute shall be borne by the party or parties against whom the applicable arbitral award is made. No arbitrator or arbitration panel under this Section 9.1.2 shall award any Losses for which recovery is prohibited under Section 9.10.

(vii) Each Dispute shall be resolved as quickly as reasonably possible. Any arbitration award must be issued within three months from completion of the hearing, or as soon as possible thereafter.

(viii) Any Dispute and any negotiations, mediation and arbitration proceedings between the parties thereto regarding such Dispute shall be confidential and shall be subject to Section 5.4.

9.1.3 Jurisdiction; Jury Trial Waiver. Subject to Section 9.9, for proceedings in aid of arbitration and to obtain interim measures of relief prior to, pending or during arbitration in accordance with Section 9.1.2, the Parties hereby irrevocably and unconditionally consent to the exclusive jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan in the City of New York, New York and the United States District Court for the Southern District of New York (the "Chosen Courts"), and agree not to commence any action, suit or proceeding (other than appeals therefrom) related thereto except in such courts. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR DISPUTES RELATING HERETO. EACH PARTY (a) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO

ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.1.3.

9.1.4 Venue. For proceedings in aid of arbitration and to obtain interim measures of relief prior to, pending or during arbitration in accordance with Section 9.1.2, the Parties further hereby irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding (other than appeals therefrom) arising out of or relating to this Agreement in the Chosen Courts, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

9.1.5 Service. Each Party further agrees that service of any process, summons, notice or document by registered mail to its address set forth in Section 9.2.2 shall be effective service of process for any action, suit or proceeding brought against it under this Agreement.

9.2 Notices.

9.2.1 Notice Requirements. Any notice, request, demand, waiver, consent, approval or other communication permitted or required under this Agreement (each, a "Notice") shall be in writing, shall refer specifically to this Agreement and shall be deemed given only if delivered by hand or sent by email of a PDF attachment (with transmission confirmed) or by internationally recognized overnight delivery service that maintains records of delivery, addressed to the receiving Party at its address specified in Section 9.2.2 or to such other address as the Party to whom notice is to be given may have provided to the other Party at least five Business Days prior to such address taking effect in accordance with this Section 9.2. Such Notice shall be deemed to have been given as of the date delivered by hand or internationally recognized overnight delivery service or confirmed that it was received by email (by email or by delivery of such communication by internationally recognized overnight delivery service that maintains records of delivery). Any Notice delivered by email shall be confirmed by a hard copy delivered as soon as practicable thereafter.

9.2.2 Address for Notice.

If to Seller, to:

Elanco General Counsel
2500 Innovation Way
Greenfield, IN 46140
Email: Elancolegal@elanco.com
and a copy (which shall not constitute effective notice) to:

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
Email: cdargan@cov.com; mriella@cov.com
Attention: Catherine J. Dargan; Michael J. Riella

If to Buyer, to:

PetIQ, Inc.
923 South Bridgeway Place
Eagle, Idaho 83616
Email: Michael.herrman@petiq.com
Attention: R. Michael Herrman, General Counsel

with a copy (which shall not constitute effective notice) to:

Winston & Strawn LLP
200 Park Avenue
New York, NY 10166
Email: ddechiara@winston.com; bgoldstein.com
Attention: Dominick P. DeChiara; Bryan C. Goldstein

9.3 No Benefit to Third Parties. The covenants and agreements set forth in this Agreement are for the sole benefit of the Parties and their successors and permitted assigns, and, except for the rights of Buyer Indemnitees or Seller Indemnitees under Section 5.7.5, Section 5.8.2 and Article 7, and Seller's Affiliates under Section 9.16, they shall not be construed as conferring any rights on any other Persons.

9.4 Waiver and Non-Exclusion of Remedies. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. The waiver by either Party of any right hereunder or of the failure to perform or of a breach by the other Party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by said other Party whether of a similar nature or otherwise. The rights and remedies provided herein are cumulative and do not exclude any other right or remedy provided by applicable Law or otherwise available except as expressly set forth herein.

9.5 Expenses. Except as otherwise specified herein, and whether or not the Closing takes place, each Party shall bear any costs and expenses incurred by it with respect to the transactions contemplated herein. Seller shall reimburse Buyer for 50% of the policy premium, underwriting fees and ticking fees (if any) incurred to obtain the R&W Policy, up to an aggregate of $200,000.

9.6 Assignment. Neither this Agreement nor either Party's rights or obligations hereunder may be assigned or delegated by such Party without the prior written consent of the other Party, and any attempted assignment or delegation of this Agreement or any of such rights or obligations by either Party without the prior written consent of the other Party shall be void and of no effect; provided that (i) Buyer may collaterally assign its rights and benefits hereunder, in whole or in part, to any financing source which assignment will not relieve Buyer of any of its obligations under this Agreement or any Ancillary Agreements and (ii) any Party may assign or delegate any or all of its rights or obligations hereunder to an Affiliate without the prior written

consent of the other Party, which assignment will not relieve such Party of any of its obligations under this Agreement. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and permitted assigns. Notwithstanding the foregoing, in the event a Party assigns its rights or obligations under this Agreement or otherwise makes payments from a jurisdiction other than the jurisdiction in which such party is organized (each an "Assignment"), and immediately after such Assignment the amount of Tax required to be withheld on any payment pursuant to this Agreement is greater than the amount of such Tax that would have been required to have been withheld absent such Assignment, then such increased withholding Tax shall be borne by the Party making such Assignment.

9.7 Amendment. This Agreement may not be modified, amended, altered or supplemented except upon the delivery of a written agreement executed by both Parties.

