UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): **December 11, 2018**

SYNERGY PHARMACEUTICALS INC.

(Exact name of registrant as specified in its charter)

Delaware	**001-35268**	**33-0505269**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

420 Lexington Avenue, Suite 2012
New York, New York 10170
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **(212) 297-0020**

(Former Name or Former Address, if Changed Since Last Report)

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a -12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d -2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e -4(c))

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

Emerging growth company ☐

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

Item 1.01 Entry into a Material Definitive Agreement

The information set forth in Item 1.03 below with respect to the Asset Purchase Agreement (as defined below) and the DIP Loans (as defined below) is incorporated herein by reference.

Item 1.03 Bankruptcy or Receivership

Chapter 11 Filing

On December 12, 2018, Synergy Pharmaceuticals Inc., a Delaware corporation (the "Company") and its wholly-owned subsidiary, Synergy Advanced Pharmaceuticals, Inc., a Delaware corporation ("Synergy Advanced" and together with the Company, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Court"). The Debtors have filed a motion with the Court seeking joint administration of their chapter 11 cases (the "Chapter 11 Cases") pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure under the caption *In re Synergy Pharmaceuticals Inc, et al.* (Case No. 18-14010 (JLG)). The Debtors will continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. To ensure their ability to continue operating in the ordinary course of business, the Debtors have filed with the Court motions seeking a variety of "first-day" relief (collectively, the "First Day Motions"), including authority to obtain debtor-in-possession financing, maintain the Debtors' cash management system, and honor certain obligations of the Debtors.

DIP Loans

Pursuant to a binding term sheet dated December 11, 2018 (the "Term Sheet") by and among the Company, as debtor-in-possession, Synergy Advanced, as guarantor, CRG Servicing LLC, as DIP administrative agent ("CRG" or "DIP Agent"), and certain affiliates of CRG (collectively, the "Lender"), and in connection with the Chapter 11 Cases, the Lender has agreed to provide a senior secured superpriority debtor-in-possession term loan facility in an aggregate principal amount equal to $[155,000,000], comprised of $[45,000,000] of "new money" loans (the "New Money DIP Loans"), plus $[110,000,000] of loans representing a "roll up" of a portion of the Prepetition Obligations (as defined in the Term Sheet) equal to the sum of (i) outstanding principal, plus (ii) accrued and unpaid interest, including accrued and unpaid postpetition interest at the Default Rate specified in the Prepetition Credit Agreement (as defined in the Term Sheet) from the petition date through and including the date of the entry of the Second Interim Order (as defined in the Term Sheet), plus (iii) any and all unreimbursed costs, fees and expenses of the Prepetition Secured Parties (as defined in the Term Sheet) (the "Roll Up DIP Loans" and together with the New Money DIP Loans, the "DIP Loans") to the Company on the terms set forth in the Term Sheet and the definitive documentation to be negotiated, executed and delivered by the Company, Synergy Advanced and Lender related to the Term Sheet, including credit, security, collateral and guarantee agreements (collectively, the "CRG DIP Documents").

Lender's obligation to provide the DIP Loans is subject to various conditions customary for debtor-in-possession financings of this type, including (i) entry of interim and final orders by the Court, in form and substance satisfactory to the DIP Agent, approving the Debtors' execution and performance of the Term Sheet and the CRG DIP Documents (such orders, the "DIP Order"), (ii) the filing by the Debtors of an Acceptable Plan (as defined in the Term Sheet) and disclosure statement no later than December 21, 2018, (iii) the Debtors' and Lender's execution and delivery of the CRG DIP Documents, in form and substance satisfactory to the DIP Agent, on or prior to December 18, 2018, and (iv) the bid procedures motion, sale motion and "stalking horse" asset purchase agreement not being modified in a manner adverse in any material respect to the rights and interests of the DIP Secured Parties (as defined in the Term Sheet) without the prior written consent of the DIP Agent.

The DIP Loans shall be used by the Company in accordance with the initial budget agreed upon between the Debtors and Lender, which budget may be modified by the Debtors with the consent of the Lender (the "Budget"). The Company's variance from the Budget cannot exceed: (i) 20% for the first four-week period (and each week thereof), (ii) 15% for the first five-week period, and (iii) 10% for the first six-week period and all subsequent weeks for various operating categories and 10% for bankruptcy-related disbursements, with certain exceptions as set forth in the Term Sheet (including fees of Lender and its professionals).

The DIP Loans will mature on the earliest of (a) April 9, 2019; (b) the consummation of a sale of all or substantially all of the Company's assets; (c) the acceleration of the DIP Loans; and (d) such later date as the Lender in its sole discretion may agree in writing with the Company (such earliest date, the "Maturity Date").

Upon the occurrence of certain mandatory prepayment events, including the consummation of an Acceptable 363 Sale (as defined in the Term Sheet) or upon the effectiveness of an Acceptable Plan (as defined in the Term Sheet), the Acceptable 363 Sale order or the Acceptable Plan, as applicable, shall provide for the indefeasible payment in full in cash of the DIP Loans upon consummation of the sale, or at emergence, as applicable. Once the Company has repaid or prepaid any amounts under the DIP Loans, such amounts may not be reborrowed.

The obligations of the Debtors under the Term Sheet and CRG DIP Documents will have priority over all other allowed Chapter 11 or Chapter 7 administrative expenses under the Bankruptcy Code, subject to a carveout as specified in the DIP Order, and shall be secured by a lien on and a security interest in all assets and property of the Company. The proceeds of the DIP Loans will be used by the Debtors, as permitted by the DIP Order, the Budget, and the CRG DIP Documents, for working capital and general corporate purposes, the pursuit of an Acceptable Sale (as defined in the Term Sheet) and bankruptcy-related costs and expenses, subject to the Carve Out (as defined in the Term Sheet).

In consideration of Lender's provision of the DIP Loans, upon entry of the Final Order (as defined in the Term Sheet) the Debtors will pay an upfront fee of 2% of the total amount of the New Money DIP Loans. In addition, on the Maturity Date, the Debtors will pay an exit fee of 3% of the total amount of the New Money DIP Loans. The Company will also pay all reasonable and documented professional fees and expenses of Lender in connection with the matters contemplated by the Term Sheet and the CRG DIP Documents.

Interest on the amounts borrowed under the DIP Loans will accrue and be payable monthly at a rate of LIBOR + 9.50% per annum; an additional 4.00% per annum will apply during the continuance of an Event of Default (as defined in the Term Sheet).

The CRG DIP Documents will contain customary representations, warranties, affirmative and negative covenants and events of default substantially consistent with the Prepetition Credit Agreement, except as set forth in the Term Sheet.

The foregoing description of the Term Sheet does not purport to be complete and is qualified in its entirety by reference to the Term Sheet filed as Exhibit 10.1 hereto and incorporated herein by reference.

Asset Purchase Agreement

In connection with the commencement of the Chapter 11 Cases, on December 11, 2018, the Debtors entered into an asset purchase agreement (the "Asset Purchase Agreement") with Bausch Health Companies, Inc. ("BH") and its wholly owned subsidiary, Bausch Health Ireland Limited ("Purchaser"), pursuant to which Purchaser agreed to acquire substantially all of the Debtors' assets and certain liabilities for an aggregate purchase price of approximately $185 million, minus the Cure Costs Deduction (as defined in the Asset Purchase Agreement) and the GTN Adjustment Amount (as defined in the Asset Purchase Agreement), net of any Deposit Funds (as defined below) (the "Cash Consideration") and an amount in cash equal to the lesser of (x) $15 million and (y) the amount of severance obligations payable to certain eligible employees (other than executive officers) to the extent such obligations constitute administrative expenses in the Chapter 11 Cases pursuant to Sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code. Within three (3) business days of the entry of the Bidding Procedures Order (as defined in the Asset Purchase Agreement), subject to the execution of an escrow agreement with an escrow agent reasonably acceptable to the Debtors and the Purchaser (the "Escrow Agent"), the Purchaser shall deposit into escrow with the Escrow Agent an amount equal to $18,500,000 (such amount, together with all interest and other earnings accrued thereon, the "Deposit Funds"), by wire transfer of immediately available funds. The Deposit Funds shall be released by the Escrow Agent and delivered to either (x) the Purchaser or (y) the Company on behalf of the Debtors, as follows: (i) if the Closing (as defined in the Asset Purchase Agreement) shall occur, the Deposit Funds shall be applied toward the Cash Consideration payable by the Purchaser, (ii) if the Asset Purchase Agreement is terminated by the Debtors for certain material breaches of the Asset Purchase Agreement, the Bidding Procedures Order or the Sale Order (each as defined in the Asset Purchase Agreement) by Purchaser, the Deposit Funds shall be delivered to the Company; or (iii) if the Asset Purchase Agreement is terminated for any other reason, the Deposit Funds shall be delivered to the Purchaser.

The Asset Purchase Agreement contains customary representations and warranties of the parties and is subject to a number of closing conditions, including, among others, (i) the approval by the Court in the Chapter 11 Cases; (ii) the accuracy of representations and warranties of the parties; and (iii) material compliance with the obligations set forth in the Asset Purchase Agreement.

The transactions contemplated by the Asset Purchase Agreement are expected to be conducted through a supervised sale under Section 363 of the Bankruptcy Code and will be subject to proposed bidding procedures, receipt of higher and better offers at auction and approval of the Court. As part of the sale process, the Company intends to file a motion for entry of an order establishing bidding procedures, designating Bausch Health as the "stalking horse" bidder and setting a hearing date on the sale of the assets. Upon entry by the Court, the bidding procedures order will provide that the Purchaser is the "stalking horse" bidder for the assets identified in the Asset Purchase Agreement. The Asset Purchase Agreement calls for the Debtors to pay a break-up fee to Purchaser equal to $7,000,000 in certain circumstances, including the entry into or consummation of an alternative transaction involving the sale of a material portion of the Debtors' assets to any person or entity other than Purchaser. The Asset Purchase Agreement, subject to Court approval, also provides for the reimbursement of specified expenses of Purchaser incurred in connection with the Asset Purchase Agreement equal to the lesser of (i) $1,950,000 and (ii) the aggregate amount of all reasonable and documented professional fees, out of pocket costs and expenses incurred by BH and the Purchaser. Upon Court approval of the bidding procedures, the Debtors plan to engage in a robust bidding process with any and all interested parties. The CRG DIP Documents contain milestones related to the sale process for purposes of ensuring the consummation of an Acceptable Sale (as defined in the Term Sheet) on or before April 9, 2019 or the consummation of an Acceptable Plan (as defined in the Term Sheet) on or before April 10, 2019.

The foregoing description of the Asset Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the Asset Purchase Agreement filed as Exhibit 2.1 hereto and incorporated herein by reference.

On December 12, 2018, the Company issued a press release announcing that the Debtors had entered into the Asset Purchase Agreement, filed petitions to initiate the Chapter 11 Cases and entered into a binding term sheet with CRG regarding providing the DIP Loans upon the satisfaction of certain agreed terms and conditions. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 2.04 Triggering Events that Accelerate or Increase a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement.

The commencement of the Chapter 11 Cases described in Item 1.03 above constitutes an event of default that accelerated Company's obligations, as applicable, under the following debt instruments (the "Debt Instruments"):

- Term Loan Agreement, dated as of September 1, 2017 (as amended or supplemented from time to time), by and between the Company, Synergy Advanced, and CRG Servicing LLC, as administrative agent and collateral agent and the lenders party thereto; and

- Indenture, dated as of November 3, 2014 (as amended or supplemented from time to time), by and between the Company and Wells Fargo Bank, National Association, as trustee, governing the Company's 7.50% Convertible Senior Notes due 2019.

The Debt Instruments provide that as a result of the commencement of the Chapter 11 Cases, the principal and interest due thereunder shall be immediately due and payable.

Any efforts to enforce the payment obligations under the Debt Instruments are automatically stayed as a result of the Chapter 11 Cases, and the creditors' rights of enforcement in respect of the Debt Instruments are subject to the applicable provisions of the Bankruptcy Code.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On December 9, 2018, in connection with the transactions described in the Asset Purchase Agreement, the Company adopted the Synergy Pharmaceuticals Inc. Amended and Restated Severance Pay Plan and Summary Plan Description (the "Plan"). The Plan replaces and supersedes the Synergy Pharmaceuticals Inc. Severance Pay Plan and Summary Plan Description effective as of August 9, 2018. The Plan is effective as of December 9, 2018.