9.8 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of either Party under this Agreement will not be materially and adversely affected thereby, (a) such provision shall be fully severable, (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and reasonably acceptable to the Parties.

9.9 Equitable Relief. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement (including failing to take such actions as are required of them hereunder to consummate this Agreement) were not performed in accordance with their specific terms or were otherwise breached for which monetary damages, even if available, would not be an adequate remedy. The Parties acknowledge and agree that (a) each Party shall be entitled to an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction without proof of damages or otherwise, this being in addition to any other remedy to which it is entitled under this Agreement, and (b) the right of specific enforcement is an integral part of the transactions contemplated by this Agreement and without that right, neither Seller nor Buyer would have entered into this Agreement. Each Party agrees not to assert that (i) a remedy of specific enforcement is unenforceable, invalid, contrary to Law or inequitable for any reason and (ii) a remedy of monetary damages would provide an adequate remedy or that the other Party or its Affiliates otherwise has an adequate remedy at law. Each Party hereby waives any requirement that the other Party post a bond or other security as a condition for obtaining any injunction, specific performance or other equitable relief contemplated under this Section 9.9.

9.10 Damages Waiver. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW OR TO THE EXTENT AWARDED TO A THIRD PARTY IN A THIRD PARTY CLAIM, NEITHER BUYER NOR SELLER SHALL BE LIABLE TO THE OTHER, OR THEIR AFFILIATES, FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL,

EXEMPLARY, PUNITIVE, INDIRECT OR MULTIPLE DAMAGES, FOR LOSS OF PROFITS, REVENUE OR INCOME, DIMINUTION IN VALUE OR LOSS OF BUSINESS OPPORTUNITY (WHETHER OR NOT FORESEEABLE ON THE EXECUTION DATE), IN CONNECTION WITH OR RESULTING FROM ANY BREACH OF THIS AGREEMENT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION HEREWITH, OR RELATED HERETO OR TO THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING ANY SUCH DAMAGES WHICH ARE BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW OR ANY OTHER THEORY OF RECOVERY.

9.11 English Language. This Agreement shall be written and executed in, and all other communications under or in connection with this Agreement shall be in, the English language. Any translation into any other language shall not be an official version thereof, and in the event of any conflict in interpretation between the English version and such translation, the English version shall control.

9.12 Bulk Sales Laws. Buyer hereby waives compliance by Seller with the requirements of any applicable bulk sales or bulk transfer Laws in any jurisdiction that may be applicable to the transactions contemplated by this Agreement.

9.13 Fulfillment of Obligations. Any obligation of any Party to any other Party under this Agreement or any of the Ancillary Agreements, which obligation is performed, satisfied or fulfilled completely by an Affiliate of such Party, shall be deemed to have been performed, satisfied or fulfilled by such Party.

9.14 Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed original counterpart of this Agreement.

9.15 Entire Agreement. This Agreement, together with the Schedules and Exhibits expressly contemplated hereby and attached hereto, the Disclosure Schedules, the Confidentiality Agreement, the Ancillary Agreements and the other agreements, certificates and documents delivered in connection herewith or therewith or otherwise in connection with the transactions contemplated hereby and thereby, contain the entire agreement between the Parties with respect to the transactions contemplated hereby or thereby and supersede all prior agreements, understandings, promises and representations, whether written or oral, between the Parties with respect to the subject matter hereof and thereof.

9.16 Buyer Guarantor Guarantee.

9.16.1 In order to induce Seller to enter into this Agreement, the Buyer Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Seller and its Affiliates, the payment in full of all amounts owed by Buyer or any of its Affiliates to Seller or its Affiliates when due and payable, in each case in accordance with the terms of this Agreement

or the Ancillary Agreements. Such guarantee shall be as primary obligor and not merely as surety, shall be a guarantee of payment and not of collection and shall be a continuing guarantee and shall remain in full force and effect until the indefeasible payment and satisfaction in full of all amounts payable by Buyer or any of its Affiliates under this Agreement or any Ancillary Agreement, shall be binding upon the Buyer Guarantor and its successors and permitted assigns (*provided* that Buyer Guarantor may not assign its rights or delegate its obligations under this Section 9.16 without the prior written consent of Seller), and shall inure to the benefit of, and be enforceable by, Seller and its Affiliates and their respective successors and permitted assigns. The Buyer Guarantor hereby waives acceptance, diligence, promptness, presentment, demand of payment or performance, filing of claims with a court in the event of insolvency or bankruptcy of the Buyer, any right to require a proceeding (or other exhaustion of remedies) first against the Buyer or to join the Buyer in any enforcement action or to first resort to any other means of obtaining payment or performance, protest, notice and all demands whatsoever. Notwithstanding anything contained herein to the contrary, the Buyer Guarantor shall be entitled to assert as a defense to any claim for payment of any amount under this Agreement or any Ancillary Agreement any defense that would be available to the Buyer if the claim were asserted directly against the Buyer.

9.16.2 The liability of Buyer Guarantor under this Section 9.16 shall be irrevocable, unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

(a) any extension, renewal, settlement, compromise, waiver or release in any respect of any obligation of Buyer or its Affiliates, by operation of Law or otherwise, unless and to the extent Seller consents to any such extension, renewal, settlement, compromise, waiver or release;

(b) any modification or amendment of, or supplement to, this Agreement or any Ancillary Agreement;

(c) any change in the corporate existence, structure or ownership of Buyer or its Affiliates, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting Buyer, its Affiliates or their respective assets, or any resulting release or discharge of any obligation of Buyer or its Affiliates;

(d) the existence of any claim, set-off or other right which Buyer Guarantor may have at any time against Buyer or its Affiliates; *provided* that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(e) any invalidity or unenforceability of this Agreement, any Ancillary Agreement or any other document entered into in connection herewith or therewith relating to or against Buyer or its Affiliates for any reason, or any provision of any Law purporting to prohibit the performance by Buyer or its Affiliates of their respective obligations under this Agreement, any Ancillary Agreement or any other document; or

(f) any other act or omission to act or delay of any kind by Seller, Buyer or any other Person or any other circumstance whatsoever that might, but for the

provisions of this Section 9.16, constitute a legal or equitable discharge of Buyer Guarantor's obligations hereunder.