The Plan is a broad-based severance plan that provides severance benefits to full-time employees of the Company (or its affiliates) (an "Eligible Employee"), in the event their employment is involuntarily terminated by the Company under certain circumstances described in the Plan, including upon the consummation of or within a 2-year period immediately following a Change of Control (as defined under the Plan). An employee who is classified as temporary, independent contractor, casual or seasonal is not an Eligible Employee under the Plan.

Under the terms of the Plan, if the Company terminates an Eligible Employee, the Eligible Employee may be entitled to receive the following benefits, subject to the terms of the Plan:

- either (i) a severance payment equal to up to 6 months base salary for Eligible Employees who are sales employees and 10 months base salary for Eligible Employees who are non-sales employees if termination is not within a 2 year period commencing upon a Change of Control or (ii) a severance payment equal to up to 8 months base salary for Eligible Employees who are sales employees and up to 12 months base salary for Eligible Employees who are non-sales employees if termination occurs during a 2 year period commencing upon a Change of Control (such period, the "Severance Duration");

- a monthly Health Payment (as defined in the Plan) for the length of the Severance Duration;

- expiration of any unvested portion of options held by such Eligible Employee on the date of termination and any vested portion of such options shall remain exercisable for the length of the Severance Duration, but not later than the expiration date of such options; and

- for bonus eligible employees a pro-rata bonus payment based upon the actual number of days the Eligible Employee was employed during such fiscal year assuming attainment of the performance criteria with respect to the Eligible Employee's bonus opportunity (as determined by the Company's Board of Directors in its sole discretion) for the fiscal year in which the termination occurs, if an Eligible Employee's termination occurs during a 2 year period commencing upon a Change of Control.

Notwithstanding the foregoing, no payment shall be made under the Plan to an Eligible Employee in the event of the sale or other disposition of the Company, any related company or any affiliate of the Company or in the event of the sale, transfer or other disposition of any assets of any such entity, including but not limited to the sale, transfer or disposition of any property or other asset owned or operated by Company, a related company or an affiliate of Company, in each case if the Eligible Employee (i) continues to be employed by the Company or an affiliate on or after the date of such sale or other disposition; (ii) resigns or is involuntarily terminated after declining to accept an offer of employment from Company or any of its parent, subsidiary, related or affiliated companies as long as the offer of employment is for a Comparable Position (as defined in the Plan), or (iii) is offered or accepts a Comparable Position (as defined in the Plan) with the acquiring entity or any of its related companies or affiliates.

All payments and other benefits under the Plan are subject to applicable withholding obligations and the Eligible Employee's granting of a release of all claims. Payments under the Plan are not intended to duplicate severance payments an eligible employee receives pursuant to any employment or similar agreement with the Company or any affiliate and shall be reduced to the extent necessary to avoid such duplication.

The foregoing description of the Plan does not purport to be complete and is qualified in its entirety by reference to the Plan, which the Company will file as an exhibit to its Annual Report on from 10-K for the fiscal year ended December 31, 2018.

Cautionary Information Regarding Trading in the Company's Securities.

The Company cautions that trading in the Company's securities during the pendency of the Chapter 11 Cases is highly speculative and poses substantial risks. Trading prices for the Company's securities may bear little or no relationship to the actual value realized, if any, by holders of the Company's securities in the Chapter 11 Cases. Accordingly, the Company urges extreme caution with respect to existing and future investments in its securities.

Cautionary Note Regarding Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements, which are based on our current expectations, estimates, and projections about the businesses and prospects of the Company and its subsidiaries ("we" or "us"), as well as management's beliefs, and certain assumptions made by management. Words such as "anticipates," "expects," "intends," "plans," "believes," "seeks," "estimates," "may," "should," "will" and variations of these words are intended to identify forward-looking statements. Such statements speak only as of the date hereof and are subject to change. The Company undertakes no obligation to revise or update publicly any forward-looking statements for any reason. These statements are not guarantees of future performance and are subject to certain risks, uncertainties, and assumptions that are difficult to predict. Forward-looking statements discuss, among other matters: our financial and operational results, as well as our expectations for future financial trends and performance of our business in future periods; our strategy; risks and uncertainties associated with Chapter 11 proceedings; the negative impacts on our businesses as a result of filing for and operating under Chapter 11 protection; the time, terms and ability to confirm a Chapter 11 plan of reorganization for our businesses; the adequacy of the capital resources of our businesses and the difficulty in forecasting the liquidity requirements of the operations of our businesses; the unpredictability of our financial results while in Chapter 11 proceedings; our ability to discharge claims in Chapter 11 proceedings; negotiations with the holders of our indebtedness and our trade creditors; risks and uncertainties with performing under the terms of the debtor-in-possession ("DIP") financing arrangements and any other arrangement with lenders or creditors while in Chapter 11 proceedings; the Company's ability to operate our businesses within the terms of our respective DIP financing arrangements; the forecasted uses of funds in the Company's DIP budgets; our ability to conduct business as usual in the United States and worldwide; our ability to continue to serve customers, suppliers and other business partners at the high level of service and performance they have come to expect from us; our ability to continue to pay suppliers and vendors; our ability to fund ongoing business operations through the applicable DIP financing arrangements; the use of the funds anticipated to be received in the DIP financing arrangements; the ability to control costs during Chapter 11 proceedings; the risk that our Chapter 11 Cases may be converted to cases under Chapter 7 of the Bankruptcy Code; the ability of the Company to preserve and utilize the NOLs following Chapter 11 proceedings; the Company's ability to secure operating capital; the Company's ability to take advantage of opportunities to acquire assets with upside potential; the Company's ability to execute on its strategic plan to evaluate and close potential M&A opportunities; our long-term outlook; our preparation for future market conditions; and any statements or assumptions underlying any of the foregoing. Such statements are not guarantees of future performance and are subject to certain risks, uncertainties, and assumptions that are difficult to predict. Accordingly, actual results could differ materially and adversely from those expressed in any forward-looking statements as a result of various factors.

Important factors that may cause such differences include, but are not limited to, the decisions of the Court; negotiations with our debtholders, our creditors and any committee approved by the Court; negotiations with lenders on the definitive DIP financing documents; the Company's ability to meet the closing conditions of its DIP financing; the Company's ability to meet the requirements, and compliance with the terms, including restrictive covenants, of their respective DIP financing arrangements and any other financial arrangement while in Chapter 11 proceedings; changes in our operational or cash needs from the assumptions underlying our DIP budgets and forecasts; changes in our cash needs as compared to our historical operations or our planned reductions in operating expense; adverse litigation; changes in domestic and international demand for TRULANCE; our ability to control operating costs and other expenses; that general economic conditions may be worse than expected; that competition may increase significantly; changes in laws or government regulations or policies affecting our current business operations and, as well as those risks and uncertainties disclosed under the sections entitled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Forms 10-Q filed with the Securities and Exchange Commission ("SEC") on May 10, 2018, August 8, 2018 and November 9, 2018 and Form 10-K filed with the SEC on March 1, 2018, and similar disclosures in subsequent reports filed with the SEC.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits. The following exhibits are filed with this report:

Exhibit No.	Description of Exhibit
2.1	Asset Purchase Agreement by and among, Synergy Pharmaceuticals Inc., Synergy Advanced Pharmaceuticals, Inc., Bausch Health Companies Inc. and Bausch Health Ireland Limited, dated as of December 11, 2018 (Schedules and Exhibits have been omitted from this exhibit pursuant to Item 601(b)(2) of Regulation S-K and are not filed herewith. The registrant hereby agrees to furnish a copy of any omitted schedule or exhibit to the Securities and Exchange Commission upon request.)
10.1	Term Sheet, dated December 11, 2018, by and between Synergy Pharmaceuticals Inc. and CRG Servicing, LLC
99.1	Press Release, dated December 12, 2018

SIGNATURES

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

SYNERGY PHARMACEUTICALS INC.

Dated: December 13, 2018

By: /s/ Troy Hamilton
Troy Hamilton
Chief Executive Officer

Exhibit 2.1

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

BY AND AMONG

SYNERGY PHARMACEUTICALS INC.,

SYNERGY ADVANCED PHARMACEUTICALS, INC.,

BAUSCH HEALTH COMPANIES INC.

AND

BAUSCH HEALTH IRELAND LIMITED

DATED AS OF DECEMBER 11, 2018

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, dated as of December 11, 2018 (this "Agreement"), is made by and among Synergy Pharmaceuticals Inc., a Delaware corporation (the "Parent"), its wholly-owned subsidiary, Synergy Advanced Pharmaceuticals, Inc., a Delaware corporation (together with the Parent, in their capacities as debtors and debtors-in-possession, the "Sellers"), Bausch Health Companies Inc., a corporation organized under the laws of British Columbia, Canada ("BH"), and its wholly-owned subsidiary Bausch Health Ireland Limited, a private limited company organized under the laws of Ireland (the "Purchaser"). Each of the Sellers, BH and the Purchaser is referred to individually herein as a "party" and collectively as the "parties." Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in Article IX.

WHEREAS, the Sellers are engaged in the business of, directly or indirectly, developing, making or having made, promoting, using, licensing and selling the Products (such business, as conducted by the Sellers as of the date hereof, the "Business");

WHEREAS, the Sellers intend to file voluntary petitions for relief commencing cases (collectively, the "Chapter 11 Case") under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") on or about December 11, 2018 (the "Petition Date");

WHEREAS, the Purchaser desires to purchase and accept, and the Sellers desire to sell, convey, assign, transfer and deliver, or cause to be sold, conveyed, assigned, transferred and delivered, to the Purchaser, all of the Acquired Assets, and the Purchaser is willing to assume, and the Sellers desire to assign and delegate to the Purchaser, all of the Assumed Liabilities, all in the manner and subject to the terms and conditions set forth herein and in accordance with Sections 105, 363 and 365 of the Bankruptcy Code, subject to the Purchaser's right to assign its rights and obligations hereunder to one of more of its Affiliates (such sale and purchase of the Acquired Assets and such assignment and assumption of the Assumed Liabilities, the "Acquisition");

WHEREAS, the parties acknowledge and agree that the purchase by the Purchaser of the Acquired Assets, and the assumption by the Purchaser of the Assumed Liabilities, are being made at arm's length and in good faith and without intent to hinder, delay or defraud creditors of the Sellers or their Affiliates;

WHEREAS, the execution and delivery of this Agreement and the Sellers' ability to consummate the transactions set forth in this Agreement are subject to, among other things, the entry of the Sale Order under, *inter alia*, Sections 363 and 365 of the Bankruptcy Code; and

WHEREAS, the parties desire to consummate the proposed transaction as promptly as practicable after the Bankruptcy Court enters the Sale Order.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
THE ACQUISITION

Section 1.1. Acquired Assets. On the terms and subject to the conditions set forth in this Agreement and, subject to approval of the Bankruptcy Court, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, at the Closing, the Sellers shall sell, assign, transfer, convey and deliver, or cause to be sold, assigned, transferred, conveyed and delivered, to the Purchaser, and the Purchaser shall purchase and accept from the Sellers, free and clear of all Encumbrances of any and every kind, nature and description, other than Permitted Post-Closing Encumbrances, all right, title and interest of the Sellers in, to or under all of the rights, properties and assets of the Sellers of every kind and description, wherever located, real, personal, or mixed, tangible or intangible, to the extent owned, leased, licensed, used or held for use in or relating to the Business, as the same shall exist on the Closing Date, other than the Excluded Assets (collectively, the "Acquired Assets"), including all right, title and interest of the Sellers in, to and under the Acquired Assets that are listed or described below:

(a) other than as set forth in Section 1.2(k), all of the Sellers' accounts receivable (but excluding any noncurrent accounts receivable) and any other receivables of the Sellers, in each case as of the Closing Date;

(b) all credits, claims for refunds, deposits for the benefit of third parties and prepaid expenses (other than (x) all credits, refunds, deposits and prepaid amounts with respect to Excluded Taxes and (y) to the extent not in respect of Taxes, all credits, refunds, deposits and prepaid amounts that relate primarily to any of the Excluded Assets or the Excluded Liabilities);

(c) the Contracts listed, described or otherwise identified on Section 1.1(c) of the Seller Disclosure Schedule, as such schedule may be amended from time to time pursuant to Section 1.5(e) (such Contracts, the "Assigned Contracts") and the rights thereunder;

(d) all raw materials, work-in-process, finished goods, supplies (including clinical drug supplies), samples (including samples held by sales representatives), components, packaging materials, and other inventories to which the Sellers have title that are in the possession of the Sellers or any third party and used or held for use in connection with any Product or an Acquired Asset (collectively, "Inventory");

(e) all machinery, equipment, apparatus, appliances, implements, computers and computer-related hardware, files, documents, network and internet and information technology systems-related equipment and all other tangible personal and intangible property including all other fixed assets and items of personal property used or held for use in the conduct of the Business or otherwise owned by the Sellers, which shall include all servers and computers used to develop and maintain code in various operating environments, all development environment and software currently residing on such computers;

(f) all Seller Intellectual Property, including Seller Registered Intellectual Property (including the items listed on Section 1.1(f) of the Seller Disclosure Schedule) and all of the Sellers' rights therein, including all rights to sue for and recover and retain damages for

present and past infringement thereof and, in the case of Trademarks that are Seller Intellectual Property, all goodwill appurtenant thereto;

(g) all rights under non-disclosure or confidentiality, invention and Intellectual Property assignment agreements executed for the benefit of the Sellers with current or former employees, consultants or contractors of the Sellers or with third parties (in the case of rights under the Parent Confidentiality Agreement, solely to the extent provided in Section 5.15(b));

(h) all Books and Records, other than Retained Books and Records;

(i) to the extent transferable, all Permits and all pending applications therefor;

(j) other than as set forth in Section 1.2(b) or Section 1.2(i), to the extent transferable, all insurance policies and rights thereunder;

(k) all goodwill and other intangible assets associated with the Business, the Acquired Assets and the Assumed Liabilities;

(l) all rights, claims, rebates, refunds, causes of action, actions, suits or proceedings, hearings, audits, rights of recovery, rights of setoff, rights of recoupment, rights of reimbursement, rights of indemnity or contribution and other similar rights (known and unknown, matured and unmatured, accrued or contingent, regardless of whether such rights are currently exercisable) against any Person, including all warranties, representations, guarantees, indemnities and other contractual claims (express, implied or otherwise) to the extent related to the Business, the Acquired Assets or the Assumed Liabilities (including any claims for past infringement or misappropriation) (without duplication of the rights, claims or causes of action of any of the Sellers set forth in Sections 1.2(f), 1.2(g), 1.2(h), 1.2(i), 1.2(j) and 1.2(k));

(m) all avoidance claims or causes of action available to the Sellers under Chapter 5 of the Bankruptcy Code (including Sections 544, 545, 547, 548, 549, 550 and 553) or any similar actions under any other applicable Law (collectively, "Avoidance Actions") against the following (collectively, the "Designated Parties"): (i) any of the Sellers' vendors, suppliers, customers or trade creditors with whom the Purchaser continues to conduct business in regard to the Acquired Assets after the Closing, (ii) any of the Sellers' counterparties under any licenses of Intellectual Property that are Assigned Contracts or counterparties under any other Assigned Contracts and (iii) any Affiliates of any of the Persons listed in clauses (i) and (ii); *provided*, *however*, that it is understood and agreed by the parties that the Purchaser will not pursue or cause to be pursued any Avoidance Actions against any of the Designated Parties other than as a defense (to the extent permitted under applicable Law) against any claim or cause of action raised by such Designated Party;

(n) all proceeds of any settlement from and after the date hereof through the Closing of any claims, counterclaims, rights of offset or other causes of action of any of the Sellers against any of the Designated Parties;

(o) any and all insurance proceeds, condemnation awards or other compensation in respect of loss or damage to any of the Acquired Assets to the extent occurring

on or after the date hereof, and all rights and claim of the Sellers to any such insurance proceeds, condemnation awards or other compensation not paid by the Closing; and

(p) all security and utility deposits, credits, allowance or other assets, or charges, setoffs, prepaid expenses, and other prepaid items related to the Acquired Assets.

EXCEPT AS EXPRESSLY SET FORTH IN ARTICLE III OF THIS AGREEMENT OR ANY ANCILLARY DOCUMENT DELIVERED BY ANY SELLER PURSUANT TO THIS AGREEMENT (I) THE SELLERS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, RELATING TO THE BUSINESS, THE ACQUIRED ASSETS OR THE ASSUMED LIABILITIES, INCLUDING ANY REPRESENTATION OR WARRANTY AS TO VALUE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR FOR ORDINARY PURPOSES, OR ANY OTHER MATTER, (II) THE SELLERS MAKE NO, AND HEREBY DISCLAIM ANY, OTHER REPRESENTATION OR WARRANTY REGARDING THE BUSINESS, THE ACQUIRED ASSETS OR THE ASSUMED LIABILITIES, AND (III) THE ACQUIRED ASSETS AND THE ASSUMED LIABILITIES ARE CONVEYED ON AN "AS IS, WHERE IS" BASIS AS OF THE CLOSING, AND THE PURCHASER SHALL RELY UPON ITS OWN EXAMINATION THEREOF. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS EXPRESSLY SET FORTH IN ARTICLE III OF THIS AGREEMENT OR ANY ANCILLARY DOCUMENT DELIVERED BY ANY SELLER PURSUANT TO THIS AGREEMENT, THE SELLERS MAKE NO REPRESENTATION OR WARRANTY REGARDING ANY BUSINESS OTHER THAN THE BUSINESS, ANY ASSETS OTHER THAN THE ACQUIRED ASSETS OR ANY LIABILITIES OTHER THAN THE ASSUMED LIABILITIES, AND NONE SHALL BE IMPLIED AT LAW OR IN EQUITY.

Section 1.2. Excluded Assets. Notwithstanding anything contained in this Agreement to the contrary, the Acquired Assets shall not include any of the following (collectively, the "Excluded Assets"):

(a) all Cash, other than any and all rights of the Sellers in and to any restricted cash, security deposits, escrow deposits and cash collateral (including cash collateral given to obtain or maintain letters of credit and cash drawn or paid on letters of credit) that primarily relate to the Assumed Liabilities or the Acquired Assets; *provided*, *however*, that any Encumbrance created under the Prepetition Credit Agreement or the Final DIP Order shall not, in and of itself, render any Cash restricted for purposes of this paragraph and such Cash shall be an "Excluded Asset";

(b) all current and prior director and officer or similar fiduciary or errors and omissions of insurance policies and all rights thereunder;

(c) any credits, refunds, deposits and prepaid amounts with respect to Excluded Taxes;

(d) any shares of capital stock or other equity interests of any Seller or any Affiliate thereof or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interests of any Seller or any Affiliate thereof;

(e) Retained Books and Records;

(f) (i) any avoidance actions against any Person other than any of the Designated Parties, (ii) any proceeds of any settlement from and after the date hereof through the Closing of any claims, counterclaims, rights of offset or other causes of action of any of the Sellers against any Person other than any Designated Party, and (iii) all claims or causes of action of the Sellers other than those identified in Section 1.1(l) and Section 1.1(m);

(g) all rights, claims or causes of action of any Seller arising under this Agreement, the Ancillary Documents or the Confidentiality Agreement or arising under the Parent Confidentiality Agreements (to the extent not assigned to the Purchaser pursuant to Section 5.15(b));

(h) all rights, claims or causes of action by or in the right of any of the Sellers against any current or former director or officer of any such Seller;

(i) all Benefit Plans, all assets of such Benefit Plans and all trust agreements, administrative service contracts, insurance policies and other Contracts related thereto and all rights of the Sellers with respect to any of the foregoing;

(j) all Contracts that are not Assigned Contracts, including the Contracts listed or described on Section 1.2(j) of the Seller Disclosure Schedule, which schedule may be modified in accordance with Section 1.5(e);

(k) all receivables, claims or causes of action that relate primarily to any of the Excluded Assets or the Excluded Liabilities, other than any receivables, claims or causes of action that relate to the Contracts set forth on Section 1.2(k) of the Seller Disclosure Schedule;

(l) any assets set forth on Section 1.2(l) of the Seller Disclosure Schedule;

(m) all leases, subleases or Contracts under which Sellers occupy any real property;

(n) all intercompany accounts receivable as to which any of the Sellers is an obligor or is otherwise responsible or liable and which are owed or payable to any of the Sellers; and

(o) all Contracts that are disclosed or required to be disclosed pursuant to Section 3.8 hereof.

Section 1.3. Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, in consideration for the sale, assignment, conveyance, transfer and delivery of the Acquired Assets to the Purchaser, the Purchaser shall assume from the Sellers and agree to pay, perform and discharge, when due, in accordance with their respective terms

and subject to the respective conditions thereof, only the following liabilities and obligations (of any nature or kind, and whether based in common law or statute or arising under written Contract or otherwise, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, asserted or unasserted) of the Sellers (collectively, the "Assumed Liabilities"):

(a) except as expressly set forth herein, all liabilities and obligations arising from the ownership, possession or use of the Acquired Assets and the operation of the Business, in each case from and after the Closing, it being understood that liabilities and obligations arising from the ownership, possession or use of the Acquired Assets or the operation of the Business prior to the Closing (including the sale of Products by the Sellers and their Affiliates prior to the Closing) other than Cure Costs shall not constitute Assumed Liabilities regardless of when the obligation to pay such liabilities and obligations arises;

(b) all liabilities and obligations arising under the Assigned Contracts, arising after the Closing (other than Cure Costs);

(c) all Cure Costs;

(d) (i) all current accounts payable (and excluding any noncurrent accounts payable) as to which any of the Sellers is responsible or liable and which are owed by any of the Sellers as of the Closing, in each case to the extent such amounts are in respect of (1) manufacturing costs related to Inventory, but excluding any payables related to API (including related to any purchases of API pursuant to Section 5.23) which shall be deemed to be a Cure Cost, or (2) accrued liabilities as of the Closing Date for research and development related to the Products up to $312,000 and (ii) all claims related to or arising from rebates, coupon programs, chargebacks and credits;

(e) any liability in respect of royalty payments that initially become due and payable after the Closing Date and are due to third parties arising with respect to sales occurring before the Closing;

(f) claims related to or arising from returns or expirations of the Products to the extent arising after the Closing;

(g) all liabilities and obligations relating to the employment or termination of the Transferred Employees, solely to the extent arising after the Closing.

The transactions contemplated by this Agreement shall in no way expand the rights or remedies of any third party against the Purchaser or Sellers as compared to the rights and remedies that such third party would have had against Sellers absent the Chapter 11 Case had the Purchaser not assumed such Assumed Liabilities.

Section 1.4. Excluded Liabilities. Notwithstanding anything contained in this Agreement to the contrary, none of BH, the Purchaser or any Affiliate of either of the foregoing shall assume, be obligated to assume, be deemed to have assumed, or be obliged to pay, perform or otherwise discharge, and the Sellers shall be solely and exclusively liable with respect to, any liabilities or obligations (of any nature, and whether based in common law or statute or arising under written Contract or otherwise, known or unknown, fixed or contingent, accrued or

unaccrued, liquidated or unliquidated, asserted or unasserted) of the Sellers and any Affiliate thereof other than the Assumed Liabilities (such liabilities and obligations other than Assumed Liabilities, the "Excluded Liabilities"). Without limiting the foregoing, BH and the Purchaser do not (nor do any of their Affiliates) assume or agree to pay, perform or otherwise discharge the liabilities or obligations (whether known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, asserted or unasserted) of the Sellers or their Affiliates with respect to, arising out of or relating to, the following Excluded Liabilities:

(a) except as expressly set forth in Sections 1.3(d) and 1.3(e), and other than the Cure Costs, any liability arising out of facts or circumstances in existence prior to the Closing and from or related to any breach, default under, failure to perform, torts related to the performance of, violations of Law, infringements or indemnities under, guaranties pursuant to and overcharges, underpayments or penalties on the part of the Sellers or any of their Affiliates under any Contract, agreement, arrangement or understanding to which any Seller or any of its Affiliates is a party prior to the Closing;

(b) other than the Cure Costs, any liability arising from or related to any Action against any Seller or its Affiliates, or related to the Business, the Acquired Assets or the Assumed Liabilities, pending or threatened or based on facts, actions, omissions, circumstances or conditions existing, occurring or accruing prior to the Closing Date even if instituted after the Closing Date;

(c) except as set forth in Sections 1.3(b), 1.3(c), 1.3(d) and 1.3(e), any liability arising from or related to the operation of the Business or any of the Sellers' products or services, or the operation or condition of the Acquired Assets or the Assumed Liabilities prior to the Closing or facts, actions, omissions, circumstances or conditions existing, occurring or accruing prior to the Closing;

(d) all Indebtedness of the Sellers (other than obligations with respect to capitalized leases that are Assigned Contracts);

(e) all guarantees of third-party Indebtedness made by the Sellers and reimbursement obligations to guarantors of the Sellers' obligations or under letters of credit or other similar agreements or instruments;