9.16.3 Buyer Guarantor is a corporation duly incorporated, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation. Buyer Guarantor has the requisite corporate power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated to be consummated by it hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated to be consummated by it hereby have been duly authorized by all necessary corporate actions of Buyer Guarantor. This Agreement has been duly executed and delivered by the Buyer Guarantor, and, assuming this Agreement constitutes the valid and binding obligation of the other parties hereto, this Section 9.16 constitutes the valid and binding obligation of the Buyer Guarantor, enforceable against the Buyer Guarantor in accordance with its terms, except as limited by (a) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar Laws relating to creditors' rights generally and (b) general principles of equity, whether such enforceability is considered in a proceeding in equity or at law.

[*Signature page follows*]

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

ELANCO US, INC.

By: /s/ Aaron L. Schacht
Name: Aaron L. Schacht
Title: EVP – Innovation, Regulatory & Bus Dev

PETIQ, LLC

By: /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

By: /s/ R. Michael Herrman
Name: R. Michael Herrman
Title: Secretary

PETIQ, INC., for purposes of Section 9.16 only

By: /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

By: /s/ R. Michael Herrman
Name: McCord Christensen
Title: General Counsel and Secretary

Exhibit 10.2

THIRD AMENDMENT TO TERM LOAN CREDIT AGREEMENT

This **THIRD AMENDMENT TO TERM LOAN CREDIT AGREEMENT** (this "**Amendment**") is dated as of July 9, 2020 and is entered into by and among **PETIQ, LLC**, an Idaho limited liability company (the "**Borrower**"), the Guarantors party hereto, **ARES CAPITAL CORPORATION** and each other Lender party hereto (consisting of the Required Lenders) and **ARES CAPITAL CORPORATION**, as the administrative agent (in such capacity, the "**Administrative Agent**"). Capitalized terms used herein without definition shall have the same meanings herein as set forth in the Existing Credit Agreement (as defined below) after giving effect to this Amendment.

RECITALS

WHEREAS, the Borrower, Ares Capital Corporation and the Lenders party thereto and the Administrative Agent have entered into that certain Amended and Restated Term Loan Credit Agreement, dated as of July 8, 2019 (as amended by the Second Amendment to the Term Loan Credit Agreement dated as of May 14, 2020 and as further amended, restated, amended and restated, supplemented, or otherwise modified prior to the date hereof, the "**Existing Credit Agreement**");

WHEREAS, the Borrower has requested that the Lenders amend the Existing Credit Agreement on the terms set forth herein (such Existing Credit Agreement, as hereby amended on the Amended Effective Date (as defined below), the "**Amended Credit Agreement**"); and

WHEREAS, on the Amendment Effective Date, the Lenders party hereto (consisting of the Required Lenders) are willing to agree to the amendments requested by the Borrower, on the terms and conditions set forth in this Amendment.

NOW, THEREFORE, in consideration of the premises and the mutual agreements set forth herein, the Borrower, the Guarantors party hereto, the Lenders party hereto (consisting of the Required Lenders) and the Administrative Agent hereby agree as follows:

Section 1. Amendments

Subject to the satisfaction of the conditions set forth in Section 3 of this Amendment, on the Amendment Effective Date, the Existing Credit Agreement is hereby amended as follows:

(a) The following new definitions are hereby added to Section 1.01 of the Existing Credit Agreement in the appropriate alphabetical order:

"**CAP IM Agreements**" means, collectively, (a) that certain CAP Supply Agreement and (b) that certain Amended and Restated Exclusive License and Supply Agreement, each dated as of March 31, 2015 between CAP IM Supply, Inc. and PetIQ, LLC.

"**CAP IM Termination Agreement**" has the meaning specified in the definition of "Consolidated EBITDA".

"**Third Amendment**" means that certain Third Amendment to the Amended and Restated Credit Agreement, dated as of the Third Amendment Effective Date, by and among the Borrower, the Guarantors party thereto, the Lenders party thereto and the Administrative Agent.

"**Third Amendment Effective Date**" means the date on which the Third Amendment became effective in accordance with its terms and conditions, such date being July 9, 2020.

(b) The definition of "Indebtedness" in Section 1.01 of the Existing Credit Agreement is hereby amended by amending and restating the last sentence thereof in its entirety as set forth below:

"For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any Capitalized Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. For the avoidance of doubt, obligations to make payments under the CAP IM Termination Agreement constitute "Indebtedness" (and as of the Third Amendment Effective Date, the aggregate principal amount of such Indebtedness (after giving effect to the netting of deposits held by the counterparties to the CAP IM Agreements on the Third Amendment Effective Date) is $19,000,000)".