(f) all liabilities or obligations arising out of or related to the matters set forth on Section 1.4(f) of the Seller Disclosure Schedule;

(g) all liabilities or obligations to any current or former owner of capital stock or other equity interests of the Sellers or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interests of the Sellers, any current or former holder of indebtedness for borrowed money of the Sellers or, in respect of obligations for indemnification or advancement of expenses, any current or former officer or director of the Sellers;

(h) all drafts or checks outstanding at the Closing under which the Sellers are obligated;

(i) all liabilities or obligations of the Sellers under futures contracts, options on futures, swap agreements or forward sale agreements;

(j) all liabilities for or in respect of Excluded Taxes;

(k) all liabilities and obligations relating to (i) the Benefit Plans (whether arising prior to, on or after the Closing Date) or (ii) the employment or termination of any current or former employee of the Sellers (including any Transferred Employees), and including any current, threatened or potential claims for compensation or benefits, in each such case, to the extent related to employment with the Sellers or termination thereof, whether arising prior to, on or after the Closing Date;

(l) all fees, charges, expenditures, expenses, costs and other payments incurred or otherwise payable by any of the Sellers or their respective affiliates, or for which any of the Sellers or their respective affiliates is liable, in connection with in connection with the administration of the Chapter 11 Case or the negotiation, execution and consummation of the transactions contemplated by this Agreement or any Ancillary Document (including any preparation for a transaction process, bankruptcy process, any sale process involving other potential buyers or any contemplated public offering or financing), including the fees and expenses of financial advisors, accountants, legal counsel, consultants, brokers and other advisors with respect thereto, whether incurred, accrued or payable on or prior to or after the date of this Agreement or the Closing Date;

(m) all liabilities or obligations to the extent relating to the ownership, possession or use of the Excluded Assets;

(n) all liabilities or obligations (x) under Environmental Laws to the extent relating to (i) facts, actions, omissions, circumstances or conditions existing, occurring or accruing, or noncompliance with or violations of Environmental Laws by the Sellers, on or before the Closing Date, (ii) the transportation, off-site storage or off-site disposal of any Hazardous Substances generated by or on behalf of the Sellers on or before the Closing Date or (iii) real property not acquired under this Agreement, including any real property formerly owned, operated or leased by Sellers prior to the Closing Date and (y) for toxic torts arising as a result of or in connection with loss of life or injury to Persons (whether or not such loss or injury was made manifest on or after the Closing Date);

(o) any liability relating to any Product that is or has been manufactured, tested, distributed, held or marketed by or on behalf of any Seller arising from any recall, withdrawal or suspension (whether voluntarily or otherwise), except to the extent that such recall, withdrawal or suspension results from Purchaser's operation of the Business or the Acquired Assets following the Closing; and

(p) all intercompany accounts payable, liabilities and obligations that are owed or payable to any Seller as to which any Seller is an obligor or is otherwise responsible or liable.

Section 1.5. Assignment of Assigned Contracts.

(a) Section 1.5(a) of the Seller Disclosure Schedule sets forth with respect to each Contract of the Sellers, the Sellers' good-faith estimate of the amount required to be paid with respect to each Contract to cure all monetary defaults under such Contract to the extent required by Section 365(b) and otherwise satisfy all requirements imposed by Section 365(d) of the Bankruptcy Code (the actual amount of such costs with respect to the Assigned Contracts, the "Cure Costs"). Prior to the Sale Hearing, the Sellers shall commence appropriate proceedings before the Bankruptcy Court and otherwise take all reasonably necessary actions in order to determine the Cure Costs with respect to any Assigned Contract entered into prior to the Petition Date, including, the right (subject to Section 5.1 hereof) to negotiate in good faith and litigate, if necessary, with any Contract counterparty the Cure Costs needed to cure all monetary defaults under such Assigned Contract. Notwithstanding the foregoing, prior to the Designation Deadline, the Purchaser may identify any Assigned Contract that the Purchaser no longer desires to have assigned to it in accordance with Section 1.5(e).

(b) To the maximum extent permitted by the Bankruptcy Code and subject to the other provisions of this Section 1.5, on the Closing Date, the Sellers shall assign the Assigned Contracts pursuant to Section 365 of the Bankruptcy Code and the Sale Order, subject to the provision of adequate assurance by the Purchaser as may be required under Section 365 of the Bankruptcy Code and payment by the Purchaser of the Cure Costs, in respect of the Assigned Contracts.

(c) To the maximum extent permitted by the Bankruptcy Code and subject to the other provisions of this Section 1.5, the Sellers shall assume and transfer and assign all of the Acquired Assets to the Purchaser and the Purchaser shall assume all of the Acquired Assets from the Sellers, as of the Closing Date, pursuant to Sections 363 and 365 of the Bankruptcy Code. Notwithstanding any other provision of this Agreement or in any Ancillary Document to the contrary, this Agreement shall not constitute an agreement to assign any asset or any right thereunder if an attempted assignment without the consent of a third party, which consent has not been obtained prior to the Closing (after giving effect to the Sale Order and the Bankruptcy Code), would constitute a breach or in any way adversely affect the rights of the Purchaser or the Sellers thereunder.

(d) Notwithstanding anything in this Agreement to the contrary, to the extent that the sale, transfer, assignment, conveyance or delivery or attempted sale, transfer, assignment, conveyance or delivery to the Purchaser of any asset that would be an Acquired Asset or any claim or right or any benefit arising thereunder or resulting therefrom is prohibited by any applicable Law or would require any consent from any Governmental Entity or any other third party and such consents shall not have been obtained prior to the Closing (after giving effect to the Sale Order and the Bankruptcy Code), the Closing shall proceed without any reduction in Purchase Price without the sale, transfer, assignment, conveyance or delivery of such asset unless there is a failure of one or more of the conditions set forth in Article VI; in which case, the Closing shall proceed only if each failed condition is waived by the party entitled to the benefit thereof. In the event that any failed condition is waived and the Closing proceeds without the transfer or assignment of any such asset, then following the Closing, each of the Purchaser and each of the Sellers shall use its reasonable best efforts, subject to any approval of

the Bankruptcy Court that may be required, and shall cooperate with the other parties, to obtain such consent as promptly as practicable following the Closing. Pending the receipt of such consent, the parties shall, subject to any approval of the Bankruptcy Court that may be required, reasonably cooperate with each other to provide the Purchaser with all of the benefits of use of such asset. Once consent for the sale, transfer, assignment, conveyance or delivery of any such asset not sold, transferred, assigned, conveyed or delivered at the Closing is obtained, the Sellers shall promptly transfer, assign, convey and deliver such asset to the Purchaser. To the extent that any such asset cannot be transferred or the full benefits or use of any such asset cannot be provided to the Purchaser, then as promptly as practicable following the Closing, the Purchaser and the Sellers shall enter into such arrangements (including subleasing, sublicensing or subcontracting), and shall reasonably cooperate with each other to provide the Purchaser with all of the benefits of use of such asset. The Sellers shall hold in trust for, and pay to the Purchaser, promptly upon receipt thereof, all income, proceeds and other monies received by the Sellers derived from their use of any asset that would be an Acquired Asset in connection with the arrangements under this Section 1.5(d). The parties agree to treat any asset the benefits of which are transferred pursuant to this Section 1.5(d) as having been sold to Purchaser for Tax purposes to the extent permitted by Law. Each of the Sellers and Purchaser agrees to notify the other parties promptly in writing if it determines that such treatment (to the extent consistent with the relevant arrangement agreed to by such Seller and Purchaser pursuant to this Section 1.5(d)) is not permitted for Tax purposes under applicable Law. Where such treatment is not so permitted, and subject to the terms of any relevant arrangement agreed to by Sellers and Purchaser pursuant to this Section 1.5(d) (and without duplication of any such Taxes economically borne by Purchaser or any of its Affiliates pursuant thereto), Purchaser shall indemnify and hold harmless the applicable Seller for any Taxes imposed on such Seller or any of its Affiliates with respect to any such Acquired Asset for any Post-Closing Tax Period (determined on a "with and without" basis).

(e) Notwithstanding anything in this Agreement to the contrary, the Purchaser may, in its sole and absolute discretion, amend or revise Section 1.1(c) of the Seller Disclosure Schedule setting forth the Assigned Contracts, in order to add any Contract to, or eliminate any Contract from, such schedule at any time during the period commencing from the date hereof and ending at the end of the Auction (or if no Auction occurs, the date that is two (2) Business Days before the commencement of the Sale Hearing) (the "Designation Deadline"). Automatically upon the addition of any Contract to Section 1.1(c) of the Seller Disclosure Schedule, it shall be an Assigned Contract for all purposes of this Agreement. Automatically upon the removal of any Contract from Section 1.1(c) of the Seller Disclosure Schedule it shall be an Excluded Asset for all purposes of this Agreement, and no liabilities arising thereunder shall be assumed or borne by the Purchaser.

Section 1.6. Purchase Price; Deposit Funds.

(a) In consideration for the Acquired Assets, the Purchaser shall, in addition to the assumption of the Assumed Liabilities by the Purchaser, pay the following amounts (the "Purchase Price"):

(i) (x) one hundred eighty five million dollars ($185,000,000) in cash, *minus* (y) the Cure Costs Deduction, *minus* (z) the GTN Adjustment Amount (the "Cash

Consideration"), net of any Deposit Funds paid to the Parent at the Closing pursuant to Section 1.6(b)(i), which Cash Consideration shall be paid to the Parent on behalf of the Sellers at the Closing; and

(ii) an amount in cash (the "Severance Consideration") to the Parent on behalf of the Sellers equal to the lesser of (x) fifteen million dollars ($15,000,000) and (y) the amount of severance obligations (inclusive, for the avoidance of doubt, of any payments and benefits in respect of any notice periods under the Worker Adjustment and Retraining Notification Act (and any similar state or local Law) (all such laws collectively, the "WARN Acts") and any other termination benefits), plus any employer portion of payroll taxes due in respect of such obligations and benefits, that are both (A) payable to any employee of the Sellers who either (1) is an "Eligible Employee" under the severance pay plan of the Parent on the Closing Date and has not received on or before the third (3rd) Business Day following the Auction an offer from BH or its Affiliate for employment commencing on the Closing Date that meets the requirements set forth in Section 5.14, (2) is an "Eligible Employee" under the severance pay plan of the Parent on the Closing Date, is a Relocation Employee and has received, prior to the Closing Date, and rejected (including by not performing services for BH or its Affiliates as of the Closing Date) an offer from BH or its Affiliate for employment commencing on the Closing Date that meets the requirements set forth in Section 5.14 or (3) is a WARN Relocation Employee and has received, prior to the Closing Date, and rejected (including by not performing services for BH or its Affiliates as of the Closing Date) an offer from BH or its Affiliate for employment commencing on the Closing Date that meets the requirements set forth in Section 5.14, and (B) administrative expenses in the Chapter 11 Case pursuant to Sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code; *provided*, *however*, that in the event that the Sellers are not authorized to pay severance to employees at the Closing pursuant to the Sale Order, the Purchaser shall instead deposit the Severance Consideration into an escrow account for the benefit of the employees entitled thereto, to be paid to such employees upon the earlier of (X) the Sellers' emergence from bankruptcy or (Y) Bankruptcy Court approval, with any remaining unused funds being remitted to the Purchaser following payment of all severance obligations.

If the Closing shall occur, at the Closing, the Purchaser and the Parent shall provide joint written instructions, executed by their respective authorized representatives under the Escrow Agreement, to the Escrow Agent that instruct the Escrow Agent to release the Deposit Funds to the Parent on the Closing Date. The Deposit Funds received by the Parent shall be applied at the Closing toward the payment of the Cash Consideration portion of the Purchase Price.

(b) Within three (3) Business Days of the entry of the Bidding Procedures Order, subject to the execution of an escrow agreement reasonably acceptable to the Sellers and the Purchaser (the "Escrow Agreement"), with an escrow agent reasonably acceptable to the Sellers and the Purchaser (the "Escrow Agent"), the Purchaser shall deposit into escrow with the Escrow Agent an amount equal to eighteen million five hundred thousand dollars ($18,500,000) (such amount, together with all interest and other earnings accrued thereon, the "Deposit Funds"), by wire transfer of immediately available funds pursuant to the terms of the Escrow Agreement. The Deposit Funds shall be released by the Escrow Agent and delivered to either (x) the Purchaser or (y) the Parent on behalf of the Sellers, as follows:

(i) if the Closing shall occur, the Deposit Funds shall be applied towards the portion of the Purchase Price payable by Purchaser to the Parent pursuant to Section 1.6(a)(i) hereof;

(ii) if this Agreement is terminated by the Sellers (A) pursuant to Section 7.1(b)(iii) or (B) pursuant to Section 7.1(a) in any circumstance where the Purchaser is not entitled to terminate pursuant to Section 7.1(a) because the failure of the Closing to occur results from the failure of the Purchaser to materially perform its obligations under Section 5.3 required to be performed by it at or prior to the Closing, in each case unless at the time of such termination the Purchaser would have been entitled to terminate this Agreement and has given prior written notice to the Sellers of such claimed right, then the Deposit Funds shall be delivered to the Parent; or

(iii) if this Agreement is terminated other than in a manner provided by Section 1.6(b)(ii), the Deposit Funds shall be delivered to the Purchaser.

Section 1.7. Withholding. Notwithstanding anything to the contrary in this Agreement, BH and the Purchaser shall be entitled to deduct and withhold from any consideration payable hereunder such amounts as are required to be deducted and withheld with respect thereto under the Code or any other Tax Law. To the extent that amounts are so deducted and withheld, such amounts shall be treated for all purposes of this Agreement as having been paid to the person in respect of which such deduction or withholding was made. Notwithstanding the foregoing, the Purchaser shall consult with the Sellers in good faith prior to withholding any amounts payable to the Sellers promptly, and in any event no later than five (5) Business Days prior to the Closing Date, notify the Sellers in writing if the Purchaser determines that any withholding or deduction is required under the Code or any applicable Law with respect to any portion of payment to the Sellers, and provide the Sellers with reasonable opportunity to provide such forms or other evidence that would eliminate or reduce any such required deduction or withholding. The Purchaser further acknowledges that no such deduction or withholding in respect of Taxes is anticipated as of the date hereof.

Section 1.8. Designation Rights. Notwithstanding anything in this Agreement to the contrary, the Purchaser reserves the right to designate any asset as an Acquired Asset or Excluded Asset under this Agreement by the Designation Deadline, and (x) automatically upon the addition of any asset to Section 1.1(a)-(p) of the Seller Disclosure Schedule prior to the Designation Deadline, such asset shall be an Acquired Asset for all purposes of this Agreement, and (y) automatically upon the addition of any asset to Section 1.2(a)-(o) of the Seller Disclosure Schedule prior to the Designation Deadline, such asset shall be an Excluded Asset for all purposes of this Agreement.

Section 1.9. Purchase Price Allocation. The parties agree to allocate for Tax purposes (and, as applicable, to cause their respective Affiliates to allocate for Tax purposes) the Purchase Price (as adjusted to take into account any payments pursuant to Section 1.10 as applicable) and any other amounts treated as additional consideration for Tax purposes among the Acquired Assets in accordance with the following procedures and, to the extent applicable, in accordance with Section 1060 of the Code, the Treasury Regulations promulgated thereunder. The parties agree that no more than $45,000,000 will be allocated to those certain licensing, development,

and commercialization agreements with Cipher Pharmaceuticals, Inc. and Shandong Luoxin Pharmaceutical Group Stock Co., Ltd. and other Intellectual Property located outside of the United States (the "Non-US Asset Allocation"). Within ninety (90) days after the Closing Date, BH shall deliver to Parent a proposed allocation of the Purchase Price (as adjusted to take into account any payments pursuant to Section 1.10 as applicable) and any other amounts treated as additional consideration for Tax purposes as of the Closing Date (the "Purchaser's Allocation"). No later than thirty (30) days following the delivery of the Purchaser's Allocation, Parent may deliver to BH a statement setting forth in reasonable detail any objections thereto, the basis for such objections, and Parent's proposed allocation ("Sellers' Allocation Notice"). If Parent timely delivers to BH a Sellers' Allocation Notice, Parent and BH shall, during the twenty (20) days following such delivery, use commercially reasonable efforts to reach agreement on the disputed items or amounts. The Purchaser's Allocation, if no Sellers' Allocation Notice is timely delivered, or as adjusted pursuant to any agreement between the Parent and BH during the twenty (20)-day period following the timely delivery of Sellers' Allocation Notice (the "Allocation") shall be final and binding on the parties; provided, that if Sellers' Allocation Notice is timely delivered and Parent and BH are unable to reach agreement within such twenty (20)-day period, they shall not be required to reach agreement, and each party shall file its respective Tax Returns in accordance with such allocation as it determines to be correct and consistent with applicable Law. If an Allocation is determined pursuant to the foregoing provisions of this Section 1.9, each of the parties (a) shall (and shall cause its Affiliates to) prepare and file all Tax Returns (and Internal Revenue Service Forms 8594) in a manner consistent with the Allocation and (b) shall not (and shall cause its Affiliates not to) take any position on any Tax Return or in connection with any Tax proceeding inconsistent with the Allocation, in each case, except to the extent otherwise required by a "determination" within the meaning of Section 1313(a) of the Code (or any analogous provision of applicable state, local or non-U.S. Law).

Section 1.10. GTN Receivables. No later than five (5) Business Days prior to the anticipated Closing Date, the Sellers shall provide the Purchaser with their good faith estimate of GTN Receivables as of the Closing. The parties shall cooperate in good faith to resolve any dispute regarding such estimate, and shall work to update such estimate to arrive at a final and agreed calculation of GTN Receivables as of the Closing Date. In the event that the parties fail to reach agreement as to such final calculation as of the Closing Date, the amount of Cash Consideration payable at Closing shall be calculated using the Purchaser's good faith calculation of GTN Receivables and the parties shall submit the dispute as expeditiously as practicable (and in any event within thirty (30) days) to a mutually agreeable, nationally recognized accounting firm for resolution, the costs and fees relating to which shall be borne fifty percent (50%) by the Sellers and fifty percent (50%) by the Purchaser. In the event that such accounting firm's final calculation of GTN Receivables differs from the amount used in calculation of Cash Consideration pursuant to the preceding sentence, the Sellers or the Purchaser, as applicable, shall make prompt payment to the other in the amount of such difference, which shall be deemed for all purposes hereof to be an adjustment to the Purchase Price.

ARTICLE II
THE CLOSING

Section 2.1. Closing. Upon the terms and subject to the conditions hereof, the closing of the sale of the Acquired Assets and the assumption of the Assumed Liabilities contemplated hereby (the "Closing") shall take place at the offices of Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, at 10:00 a.m. local time as soon as possible (and in any event within two (2) Business Days) after the conditions set forth in Article VI shall have been satisfied or (if permissible) waived (except for such conditions that, by their nature, are to be satisfied at the Closing, but subject to the satisfaction or (if permissible) waiver thereof at the Closing), or at such time, date and place as the parties hereto may mutually agree (the date of the Closing being herein referred to as the "Closing Date"). For financial, accounting and economic purposes, including risk of loss, and for all other purposes under this Agreement, upon the occurrence of the Closing, the Closing shall be deemed to have occurred at 12:01 a.m., New York City time, on the Closing Date.

Section 2.2. Deliveries at the Closing.

(a) At the Closing, the Sellers shall deliver to the Purchaser:

(i) a duly executed bill of sale substantially in the form of Exhibit B attached hereto (the "Bill of Sale"), transferring the Acquired Assets to the Purchaser;

(ii) the Acquired Assets by making the Acquired Assets available to the Purchaser at their present location;

(iii) the assignment and assumption agreement to be entered into between the Sellers and the Purchaser substantially in the form of Exhibit C attached hereto (the "Assignment and Assumption Agreement"), duly executed by the Sellers;

(iv) assignments of the Seller Intellectual Property, including the Seller Registered Intellectual Property, substantially in the forms of Exhibit D attached hereto (the "Intellectual Property Assignment Agreements"), duly executed by the Sellers;

(v) a certificate duly executed by each Seller and dated as of the Closing Date, in the form prescribed under Treasury Regulations Section 1.1445-2(b) and reasonably acceptable to the Purchaser, that such Seller is not a foreign person within the meaning of Section 1445(f)(3) of the Code;

(vi) the certificates described in Section 6.3(f);

(vii) *[reserved;]*

(viii) a copy of the Sale Order entered by the Bankruptcy Court; and

(ix) such other documents reasonably satisfactory to the Purchaser as the Purchaser may reasonably request in writing no later than three (3) Business Days prior to the Closing Date in order to give effect to the Acquisition.

(b) At the Closing, BH or the Purchaser shall deliver to the Sellers:

(i) the Cash Consideration (including any portion of the Purchase Price to be paid by release of the Deposit Funds to the Sellers) and the Severance Consideration by wire transfer of immediately available funds to an account or accounts designated by the Sellers;

(ii) the Assignment and Assumption Agreement duly executed by the Purchaser (and/or its designated Affiliate or Affiliates);

(iii) the Intellectual Property Assignment Agreements, duly executed by the Purchaser (and/or its designated Affiliate or Affiliates);

(iv) the certificate(s) described in Section 6.2(d);

(v) the Bill of Sale, duly executed by the Purchaser (and/or its designated Affiliate or Affiliates);

(vi) evidence of the payment of all Cure Costs to the applicable Assigned Contract counterparties; and

(vii) such other documents reasonably satisfactory to the Sellers as the Sellers may reasonably request in writing no later than three (3) Business Days prior to the Closing Date in order to give effect to the Acquisition.

(c) At the Closing, each of the Parent and the Purchaser shall deliver to the Escrow Agent, the joint written instructions contemplated by Section 1.6(b)(i), duly executed by the Parent and the Purchaser.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Except as disclosed in (x) the Parent SEC Documents publicly available prior to the date hereof (but excluding any predictive, cautionary or forward looking disclosures contained under the captions “risk factors,” “forward looking statements” or any similar precautionary sections and any other disclosures contained therein that are predictive, cautionary or forward looking in nature) or (y) the applicable section of the disclosure schedule delivered by the Sellers to BH and the Purchaser immediately prior to the execution of this Agreement (the “Seller Disclosure Schedule”) (it being understood that any information set forth in one section or subsection of the Seller Disclosure Schedule shall be deemed to apply to and qualify the representation and warranty set forth in this Agreement to which it corresponds in number and, whether or not an explicit reference or cross-reference is made, each other representation and warranty set forth in this Article III for which it is reasonably apparent on its face that such information is relevant to

such other section), the Sellers represent and warrant to BH and the Purchaser, solely with respect to the Business, the Acquired Assets and the Assumed Liabilities, as follows:

Section 3.1. Qualification, Organization, Subsidiaries, etc. Each Seller is a legal entity duly organized, validly existing and in good standing (with respect to jurisdictions that recognize such concept) under the Laws of its respective jurisdiction of organization and has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted. Each Seller is qualified to do business and is in good standing (with respect to jurisdictions that recognize such concept) as a foreign corporation or other entity in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so qualified or, where relevant, in good standing, has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Sellers have made available to BH and the Purchaser a complete and accurate copy of the organizational documents of each Seller as in effect on the date hereof. None of the Sellers is in violation of any of the provisions of its certificate of incorporation and bylaws (or equivalent organizational documents), in each case, except for violations that have not and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Synergy Advanced Pharmaceuticals, Inc. (a) is the sole Subsidiary of the Parent and (b) does not have any Subsidiaries.

Section 3.2. Authority of the Sellers. Each Seller has all requisite corporate power and authority to execute and deliver and, subject to the entry and effectiveness of the Bidding Procedures Order and Sale Order, to perform its obligations under this Agreement and each of the Ancillary Documents to which each such Seller is a party. The execution, delivery and performance of this Agreement and such Ancillary Documents by each Seller and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized and approved by all requisite corporate action of such Seller, including with respect to the Parent, by the Parent Board of Directors, and no other corporate proceedings (pursuant to any Seller's organizational documents or otherwise) on the part of any Seller is necessary to authorize the consummation of, and to consummate, the transactions contemplated hereby and thereby. Subject to the entry and effectiveness of the Bidding Procedures Order and Sale Order, this Agreement and each such Ancillary Document have been duly and validly executed and delivered by each Seller, and, assuming the due authorization, execution and delivery of this Agreement and each such Ancillary Document by BH and the Purchaser, as applicable, constitute a valid and binding agreement of each Seller, enforceable against each such Seller in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other Laws affecting creditors' rights generally from time to time in effect and to general equitable principles (collectively, the "Enforceability Limitations").