(c) The following definition in Section 1.01 of the Existing Credit Agreement is hereby amended and restated in its entirety as set forth below:

"**Loan Documents**" means this Agreement, the First Amendment, the Second Amendment, the Third Amendment, each Note, each Security Document, the Fee Letter, each Subordination Agreement, each Compliance Certificate, the ABL Intercreditor Agreement, any Junior Lien Intercreditor Agreement, any Pari Passu Intercreditor Agreement, any agreement creating or perfecting rights in cash collateral pursuant to the provisions of **Section 2.14** (but specifically excluding any Secured Cash Management Agreement and Secured Hedge Agreement), and each other agreement, document or instrument delivered by any Credit Party in connection with any Loan Document, whether or not specifically mentioned herein or therein.

(d) Section 6.05(a) of the Existing Credit Agreement is hereby amended and restated in its entirety as set forth below:

(a) **Defaults**. The Credit Parties will promptly (but in any event within three (3) Business Days) notify the Administrative Agent and each Lender in writing following Senior Management obtaining knowledge of the occurrence of (i) any Default or Event of Default or (ii) any "default," "event of default" or material breach under any Material Agreement or Pharmaceutical License or (iii) any termination or expiration of any Material Agreement or Pharmaceutical License (other than, in the case of clause (ii) and (iii) as it relates to the CAP Supply Agreement (referred to under clause (a) of the definition of CAP IM Agreements), any default, breach or termination thereof that occurred on or prior to the Third Amendment Effective Date or as part of the CAP IM Termination Agreement).

(e) Clause (b)(vi) of the definition of "Consolidated EBITDA" in Section 1.01 of the Existing Credit Agreement is hereby amended and restated in its entirety as set forth below:

(vi) one-time non-cash expenses of up to $19,000,000 recorded in the fiscal quarter ending June 30, 2020 in connection with the termination of the CAP IM Agreements in accordance with that certain Termination, Settlement and Asset Purchase Agreement dated as of the Third Amendment Effective Date among PetIQ, LLC, CAP IM Supply, Inc. and CAP Supply Inc. (the "**CAP IM Termination Agreement**"), excluding, for the avoidance of doubt, the amount of all payments made under the CAP IM Termination Agreement attributable to the purchases of inventory, to

(f) Section 7.02(p) of the Existing Credit Agreement is hereby amended by replacing "and" with ";" at the end thereof;

(g) Section 7.02(q) of the Existing Credit Agreement is hereby amended by replacing "." with "; and" at the end thereof;

(h) Section 7.02 of the Existing Credit Agreement is hereby amended by adding clause (r) as set forth below:

(r) unsecured Indebtedness of the Credit Parties and their Restricted Subsidiaries incurred in connection with the termination of the CAP IM Agreements pursuant to the CP IM Termination Agreement; ***provided***, that the aggregate amount of such Indebtedness shall not exceed $19,000,000 (after giving effect to the netting of deposits held by the counterparties to the CAP IM Agreements on the Third Amendment Effective Date).

(i) Section 7.04(b)(vi) of the Existing Credit Agreement is hereby amended by replacing "and" with ";" at the end thereof;

(j) Section 7.04(b)(vii) of the Existing Credit Agreement is hereby amended by replacing "." with "and" at the end thereof;

(k) Section 7.04(b) of the Existing Credit Agreement is hereby amended by adding clause (viii) as set forth below:

(viii) payments made pursuant to the CAP IM Termination Agreement in an aggregate amount not to exceed the amount payable thereunder as of the Third Amendment Effective Date.

Section 2. Conditions to Effectiveness

This Amendment shall become effective as of the date hereof only upon the satisfaction or waiver of all of the conditions precedent (the date of satisfaction or waiver of such conditions being referred to herein as the "**Amendment Effective Date**") set forth below have been satisfied:

(a) Amendment. The Administrative Agent shall have received counterparts of this Amendment executed and delivered by each of the (i) Borrower and each other Guarantor party hereto and (ii) the Lenders party hereto (consisting of the Required Lenders);

(b) Amendment to ABL Credit Agreement. The Administrative Agent shall have received a copy of a fully executed amendment to the ABL Credit Agreement, in form and substance reasonably satisfactory to the Required Lenders;

(c) Default. No Default or Event of Default shall have occurred and be continuing at the time of incurrence of this Amendment or the transactions contemplated hereby or could result therefrom;

(d) Closing Certificate. The Administrative Agent shall have received a customary certificate, dated as of the Amendment Effective Date, signed by a chief executive officer, chief financial officer or another senior officer of the Borrower, confirming compliance with the conditions precedent set forth in clauses (c) and (e) of this Section 3 has been satisfied;

(e) Representations and Warranties. Each of the representations and warranties made by any Credit Party in or pursuant to the Loan Documents shall be true and correct in all material respects on and as of the date hereof as if made on and as of such date except, (i) to the extent that such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such date and (ii) that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects; and

(f) Fees and Expenses. The Borrower shall have paid all reasonable documented out-of-pocket expenses incurred by the Administrative Agent (including the reasonable and documented fees, charges and disbursements of counsel) in connection with this Amendment, to the extent invoiced three (3) Business Days prior to the Amendment Effective Date (except as otherwise reasonably agreed by the Borrower).

Section 3. Reaffirmation, Acknowledgment and Consent

The Borrower hereby confirms its pledges, grants of security interests and other obligations, as applicable, under and subject to the terms of each of the Loan Documents to which it is party, and agrees that, notwithstanding the effectiveness of this Amendment or any of the transactions contemplated hereby, such pledges, grants of security interests and other obligations, and the terms of each of the Loan Documents to which it is a party, as supplemented in connection with this Amendment and the transactions contemplated hereby, are not impaired or affected in any manner whatsoever and shall continue to be in full force and effect and shall continue to secure all the Obligations.

Each Guarantor hereby acknowledges that it has reviewed the terms and provisions of the Existing Credit Agreement and this Amendment and consents to the amendments to the Existing Credit Agreement effected pursuant to this Amendment. Each Guarantor hereby confirms its guarantees, pledges, grants of security interests and other obligations under and subject to the terms of each of the Loan Documents to which it is party, and agrees that, notwithstanding the effectiveness of this Amendment or any of the transactions contemplated hereby, such guarantees, pledges, grants of security interests and other obligations, and the terms of each of the Loan Documents to which it is a party, as modified or supplemented in connection with this Amendment and the transactions contemplated hereby, are not impaired or affected in any manner whatsoever and shall continue to be in full force and effect and shall continue to secure all the Obligations.

Each Guarantor acknowledges and agrees that each Loan Document to which it is a party or otherwise bound shall continue in full force and effect and that all of its obligations thereunder shall be valid and enforceable and shall not be impaired or limited by the execution or effectiveness of this Amendment.

Section 4. Miscellaneous

(a) **Reference to and Effect on the Credit Agreement and the other Loan Documents**.

(i) On and after the Amendment Effective Date, each reference in the Existing Credit Agreement to "this Agreement," "hereunder," "hereof," "herein" or words of like import referring to the Existing Credit Agreement, and each reference in the other Loan Documents to the "Credit Agreement," "thereunder," "thereof" or words of like import referring to the Existing Credit Agreement, shall mean and be a reference to the Amended Credit Agreement.

(ii) Except as specifically amended by this Amendment, the Existing Credit Agreement and the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed.

(b) **Loan Document.** This Amendment shall constitute a Loan Document under the terms of the Amended Credit Agreement.

(c) **Non-Reliance on Administrative Agent**. Each Lender acknowledges that it has independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Amendment. Each Lender also acknowledges that it will, without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit decisions in taking or not taking action under or based upon this Amendment, the Amended Credit Agreement, any other Loan Document, any related agreement or any document furnished hereunder or thereunder.

(d) **No Novation.** By its execution of this Amendment, each of the parties hereto acknowledges and agrees that the terms of this Amendment do not constitute a novation, but, rather, an amendment of the terms of a pre-existing Indebtedness and related agreement, as evidenced by the Amended Credit Agreement.

(e) **Headings.** Section and Subsection headings in this Amendment are included for convenience of reference only and shall not affect the interpretation of this Amendment.

(f) **Governing Law.** THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD OF CONFLICTS OF LAW RULES THAT WOULD RESULT IN THE APPLICATION OF A DIFFERENT GOVERNING LAW. The provisions of Sections 10.04 and 10.14(b), (c), (d) and (e) of the Amended Credit Agreement are incorporated by reference herein and made a part hereof.

(g) **Counterparts**. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Amendment. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Amendment or any document to be signed in connection with this Amendment and the transactions contemplated hereby shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other state laws based on the Uniform Electronic Transactions Act, and the parties hereto consent to conduct the transactions contemplated hereunder by electronic means.

(h) **Severability**. If any provision of this Amendment is held to be illegal, invalid or unenforceable, (i) the legality, validity and enforceability of the remaining provisions of this Amendment shall not be affected or impacted thereby and (ii) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

[*Signature pages follow*]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

Borrower:

PETIQ, LLC, an Idaho limited liability company

By: /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

Guarantors:

PETIQ HOLDINGS, LLC, a Delaware limited liability company

By: /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

TRUE SCIENCE HOLDINGS, LLC, a Florida limited liability company

By: /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

TRURX LLC, an Idaho limited liability company

By: /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

TRU PRODIGY, LLC, a Texas limited liability company

By: /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

COMMUNITY VETERINARY CLINICS, LLC, a Delaware limited liability company

By: /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

PET SERVICES OPERATING, LLC, a Delaware limited liability company

By: /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

VIP PETCARE, LLC, a California limited liability company

By: /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

PAWSPLUS MANAGEMENT, LLC, a Delaware limited liability company

By: /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

COMMUNITY CLINICS, INC., a California corporation

By: /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

HBH ENTERPRISES LLC,
a Utah limited liability company

By: /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

SERGEANT'S PET CARE PRODUCTS, INC.,
a Michigan corporation

By: /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

SPC TRADEMARKS, LLC,
a Texas limited liability company

By: /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

VELCERA, INC.,
a Delaware corporation

By: /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

ARES CAPITAL CORPORATION, as Administrative Agent and a Lender

By: /s/ Ian Fitzgerald
Name: Ian Fitzgerald
Title: Authorized Signatory

Lenders:

ARES CAPITAL CORPORATION

By: /s/ Ian Fitzgerald
Name: Ian Fitzgerald
Title: Authorized Signatory

CADEX CREDIT FINANCING, LLC

By: /s/ Ian Fitzgerald
Name: Ian Fitzgerald
Title: Authorized Signatory

ARES JASPER FUND HOLDINGS, LLC
By: Ares Capital Management LLC, as servicer

By: /s/ Ian Fitzgerald
Name: Ian Fitzgerald
Title: Authorized Signatory

ARES ND CSF HOLDINGS LLC
By: Ares Capital Management LLC, as servicer

By: /s/ Ian Fitzgerald
Name: Ian Fitzgerald
Title: Authorized Signatory

ARES CREDIT STRATEGIES INSURANCE DEDICATED FUND SERIES INTERESTS OF THE SALI MULTI-SERIES FUND, L.P.
By: Ares Management LLC, its investment subadvisor
By: Ares Capital Management LLC, as subadvisor