Section 3.3. Consents and Approvals. No consent, approval, permit or authorization of, or declaration, filing or registration with, any Governmental Entity is necessary or required to be made or obtained by any Seller or their Affiliates in connection with the execution, delivery and performance of this Agreement and the Ancillary Documents to which a Seller is a party and the consummation of the transactions contemplated hereby and thereby, except in connection with or compliance with (a) any applicable requirements of the Bankruptcy Court, and (b) the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), except for

such consents, approvals, permits, authorizations, declarations, filings or registrations, which, if not made or obtained, would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.4. No Violations. Except as described in Sections 3.3 and 4.3, neither the execution, delivery or performance of this Agreement and the Ancillary Documents by the Sellers nor the consummation by the Sellers of the transactions contemplated hereby or thereby will (a) conflict with or result in any violation or breach of any provisions of the certificate of incorporation, bylaws or other organizational documents of any Seller, (b) with or without notice or lapse of time or both, conflict with or result in any breach or violation of or constitute a default or change of control under, or give rise to a right of, or result in, termination, modification, cancellation, first offer, first refusal or acceleration of any obligation or to the loss of a benefit under any Contract to which any Seller is a party or by or to which any of their respective properties, rights or assets are bound or subject, (c) result in the creation or imposition of any Encumbrance on any Acquired Asset other than (i) with respect to the execution and delivery of this Agreement, Permitted Pre-Closing Encumbrances and (ii) with respect to the execution and delivery of the Ancillary Documents and with respect to the performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, the Permitted Post-Closing Encumbrances or (d) conflict with or violate any Order or Law applicable to any Seller or their respective properties, rights or assets, except in the case of the foregoing clauses (b), (c) and (d), for breaches, violations, defaults, rights, creations or impositions that (y) have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (z) are excused by or unenforceable as a result of the entry or effectiveness of the Sale Order.

Section 3.5. Financial Statements; Books and Records.

(a) The consolidated financial statements (including all related notes and schedules) of the Parent included or incorporated by reference in the Parent SEC Documents (the "Financial Statements") when filed, complied in all material respects with the applicable accounting requirements and the published rules and regulations of the SEC with respect thereto and fairly present in all material respects the consolidated financial position of the Parent and its consolidated Subsidiaries, as at the respective dates thereof, and the consolidated results of their operations and their consolidated cash flows for the respective periods then ended (subject, in the case of the unaudited quarterly financial statements, to normal year-end audit adjustments that are not material and the absence of notes) in conformity with GAAP, applied on a consistent basis during the periods involved (except as indicated in the notes thereto including, in the case of the unaudited quarterly financial statements, for normal and recurring year-end adjustments that are not material and for the absence of notes).

(b) The Parent has established and maintains, and at all times since January 1, 2016 has maintained, disclosure controls and procedures and internal control over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) as required by Rule 13a-15 under the Exchange Act designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, and which includes policies and procedures that: (a) pertain to the maintenance of records that in reasonable detail

accurately and fairly reflect the transactions and dispositions of the assets of the Parent, (b) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and that receipts and expenditures are being made only in accordance with authorizations of management and directors of the Parent and (c) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Parent that could have a material effect on the financial statements. Since January 1, 2016, the Parent's principal executive officer and its principal financial officer have disclosed to the Parent's auditors and the audit committee of the Parent's Board of Directors (which disclosure (if any) and significant facts learned during the preparation of such disclosure have been made available to BH and the Purchaser prior to the date hereof) (i) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting, (ii) any fraud, whether or not material, that involves management or other employees and (iii) any claim or allegation regarding any of the foregoing. Since January 1, 2016, neither the Parent nor any Subsidiary of the Parent has received any material, unresolved, complaint, allegation, assertion or claim regarding the accounting or auditing practices, procedures, methodologies or methods of the Parent or any Subsidiary of the Parent or their respective internal accounting controls.

(c) The Books and Records maintained with respect to the Business and used in the preparation of the Financial Statements accurately and fairly reflect, in all material respects, the transactions and the assets and liabilities of the Sellers with respect to the Business.

Section 3.6. Title to Property; Sufficiency of Assets.

(a) The Sellers have good and marketable title to, a valid leasehold interest in or all rights to use, all of the Acquired Assets, free and clear of all Encumbrances other than Permitted Pre-Closing Encumbrances. Upon the entry and effectiveness of the Sale Order, the Sellers will have the power and right to sell, assign, transfer, convey and deliver, as the case may be, to the Purchaser the Acquired Assets, and at the Closing, the Sellers will sell, assign, transfer, convey and deliver to the Purchaser good and marketable title to, or, in the case of personal property leased by the Sellers, a valid leasehold interest in, or all rights to use, the Acquired Assets, free and clear of all Encumbrances other than Permitted Post-Closing Encumbrances.

(b) After giving effect to Section 1.5(c) and Section 1.5(d), the Acquired Assets together with the Excluded Assets (x) constitute all of the material assets, rights and properties used by the Sellers and their Affiliates in the conduct of the Business, and (y) are sufficient to conduct the Business in all material respects as it is conducted on the date hereof.

Section 3.7. Absence of Certain Changes.

(a) From December 31, 2017 through the date hereof: (i) the Business has been conducted in all material respects in the ordinary course of business consistent with past practice and (ii) none of the Sellers has taken any action that, if taken after the date hereof, would constitute a breach of, or require the consent of BH or the Purchaser under, Section 5.1.

(b) From December 31, 2017, there has not occurred any Effect that has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.8. Brokers or Finders. Other than Centerview Partners, none of the Sellers has employed or engaged any investment banker, broker or finder who is entitled to any fee or any commission in connection with this Agreement, the Ancillary Documents or the transactions contemplated hereby or thereby. A true and complete copy of the engagement letter with Centerview Partners has been made available to BH and the Purchaser prior to the date hereof.

Section 3.9. Litigation. Except as would not, individually or in the aggregate, have a Material Adverse Effect and except for the Chapter 11 Case, there are no Actions pending or, to the Knowledge of the Sellers, threatened against the Sellers or any of their respective properties, rights or assets by or before, and there are no orders, judgments or decrees of or settlement agreements with, any Governmental Entity.

Section 3.10. Intellectual Property.

(a) Section 3.10(a) of the Seller Disclosure Schedule sets forth a true and complete list, as of the date hereof, of each item of Seller Registered Intellectual Property and any Product IP that is Registered Intellectual Property, including the current owner, the jurisdiction in which each item has been registered or filed, the applicable registration, application or serial number or similar identifier, the filing date, and the applicable issuance, registration or grant date.

(b) The Sellers exclusively own all right, title and interest in and to all Seller Intellectual Property, including all Seller Registered Intellectual Property, free and clear of any Encumbrances, except for Permitted Pre-Closing Encumbrances. Following the Closing, the Purchaser will exclusively own, all right, title and interest in and to all Seller Intellectual Property, including all Seller Registered Intellectual Property, free and clear of any Encumbrances, except for Permitted Post-Closing Encumbrances. Without limiting the generality of the foregoing, all Seller Intellectual Property is fully transferable, alienable and licensable by the Sellers, and following the Closing, will be fully transferable, alienable and licensable by the Purchaser without restriction and without payment of any kind to any third party. No Seller Intellectual Property, or to the Knowledge of the Sellers, Product IP, is or was subject to any Action or settlement agreement that restricts in any material respect the use, provision, transfer, assignment or licensing thereof, as the case may be, by any Seller or that may affect the validity, ownership, use or enforceability of any material Seller Intellectual Property or, to the Knowledge of the Sellers, material Product IP. Each item of Seller Registered Intellectual Property is subsisting, and to the Knowledge of the Sellers, not unenforceable or invalid.

(c) No Seller is a party to or has initiated or threatened in writing any Action that challenges the legality, validity, enforceability, registration, use or ownership of a third party's Intellectual Property.

(d) No Seller has granted or transferred (or is obligated to grant or transfer) to any Person or is obligated to permit any Person to retain an ownership interest, including any joint ownership interest, or any exclusive rights in any Intellectual Property that is or was material Seller Intellectual Property.

(e) No Actions are pending or, to the Knowledge of the Sellers, threatened against any Seller alleging that any Seller is infringing, misappropriating, diluting or otherwise violating the Intellectual Property of any Person. Neither the operation of the Business, nor any Product (i) infringes or misappropriates (or has in the past infringed or misappropriated to the extent there is any current liability therefor or a liability is reasonably expected to arise) any Intellectual Property of any Person and (ii) following the Closing will (when conducted in substantially the same manner by the Purchaser), infringe or misappropriate any Intellectual Property of any Person, in each case except as would not result in any material liability to any of the Sellers. Since January 1, 2016, no Seller has received any written offer to license or notice from any Person that would reasonably be construed to be claiming that the operation of the Business, or any Product, conflicts with, infringes or misappropriates any Intellectual Property of any Person or constitutes unfair competition or trade practices under the Laws of any jurisdiction.

(f) Since January 1, 2016, no Seller has brought, or threatened in writing to bring, any Action against a third party alleging infringement or misappropriation of any material Seller Intellectual Property.

(g) In each case in which a Seller has engaged or hired an employee, consultant or contractor (whether current or former) for the purpose of developing or creating any material Intellectual Property, such Seller has obtained an assignment or transfer of all such Intellectual Property to such Seller or otherwise is the owner of such Intellectual Property by operation of Law. Each Seller has taken commercially reasonable actions to maintain and protect Trade Secrets in its possession that are material Intellectual Property of the Sellers or any third party. To the Knowledge of the Sellers, there has been no unauthorized disclosure of any Trade Secrets that are material Seller Intellectual Property.

(h) Section 3.10(h) of the Seller Disclosure Schedule sets forth a true and complete list of all Contracts that grant any Seller a license (including covenants not to sue), ownership rights, or other rights in or to (1) any material Product IP or (2) any other Intellectual Property or technology (including any software) owned by a third party that is material to the operation of the Business, other than Ordinary Course Licenses. Section 3.10(h) of the Seller Disclosure Schedule sets forth a true and complete list of all material Contracts to which any Seller is a party under which such Seller grants any third party a license (including covenants not to sue) or other rights in or to any material Seller Intellectual Property, other than non-exclusive licenses pursuant to written agreements entered into in the ordinary course of business consistent with past practice (the foregoing, together with the Ordinary Course Licenses, the "IP Contracts").

(i) The consummation of the transactions contemplated hereby will not result in (i) a material breach, violation, modification, cancellation, termination, or suspension of any rights under the IP Contracts set forth on Section 6.3(c) of the Seller Disclosure Schedule, (ii) the

grant of (or requirement to grant) any material license, covenant not to assert, release, agreement not to enforce or prosecute, or other immunity to any Seller Intellectual Property (or any Intellectual Property of BH or the Purchaser) to any Person, or (iii) BH or the Purchaser being obligated to pay any material royalties, or other material amounts, to any third party in excess of those payable by, or required to be offered by, any of them, respectively, in the absence of this Agreement or the transactions contemplated hereby.

(j) All IP Contracts set forth on Section 6.3(c) of the Seller Disclosure Schedule are fully transferable and assumable by Purchaser pursuant to the transactions contemplated hereby and shall remain in full force and effect following the Closing in accordance with their terms, and, as of immediately after the Closing, the Purchaser will be entitled to exercise all of the Sellers' rights under all IP Contracts to the same extent as prior to the Closing.

Section 3.11. Privacy and Data Protection.

(a) Since January 1, 2016, each Seller's receipt, collection, maintenance, transmission, use, analysis, disclosure, storage and disposal of Protected Information and, to the Knowledge of Sellers, any such activities performed by authorized third parties on such Seller's behalf, has complied in all material respects with (i) applicable Information Privacy and Security Laws and (ii) all applicable policies and procedures (which meet or exceed applicable industry standards) adopted by the Sellers relating to Protected Information, including the Privacy Statements. The Sellers have executed Business Associate Agreements (as such agreements are defined in HIPAA) with any Business Associate (as defined in HIPAA), in compliance with HIPAA. The Sellers have obtained all material consents and authorizations necessary to receive, access, use and disclose the Protected Information in their possession or under their control in connection with the operation of the Business. Since January 1, 2016, the Sellers have complied in all material respects with their published privacy policies as in effect from time to time.

(b) Since January 1, 2016, there has been no material data security breach or unauthorized access to, as the case may be, any of Seller's material systems, networks or information technology that transmits or maintains Protected Information or other incidents involving the unauthorized access, acquisition, use or disclosure of any Protected Information, owned, used, maintained or controlled by a Seller, including any such unauthorized access, acquisition, use or disclosure of Protected Information that would, to the Knowledge of the Sellers, constitute a breach for which notification to individuals and/or Governmental Entities is required under any applicable Information Privacy and Security Laws or Contracts to which any Seller is a party. To the Knowledge of the Sellers, none of the Sellers' vendors, suppliers and subcontractors, or the Sellers, have (i) suffered any breach that has resulted in any unauthorized access to, use of, disclosure of or other loss of any Protected Information, (ii) materially breached any Contracts with any Seller relating to Protected Information or (iii) materially violated any Information Privacy and Security Laws.