By: /s/ Ian Fitzgerald
Name: Ian Fitzgerald
Title: Authorized Signatory

ARES CSIDF HOLDINGS, LLC
By: Ares Capital Management LLC, as servicer

By: /s/ Ian Fitzgerald
Name: Ian Fitzgerald
Title: Authorized Signatory

AC AMERICAN FIXED INCOME IV, L.P.
By: Ares Capital Management LLC, its investment manager

By: /s/ Ian Fitzgerald
Name: Ian Fitzgerald
Title: Authorized Signatory

FEDERAL INSURANCE COMPANY
By: Ares Capital Management LLC, its investment manager

By: /s/ Ian Fitzgerald
Name: Ian Fitzgerald
Title: Authorized Signatory

NATIONWIDE LIFE INSURANCE COMPANY
By: Ares Capital Management LLC, its investment manager

By: /s/ Ian Fitzgerald
Name: Ian Fitzgerald
Title: Authorized Signatory

SA REAL ASSET 20 LIMITED
By: Ares Management LLC, its investment manager
By: Ares Capital Management LLC, as subadvisor

By: /s/ Ian Fitzgerald
Name: Ian Fitzgerald
Title: Authorized Signatory

GREAT AMERICAN LIFE INSURANCE COMPANY
By: Ares Capital Management LLC, its investment manager

By: /s/ Ian Fitzgerald
Name: Ian Fitzgerald
Title: Authorized Signatory

GREAT AMERICAN INSURANCE COMPANY
By: Ares Capital Management LLC, its investment manager

By: /s/ Ian Fitzgerald
Name: Ian Fitzgerald
Title: Authorized Signatory

BOWHEAD IMC LP
By: Ares Capital Management LLC, its investment manager

By: /s/ Ian Fitzgerald
Name: Ian Fitzgerald
Title: Authorized Signatory

AN CREDIT STRATEGIES FUND, L.P.
By: Ares Capital Management LLC, its investment manager

By: /s/ Ian Fitzgerald
Name: Ian Fitzgerald
Title: Authorized Signatory

DIVERSIFIED LOAN FUND – PRIVATE DEBT A S.A R.L
By: Ares Management Limited, its portfolio manager
By: Ares Capital Management LLC, its subadvisor

By: /s/ Ian Fitzgerald
Name: Ian Fitzgerald
Title: Authorized Signatory

AO MIDDLE MARKET CREDIT L.P.
By: Ares Capital Management LLC, its investment manager

By: /s/ Ian Fitzgerald
Name: Ian Fitzgerald
Title: Authorized Signatory

IVY HILL MIDDLE MARKET CREDIT FUND XV, LTD.
By: Ivy Hill Asset Management, L.P., as Asset Management

By: /s/ Kevin Braddish
Name: Ian Fitzgerald
Title: Authorized Signatory

IVY HILL MIDDLE MARKET CREDIT FUND XIV, LTD.
By: Ivy Hill Asset Management, L.P., as Asset Management

By: /s/ Kevin Braddish
Name: Ian Fitzgerald
Title: Authorized Signatory

IVY HILL MIDDLE MARKET CREDIT FUND XII, LTD.
By: Ivy Hill Asset Management, L.P., as Asset Management

By: /s/ Kevin Braddish
Name: Ian Fitzgerald
Title: Authorized Signatory

IVY HILL MIDDLE MARKET CREDIT FUND VIII, LTD.
By: Ivy Hill Asset Management, L.P., as Asset Management

By: /s/ Kevin Braddish
Name: Ian Fitzgerald
Title: Authorized Signatory

IVY HILL MIDDLE MARKET CREDIT FUND V, LTD.
By: Ivy Hill Asset Management, L.P., as Asset Management

By: /s/ Kevin Braddish
Name: Ian Fitzgerald
Title: Authorized Signatory

IVY HILL MIDDLE MARKET CREDIT FUND IV, LTD.
By: Ivy Hill Asset Management, L.P., as Asset Management

By: /s/ Kevin Braddish
Name: Ian Fitzgerald
Title: Authorized Signatory

IVY HILL MIDDLE MARKET CREDIT FUND XVI, LTD.
By: Ivy Hill Asset Management, L.P., as Asset Management

By: /s/ Kevin Braddish
Name: Ian Fitzgerald
Title: Authorized Signatory

FEDERAL INSURANCE COMPANY
By: Ivy Hill Asset Management, L.P., as Asset Management

By: /s/ Kevin Braddish
Name: Ian Fitzgerald
Title: Authorized Signatory

IVY HILL MIDDLE MARKET CREDIT FUND XVII, LTD.
By: Ivy Hill Asset Management, L.P., as Asset Management

By: /s/ Kevin Braddish
Name: Ian Fitzgerald
Title: Authorized Signatory

FIFTH AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT

THIS FIFTH AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT (this "Amendment"), dated as of July 9, 2020, is entered into by and among PETIQ, LLC, an Idaho limited liability company ("PetIQ"), the other Credit Parties signatory hereto (collectively with PetIQ, the "Borrowers"), the LENDERS signatory hereto, and EAST WEST BANK, a California banking corporation, as Administrative Agent for the Lenders (in such capacity, "Administrative Agent"), with reference to the following facts:

RECITALS

A. The Borrowers, the Lenders, and Administrative Agent are parties to an Amended and Restated Credit Agreement dated as of January 17, 2018, as amended by the First Amendment to Amended and Restated Credit Agreement and Joinder dated as of August 9, 2018, the Second Amendment to Amended and Restated Credit Agreement dated as of March 25, 2019, and the Third Amendment to Amended and Restated Credit Agreement dated as of July 8, 2019, and as supplemented by the Consent Agreement dated as of October 17, 2018, the Joinder No. 1 to Amended and Restated Credit Agreement dated as of December 10, 2018, the consent letter dated May 7, 2019 from Administrative Agent to Borrower Representative, the Joinder No. 2 to Amended and Restated Credit Agreement dated as of July 23, 2019, and the Fourth Amendment to Amended and Restated Credit Agreement dated as of May 14, 2020 (collectively, the "Credit Agreement") and certain other related Loan Documents, pursuant to which the Lenders provide the Borrowers a revolving credit facility with sub-facilities for letters of credit and swing line loans.