(c) Since January 1, 2016, the Sellers have implemented and maintained a written information security program reasonably designed to (i) identify and address material internal and external risks to the security of any proprietary or confidential information in its possession, including Protected Information, (ii) implement administrative, technical and

physical safeguards to control such risks and (iii) maintain notification procedures in compliance with applicable Information Privacy and Security Laws in the case of any applicable breach of security compromising data containing Protected Information. The Sellers have made available to BH and the Purchaser true and complete copies of all currently effective privacy policies under which any Seller collects, uses or stores any Protected Information.

(d) Since January 1, 2016, no Person has (i) provided a written notice or audit request to any Seller, (ii) made any written claim against any Seller or (iii) to the Knowledge of the Sellers, commenced any Action against any Seller or any party acting on behalf of a Seller, in each case, with respect to (A) any alleged violation of Information Privacy and Security Laws by any Seller or any authorized third party acting on any Seller's behalf or (B) any of the Sellers' privacy or data security practices, including any loss, damage or unauthorized access, acquisition, use, disclosure, modification or other misuse of any Protected Information maintained by or on behalf of any of the Sellers. No Person has provided a complaint (written or otherwise) to a Seller, nor, to the Knowledge of the Sellers, to any third party, regarding the improper disclosure of Protected Health Information (as defined in HIPAA) by any of the Sellers. Except as has not been and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the execution, delivery, and performance of this Agreement will not cause, constitute, or result in a breach or violation of any contractual obligation of the Sellers relating to Protected Information.

Section 3.12. Real Property Leases.

(a) None of the Sellers owns any real property.

(b) Section 3.12(b) of the Seller Disclosure Schedule sets forth a complete and correct list, as of the date hereof, of each Contract pursuant to which any Seller leases, subleases or occupies any real property (the "Leases"). Complete and correct copies of the Leases have been made available to BH and the Purchaser prior to the date hereof. No Seller has subleased, licensed or otherwise granted any Person the right to use or occupy any real property subject to a Lease or any material portion thereof. Each Lease is valid, binding and in full force and effect, subject to the Enforceability Limitations, and no uncured default of a material nature on the part of any Seller or, to the Knowledge of the Sellers, the landlord thereunder exists with respect to any Lease. The Sellers have good and valid leasehold interest in or contractual right to use or occupy, subject to the terms of the applicable Lease, each real property subject to the Leases.

Section 3.13. Material Contracts.

(a) Section 3.13(a) of the Seller Disclosure Schedule contains a complete and correct list, as of the date hereof, of each Contract described below in this Section 3.13(a) under which any Seller has any current or future rights, responsibilities, obligations or liabilities (in each case, whether contingent or otherwise) or to which any Seller is a party or to which any of their respective properties or assets is subject, other than Seller Benefit Plans listed on Section 3.15(a) of the Seller Disclosure Schedule (all Contracts of the type described in this Section 3.13(a), whether or not set forth on Section 3.13(a) of the Seller Disclosure Schedule, being referred to herein as the "Material Contracts"):

(i) each Contract that limits the freedom of any Seller or any of their respective Affiliates to compete or engage in any line of business or geographic region or with any Person, sell, supply or distribute any product or service or that otherwise has the effect of restricting any Seller or any of their respective Affiliates from the development, marketing or distribution of products and services, in each case, in any geographic area;

(ii) any partnership, joint venture, strategic alliance, limited liability company agreement or similar Contract;

(iii) each acquisition or divestiture Contract that contains representations, covenants, indemnities or other obligations (including "earnout" or other contingent payment obligations) that would reasonably be expected to result in the receipt or making by any Seller of future payments in excess of $250,000;

(iv) each IP Contract (other than Ordinary Course Licenses);

(v) any settlement or similar Contract (x) with a third party that imposes operational restrictions on the Business or (y) with a Governmental Entity;

(vi) each Contract not otherwise described in any other subsection of this Section 3.13(a) pursuant to which a Seller is obligated to pay, or entitled to receive, payments in excess of $250,000 in the twelve (12) month period following the date hereof;

(vii) any Contract that obligates a Seller to make any capital investment or capital expenditure outside the ordinary course of business and in excess of $100,000;

(viii) each Contract with any (x) Material Customer, (y) Material Supplier with whom the Sellers have spent at least $1,000,000 during the fiscal year ended December 31, 2017, or (z) that is otherwise material to the Sellers or the conduct of the Business;

(ix) each Contract that grants any right of first refusal or right of first offer or that limits the ability of a Seller or any of their respective Affiliates to own, operate, sell, transfer, pledge or otherwise dispose of any material businesses or material assets;

(x) each Contract that contains any exclusivity rights or "most favored nations" provisions or minimum use, supply or display requirements that is binding on a Seller;

(xi) each Lease;

(xii) each Contract relating to outstanding Indebtedness (or commitments in respect thereof) of a Seller (whether incurred, assumed, guaranteed or secured by any asset) in an amount in excess of $250,000;

(xiii) each Contract that contains any material indemnification obligations by a Seller;

(xiv) each Contract involving derivative financial instruments or arrangements (including swaps, caps, floors, futures, forward contracts and option agreements)

for which the aggregate exposure (or aggregate value) to a Seller is reasonably expected to be in excess of $250,000 or with a notional value in excess of $250,000;

(xv) any material Contract that relates to the research, development, distribution, marketing (excluding Contracts with agencies that generate advertising, disease awareness or marketing materials), supply or manufacturing of any of the Products; and

(xvi) any Contract not otherwise described in any other subsection of this Section 3.13(a) that would constitute a "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC) with respect to the Parent.

(b) True and complete copies of each Material Contract in effect as of the date hereof have been made available to BH and the Purchaser or publicly filed with the SEC prior to the date hereof. No Seller is in breach of or default under the terms of any Material Contract, except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. To the Knowledge of the Sellers, as of the date hereof, no other party to any Material Contract is in breach of or default under the terms of any Material Contract where such breach or default has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, each Material Contract is a valid, binding and enforceable obligation of the Seller party thereto and, to the Knowledge of the Sellers, of each other party thereto, and is in full force and effect, subject to the Enforceability Limitations.

Section 3.14. Compliance with Laws; Permits.

(a) The Sellers are and have been since January 1, 2016 in compliance with and are not in default under or in violation of any Laws (including Environmental Laws and employee benefits and labor Laws) applicable to the Sellers or any of their respective properties or assets, except where such non-compliance, default or violation has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) The Sellers are and since January 1, 2016 have been in possession of all franchises, grants, authorizations, business licenses, permits, easements, variances, exceptions, consents, certificates, approvals, registrations, clearances and orders of any Governmental Entity or pursuant to any applicable Law necessary for the Sellers to own, lease and operate their properties and assets or to carry on their businesses at the relevant time (the "Permits"), except where the failure to have any of the Permits has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, all Permits are in full force and effect, no default (with or without notice, lapse of time or both) has occurred under any such Permit and no Seller has received any written notice from any Governmental Entity threatening to suspend, revoke, withdraw or modify any such Permit.

(c) Except as has not been and would not reasonably be expected to be, individually or in the aggregate, material to the Sellers or the conduct of the Business, since January 1, 2015, no Seller, in connection with the Business, or, to the Knowledge of the Sellers,

any other third party (including any of the Sellers' Representatives) acting on behalf of any Seller, has (i) taken any action in violation of any applicable Anti-Corruption Law, (ii) offered, authorized, provided or given any payment or thing of value to any Person for the purpose of influencing any act or decision of such Person to unlawfully obtain or retain business or other advantage or (iii) taken any other action that would constitute an offer to pay, a promise to pay or a payment of money or anything else of value, or an authorization of such offer, promise or payment, directly or indirectly, to any Representative of another company or entity in the course of their business dealings with any Seller, in order to unlawfully induce such Person to act against the interest of his or her employer or principal.

(d) Except as has not been and would not reasonably be expected to be, individually or in the aggregate, material to the Sellers or the conduct of the Business, since January 1, 2015, no Seller has been subject to any actual, pending, or, to the Knowledge of the Sellers, threatened civil, criminal, or administrative actions, suits, demands, claims, hearings, notices of violation, investigations, proceedings, demand letters, settlements, or enforcement actions, or made any voluntary or mandatory disclosures to any Governmental Entity, involving any Seller in any way relating to applicable Anti-Corruption Laws. The Sellers have established and maintain a compliance program and reasonable internal controls and procedures appropriate to the requirements of applicable Anti-Corruption Laws.

(e) Except as has not been and would not reasonably be expected to be, individually or in the aggregate, material to the Sellers or the conduct of the Business, since January 1, 2015, the Sellers have at all times conducted their businesses in all respects in accordance with United States economic sanctions Laws administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC"), the Bureau of Industry and Security of the U.S. Department of Commerce ("BIS") and all other applicable Import Restrictions and Export Controls in any countries in which any of the Sellers conduct business. Since January 1, 2015, the Sellers have maintained all records required to be maintained in the Sellers' possession as required under the Import Restrictions and Export Controls.

(f) Except as has not been and would not reasonably be expected to be, individually or in the aggregate, material to the Sellers or the conduct of the Business, since January 1, 2015, no Seller has sold, exported, reexported, transferred, diverted, or otherwise disposed of any products, or technology to any destination, entity, or Person prohibited by the Laws of the United States or any other country, without obtaining prior authorization from the competent Governmental Entities as required by those Laws. The Sellers have complied in all material respects with all terms and conditions of any license issued or approved by the Directorate of Defense Trade Controls, BIS, or OFAC that is or has been in force since January 1, 2015. Since January 1, 2015, except pursuant to valid licenses, the Sellers have not released or disclosed controlled technical data or technology to any foreign national whether in the United States or abroad.

(g) Except as has not been and would not reasonably be expected to be, individually or in the aggregate, material to the Sellers or the conduct of the Business, neither the Sellers, nor, to the Knowledge of the Sellers, any director, officer, agent, employee or Affiliate of the Sellers: (x) is, or is owned or controlled by, a Person or entity subject to the sanctions administered by OFAC, BIS or included on the List of Specially Designated Nationals and

Blocked Persons or Foreign Sanctions Evaders, Denied Persons List, Entities List, Debarred Parties List, Excluded Parties List and Terrorism Exclusion List, or any other lists of known or suspected terrorists, terrorist organizations or other prohibited Persons made publicly available or provided to the Sellers by any Governmental Entity (such entities, Persons or organizations collectively, the "Restricted Parties") or (y) has, since January 1, 2015, conducted any business with or engaged in any transaction or arrangement with or involving, directly or indirectly, any Restricted Parties or countries subject to economic or trade sanctions in violation of applicable Law, or has otherwise been in violation of any such sanctions, restrictions or any similar Law. No Seller is subject to any pending or, to the Knowledge of the Sellers, threatened action by any Governmental Entity that would restrict its ability to engage in export transactions, bar it from exporting or otherwise limit in any material respect its exporting activities or sales to any Governmental Entity. No Seller has, since January 1, 2015, received any written notice of material deficiencies in connection with any export controls, trade embargoes or economic sanctions matter from OFAC, BIS or any other Governmental Entity in its compliance efforts nor made any voluntary disclosures to OFAC, BIS or any other Governmental Entity of facts that could result in any material action being taken or any material penalty being imposed by a Governmental Entity against any Seller.

(h) Subject to the entry of the Bidding Procedures Order and Sale Order, the Sellers have complied in all material respects with all requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure in connection with obtaining approval of the sale of the Acquired Assets (including the assumption and assignment to the Purchaser of any Assigned Contracts) to the Purchaser pursuant to this Agreement.

Section 3.15. Employee Benefit Matters.

(a) Section 3.15(a) of the Seller Disclosure Schedule sets forth a complete and correct list of each material Benefit Plan as of the date hereof. The Sellers have made available to the Purchaser copies of documents embodying each of the material Benefit Plans. The Sellers have furnished the Purchaser with the most recent Internal Revenue Service determination or opinion letter issued with respect to each Benefit Plan subject to Section 401(a) of the Code and, to the Knowledge of the Sellers, nothing has occurred since the issuance of each such letter that could reasonably be expected to cause the loss of the tax-qualified status of any such Benefit Plan.