B. The parties hereto desire to amend the Credit Agreement as set forth below.

NOW, THEREFORE, the parties hereby agree as follows:

1. Defined Terms. All initially capitalized terms used in this Amendment (including in the recitals hereto) without definition shall have the respective meanings set forth for such terms in the Credit Agreement.

2. Addition of Definitions Relating to CAP IM Termination Agreement.

(a) Addition of Definition of CAP IM Agreements. Section 1.01 of the Credit Agreement is hereby amended and supplemented by adding therein a definition of "CAP IM Agreements" as follows:

"CAP IM Agreements" means, collectively, (a) the Exclusive Distribution and Supply Agreement dated August 22, 2014, as amended, between Cap Supply Inc. and PetIQ, LLC and (b) the Amended and Restated Exclusive License and Supply Agreement dated as of March 31, 2015 between CAP IM Supply, Inc. and PetIQ, LLC.

(b) Addition of Definition of CAP IM Termination Agreement. Section 1.01 is hereby amended and supplemented by adding therein a definition of "CAP IM Termination Agreement" as follows:

"CAP IM Termination Agreement" has the meaning specified in the definition of "Consolidated EBITDA".

(c) Addition of Definition of Fifth Amendment. Section 1.01 of the Credit Agreement is hereby amended and supplemented by adding therein a definition of "Fifth Amendment" as follows:

"Fifth Amendment" means that certain Fifth Amendment to Amended and Restated Credit Agreement, dated as of the Fifth Amendment Effective Date, by and among the Borrowers, the Lenders party thereto and the Administrative Agent.

(d) Addition of Definition of Fifth Amendment Effective Date. Section 1.01 of the Credit Agreement is hereby amended and supplemented by adding therein a definition of "Fifth Amendment Effective Date" as follows:

"Fifth Amendment Effective Date" means the date on which the Fifth Amendment became effective in accordance with its terms and conditions, such date being July 9, 2020.

3. Amendment of Definition of Consolidated EBITDA. Section 1.01 of the Credit Agreement is hereby amended by inserting a new clause (b)(xi) in the definition of "Consolidated EBITDA" so that clauses (b)(x) and (b)(xi) of such definition reads in full as follows (changes to text are indicated, in the case of deletions, with a ~~strikethrough~~ or, in the case of additions, in ***bold, italicized and underscored*** type):

> (x) fees and expenses paid to members of the board of directors of Parent (or any direct or indirect parent company of Parent) in an amount not to exceed $250,000 for any period of four consecutive Fiscal Quarters;
>
> ***(xi) one-time non-cash expenses of up to $19,000,000 recorded in the fiscal quarter ending June 30, 2020 in connection with the termination of the CAP IM Agreements in accordance with that certain Termination, Settlement and Asset Purchase Agreement dated as of the Fifth Amendment Effective Date among PetIQ, LLC, CAP IM Supply, Inc. and CAP Supply Inc. (the "CAP IM Termination Agreement"), excluding, for the avoidance of doubt, the amount of all payments made under the CAP IM Termination Agreement attributable to purchases of inventory***; minus

4. Amendment of Definition of Indebtedness. Section 1.01 of the Credit Agreement is hereby amended by amending and restating the last paragraph of the definition of "Indebtedness" so that it reads in full as follows (changes to text are indicated, in the case of deletions, with a ~~strikethrough~~ or, in the case of additions, in ***bold, italicized and underscored*** type):

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any Capitalized Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. ***For the avoidance of doubt, obligations to make payments under the CAP IM Termination Agreement constitute (x) "Indebtedness" (and as of the Fifth Amendment Effective Date, the aggregate principal amount of such Indebtedness (after giving effect to the netting of deposits held by the counterparties to the CAP IM Agreements on the Fifth Amendment Effective Date) does not exceed $19,000,000) and (y) "Indebtedness for borrowed money" for purposes of clause (b)(ii) of the definition of Consolidated Fixed Charge Coverage Ratio.***

5. Amendment of Notice Affirmative Covenant Relating to the CAP IM Termination Agreement. Section 6.05(a) of the Credit Agreement is hereby amended by amending and restating such clause in its entirety, which shall read in full as follows (changes to text are indicated, in the case of deletions, with a ~~strikethrough~~ or, in the case of additions, in ***bold, italicized and underscored*** type):

> "(a) Defaults. The Credit Parties will promptly (but in any event within three (3) Business Days) notify the Administrative Agent and each Lender in writing following Senior Management obtaining knowledge of the occurrence of (i) any Default or Event of Default or (ii) any "default," "event of default" or material breach under any Material Agreement or Pharmaceutical License or (iii) any termination or expiration of any Material Agreement or Pharmaceutical License ***(other than, in the case of clause (ii) and (iii) as it relates to the CAP Supply Agreement, any default, breach or termination thereof that occurred on or prior to the Fifth Amendment Effective Date or as part of the CAP IM Termination Agreement).***"

6. Amendment of Indebtedness Negative Covenant to Permit CAP IM Termination Agreement Obligations. Section 7.02 of the Credit Agreement is hereby amended by (i) deleting the word "and" from the end of subsection (o), (ii) re-labelling current subsection (p) so that it becomes new subsection (q), and (iii) adding therein a replacement subsection (p) which shall read in full as follows:

> "(p) unsecured Indebtedness of the Credit Parties and their Restricted Subsidiaries incurred in connection with the termination of the CAP IM Agreements pursuant to the CP IM Termination Agreement; ***provided***, that the aggregate amount of such Indebtedness shall not exceed $19,000,000 (after giving effect to the netting of deposits held by the counterparties to the CAP IM Agreements on the Fifth Amendment Effective Date); and"

7. Amendment of Restricted Payments; Prepayments Negative Covenant to Permit Payment of CAP IM Termination Agreement Obligations. Section 7.04(b) of the Credit Agreement is hereby amended by adding therein a new clause vi which shall read in full as follows:

> vi. payments made pursuant to the CAP IM Termination Agreement in an

aggregate amount not to exceed the amount payable thereunder as of the Fifth Amendment Effective Date.

8. Conditions Precedent. The effectiveness of this Amendment shall be subject to the satisfaction of each of the following conditions:

A. This Amendment. Administrative Agent shall have received this Amendment, duly executed by the Borrowers, the Required Lenders, and Administrative Agent; and

B. Amendment to Term Credit Agreement. Administrative Agent shall have received a copy of a fully executed amendment under the Term Credit Agreement, in form and substance reasonably satisfactory to the Required Lenders.

9. General Amendment Provisions.

A. The Credit Agreement, as amended hereby, shall be and remain in full force and effect in accordance with its terms, and the Borrowers hereby ratify and confirm the Credit Agreement in all respects and reaffirm their obligations under the Credit Agreement in all respects. Except as expressly set forth herein, the execution, delivery, and performance of this Amendment shall not operate as a waiver of, an amendment to, or a consent to a deviation from, any right, power, or remedy of Administrative Agent or the Lenders under the Credit Agreement or any other Loan Document, as in effect prior to the date hereof.

B. The Borrowers represent and warrant to Administrative Agent and the Lenders that the representations and warranties contained in the Credit Agreement are true and correct in all material respects as of the date of this Amendment (except for representations and warranties that expressly relate to an earlier date, which are true and correct in all material respects as of such earlier date) and that no Event of Default has occurred and is continuing.

C. This Amendment constitutes the entire agreement of the parties in connection with the subject matter hereof and cannot be changed or terminated orally. All prior agreements, understandings, representations, warranties and negotiations regarding the subject matter hereof, if any, are merged into this Amendment.

D. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing this Amendment (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original hereof.

E. This Amendment shall be governed by, and construed and enforced in accordance with, the internal laws (as opposed to the conflicts of law principles) of the State of New York.

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

IN WITNESS WHEREOF, the undersigned have executed this Amendment by their respective duly authorized officers as of the date first above written.

The Borrowers:

PETIQ, LLC,
an Idaho limited liability company

By /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

TRUE SCIENCE HOLDINGS, LLC,
a Florida limited liability company

By /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

TRURX LLC,
an Idaho limited liability company

By /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

TRU PRODIGY, LLC,
a Texas limited liability company

By /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

COMMUNITY VETERINARY CLINICS, LLC,
a Delaware limited liability company

By /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

PET SERVICES OPERATING, LLC,
a Delaware limited liability company

By /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

PAWSPLUS MANAGEMENT, LLC,
a Delaware limited liability company

By /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

VIP PETCARE, LLC,
a Delaware limited liability company

By /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

COMMUNITY CLINICS, INC.,
a California corporation

By /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

PETIQ MFG, LLC (F/K/A HBH ENTERPRISES LLC),
a Utah limited liability company

By /s/ McCord Christensen
Name: McCord Christensen
Title: Chief Executive Officer

The Agent, L/C Issuer and Swingline Lender:

EAST WEST BANK,
as Administrative Agent, LC/Issuer and Swingline Lender

By: /s/ David A. Lehner
David A. Lehner
Senior Vice President

The Syndication Agent:

KEYBANK NATIONAL ASSOCIATION,
as Syndication Agent

By /s/ Anthony Alexander
Name: Anthony Alexander
Title: Vice President

The Lenders:

EAST WEST BANK,
as a Lender

By: /s/ David A. Lehner
David A. Lehner
Senior Vice President

COMERICA BANK,
as a Lender

By /s/ Catherine M. Vyenielo
Name: Catherine M. Vyenielo
Title: SVP

KEYBANK NATIONAL ASSOCIATION,
as a Lender

By /s/ Anthony Alexander
Name: Anthony Alexander
Title: Vice President

Exhibit 31.1

CERTIFICATION PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002

I, McCord Christensen, certify that:

1. I have reviewed this quarterly report on Form 10-Q of PetIQ, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 7, 2020

/s/ McCord Christensen
McCord Christensen
Chief Executive Officer

Exhibit 31.2

CERTIFICATION PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002

I, John Newland, certify that:

1. I have reviewed this quarterly report on Form 10-Q of PetIQ, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 7, 2020

/s/ John Newland
John Newland
Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of PetIQ, Inc. (the "Company") for the period ended June 30, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, McCord Christensen, Chief Executive Officer of the Company, certify to the best of my knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ McCord Christensen

McCord Christensen
Chief Executive Officer

Date: August 7, 2020

Exhibit 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of PetIQ, Inc. (the "Company") for the period ended June 30, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John Newland, Chief Financial Officer of the Company, certify to the best of my knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ John Newland

John Newland
Chief Financial Officer

Date: August 7, 2020