(b) (i) Each Benefit Plan has been administered in all material respects in accordance with its terms and in compliance with applicable Law; (ii) none of the Benefit Plans promises or provides retiree medical or other retiree welfare benefits to any person except as required by applicable Law; (iii) all material contributions and payments required to be made by the Sellers or any ERISA Affiliate to any Benefit Plan have been paid when due; and (iv) no material Action (other than routine claims for benefits) is currently pending or, to the Knowledge of the Sellers, is currently threatened, against or with respect to any Benefit Plan, including any audit or inquiry by the Internal Revenue Service or United States Department of Labor.

(c) No Seller or any ERISA Affiliate maintains, sponsors, participates in, or contributes to, or has any obligation to contribute to, or has, since January 1, 2013, ever maintained, sponsored, participated in, contributed to, or been obligated to contribute to, or

otherwise incurred any obligation or liability (including any contingent liability) under any "multiemployer plan" (as defined in Section 3(37) of ERISA) or to any "pension plan" (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA or Section 412 of the Code. No Seller nor any ERISA Affiliate has any actual or potential withdrawal liability for any complete or partial withdrawal (as defined in Sections 4203 and 4205 of ERISA) from any multiemployer plan.

(d) The consummation of the Acquisition, whether alone or in combination with any other event, will not (i) entitle any current or former employee of the Sellers or any ERISA Affiliate to severance benefits or any other payment (including unemployment compensation, golden parachute, bonus or benefits) under any Benefit Plan; or (ii) accelerate the time of payment or vesting of any such benefits or increase the amount of compensation due any such current or former employee under any Benefit Plan. No Benefit Plan includes any obligation to compensate any Person for excise Taxes payable pursuant to Section 4999 of the Code or Section 409A of the Code.

Section 3.16. Labor Matters.

(a) No Seller is a party to, or bound by, any agreement with respect to employees with any labor union or any other employee organization, group or association organized for purposes of collective bargaining. To the Knowledge of the Sellers, there are, and since January 1, 2015 there have been, no labor union organizing activities with respect to any employees of the Sellers. As of the date hereof, there is no pending or, to the Knowledge of the Sellers, threatened labor strike, slowdown, lockout or work stoppage involving the Sellers or any of their respective employees, which would, individually or in the aggregate, have a Material Adverse Effect.

(b) Each Seller is and, during the preceding ninety (90) days, has been, in compliance in all material respects with the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any similar state, local or foreign Law relating to plant closings or mass layoffs.

Section 3.17. Environmental Matters. Except for matters that, have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) each Seller is, and has been since January 1, 2016, in compliance with all applicable Environmental Laws, (b) the Sellers possess all permits and approvals issued pursuant to any applicable Law relating to the protection of the environment or, as such relates to exposure to Hazardous Substances, to health and safety that are required to conduct the Business, and are, and have been since January 1, 2016, in compliance with all such permits and approvals, (c) no releases of Hazardous Substances have occurred at, on, from or under any real property currently or, to the Knowledge of the Sellers, formerly owned or operated by any Seller in a manner that would reasonably be expected to result in a liability under any Environmental Laws, (d) no Seller has received any written claim or notice from any Governmental Entity or other Person alleging that a Seller is or may be in violation of or liable under, any Environmental Law, and (e) no Seller has entered into or agreed to any consent decree or order or is subject to any judgment, decree or judicial order relating to compliance with Environmental Laws or the investigation, sampling, monitoring, treatment, remediation, removal or cleanup of Hazardous Substances.

Section 3.18. Healthcare Regulatory Matters.

(a) Section 3.18(a) of the Seller Disclosure Schedule sets forth a true and complete list, as of the date of this Agreement, and the Sellers have made available to the Purchaser true and complete copies of, all Regulatory Authorizations from the FDA, the EMA and all other applicable Regulatory Authorities held by the Sellers relating to the Products and/or necessary to conduct the Business. All such Regulatory Authorizations are (i) in full force and effect, (ii) validly registered and on file with applicable Regulatory Authorities, (iii) in compliance with all material filing and maintenance requirements, and (iv) in good standing, valid and enforceable. Each Seller has fulfilled and performed all of its material obligations with respect to such Regulatory Authorizations, and no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof. Except as have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (x) each Seller has filed, maintained or furnished with the applicable Regulatory Authorities all required filings, declarations, listings, registrations, submissions, amendments, modifications, notices and responses to notices, applications and supplemental applications, reports (including all adverse event/experience reports) and other information (collectively, the "Health Care Submissions") with the FDA, the EMA and all other applicable Regulatory Authorities and (y) all such Health Care Submissions were complete and accurate and in compliance with applicable Health Laws when filed (or were corrected or completed in a subsequent filing).

(b) (i) Each Seller is in material compliance with all applicable Health Laws that affect the Business, Products, properties, assets and activities of such Seller, (ii) as of the date of this Agreement, no Seller has received any written notice or written communication from any Regulatory Authority (A) withdrawing or placing any of the Products on "clinical hold" or requiring the termination or suspension or investigation of any pre-clinical studies or clinical trials of the Products or (B) alleging any material violation of any Health Law and (iii) there are no investigations (except routine audits), suits, claims, actions or proceedings pending, or to the Knowledge of the Sellers, threatened against any Seller with respect to any of the Products or alleging any violation by a Seller or the Products of any such Health Law.

(c) All pre-clinical studies and clinical trials conducted or being conducted with respect to the Products by or at the direction of any Seller have been and are being conducted in material compliance with the required experimental protocols, procedures and controls, and all applicable Health Laws and Information Privacy and Security Laws. No clinical trial conducted by or, on behalf of, any Seller has been terminated or suspended by any Regulatory Authority and no Seller has received any written notification or other written communication from any institutional review board, ethics committee or safety monitoring committee raising any issues that may result in a clinical hold or otherwise delay or materially restrict any clinical studies proposed or currently conducted by, or on behalf of, a Seller, or in which a Seller has participated and, to the Knowledge of the Sellers, no such action has been threatened against any Seller. With respect to each Product, the Sellers have made available to the Purchaser complete and accurate copies of all material clinical and preclinical data in the possession of the Sellers and all material written correspondence that exists as of the date hereof between any of the Sellers and the applicable Regulatory Authorities (including letters, memoranda and emails).

(d) All manufacture of the Products, including any clinical supplies used in any clinical trials, by or on behalf of any Seller has been conducted in all material respects in compliance with the applicable specifications and requirements of Good Manufacturing Practices and applicable Health Law. None of the Sellers or, to the Knowledge of the Sellers, any Person acting on any Seller's behalf has, with respect to any Product, (i) been subject to a Regulatory Authority shutdown or import or export prohibition or (ii) received any FDA Form 483, or other written Regulatory Authority notice of inspectional observations, "warning letters," "untitled letters" or written demand or written request to make any change to any Product or any processes or procedures of any of the Sellers, or any similar correspondence from any Regulatory Authority in respect of a Seller or its business operations alleging or asserting non-compliance with any applicable Health Law or Regulatory Authorization and, to the Knowledge of the Sellers, no Regulatory Authority is considering such action.

(e) None of the Sellers or, to the Knowledge of the Sellers, any of their respective officers, employees, or agents, or, any clinical investigator acting for any Seller, has (i) made an untrue statement of a material fact or fraudulent statement to any Regulatory Authority or any other Governmental Entity, including the Centers for Medicare and Medicaid Services, the U.S. Department of Health and Human Services, HHS Office of Inspector General or the Center for Medicare and Medicaid Innovation, (ii) failed to disclose a material fact required to be disclosed to any Regulatory Authority or any other Governmental Entity, including the Centers for Medicare and Medicaid Services, the U.S. Department of Health and Human Services, HHS Office of Inspector General or the Center for Medicare and Medicaid Innovation, or (iii) committed an act, made a statement, or failed to make a statement, including with respect to any scientific data or information, that, at the time such disclosure was made or failure to disclose occurred, would reasonably be expected to provide a basis for the FDA or any other Governmental Entity to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991), and any amendments thereto, or any similar policy or any other statute or regulation regarding the communication or submission of false information to any applicable Regulatory Authority or Governmental Entity. No Seller has committed or engaged in any fraud or falsification or forgery of any research or development data, report, studies or publications or of any document or statement voluntarily submitted or required to be submitted to any Regulatory Authority or any other Governmental Entity, including the Centers for Medicare and Medicaid Services, the U.S. Department of Health and Human Services, HHS Office of Inspector General or the Center for Medicare and Medicaid Innovation. None of the Sellers or, to the Knowledge of the Sellers, any of their respective officers, employees, agents, or, any clinical investigator acting for any of the Sellers, is or has been convicted of any crime or engaged in any conduct that has resulted in, or would reasonably be expected to result in, debarment from participation in any program related to pharmaceutical products pursuant to 21 U.S.C. Section 335a (a) or (b) or exclusion from participation in any federal health care program pursuant to 42 U.S.C. Section 1320a-7.

(f) No Product that is or has been manufactured, tested, distributed, held or marketed by or on behalf of any Seller has been recalled, withdrawn or suspended (whether voluntarily or otherwise) or, to the Knowledge of the Sellers, has been adulterated or misbranded. No Actions (whether complete or pending) seeking the recall, withdrawal, suspension or seizure of any such Product or pre-market approvals or marketing authorizations are pending or, to the Knowledge of the Sellers, threatened against any Seller, nor have any such

Actions been pending at any time. The Sellers have made available to the Purchaser all information about adverse drug experiences obtained or otherwise received by the Sellers from any source, in the United States or outside of the United States as of the date hereof, including information derived from clinical investigations, surveillance studies or registries, reports in the scientific literature and unpublished scientific papers relating to any Product that is or has been manufactured, tested, distributed, held or marketed by or on behalf of any Seller or any of their respective licensors or licensees in the possession of the Sellers (or to which any Seller has access). In addition, each Seller has filed all annual and periodic reports, amendments and safety reports required for any Product required to be made to any Regulatory Authority.

(g) The Sellers have complied in all material respects with all applicable security and privacy standards regarding protection of health information under (i) the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and their implementing regulations and agency guidance and (ii) any other applicable state or foreign privacy Laws.

Section 3.19. Taxes.

(a) (i) All material Tax Returns required to be filed with respect to the Business, the Acquired Assets and Assumed Liabilities have been timely filed with the appropriate Taxing Authority in all jurisdictions in which such Tax Returns are required to be filed (after giving effect to any valid extensions of time in which to make such filings), and all such Tax Returns are true, complete and correct in all material respects; and (ii) all material amounts of Taxes payable with respect to the Business, the Acquired Assets and Assumed Liabilities have been timely paid.

(b) No audit or other proceeding with respect to any material Taxes or material Tax Returns with respect to the Business, the Acquired Assets or Assumed Liabilities is currently in progress, or has been proposed or threatened in writing.

(c) Neither the Sellers nor any of their respective Subsidiaries has received written notice of any material Tax deficiency outstanding, proposed or assessed, nor has any of the Sellers or any of their respective Subsidiaries executed any waiver of any statute of limitations in respect of material Taxes nor agreed to any extension of time with respect to a material Tax assessment, collection or deficiency with respect to the Business, the Acquired Assets or Assumed Liabilities.

(d) There are no liens for Taxes other than Permitted Pre-Closing Encumbrances upon any of the Acquired Assets.

(e) None of the Acquired Assets constitutes stock, partnership interests or other equity interest in any Person for U.S. federal income tax purposes.

(f) The Sellers and each of their respective Subsidiaries have complied in all material respects with all applicable Laws relating to the withholding, collection and payment of Taxes and have timely withheld, collected and paid over to the appropriate Taxing Authority all material amounts required to be so withheld, collected and paid under all applicable Laws.

Section 3.20. Customers; Suppliers.

(a) Section 3.20(a) of the Seller Disclosure Schedule sets forth a list, as of the date hereof, of the five (5) largest customers of the Sellers based upon revenue for the fiscal year ended December 31, 2017 (each, a "Material Customer"). No Material Customer has cancelled, terminated or adversely modified, or, to the Knowledge of the Sellers, threatened to cancel, terminate or adversely modify, its relationship with any of the Sellers.

(b) Section 3.20(b) of the Seller Disclosure Schedule sets forth a list, as of the date hereof, of the suppliers and vendors of the Sellers with whom the Sellers have spent at least $500,000 during the fiscal year ended December 31, 2017 (each, a "Material Supplier"). No Material Supplier has cancelled, terminated or adversely modified, or, to the Knowledge of the Sellers, threatened to cancel, terminate or adversely modify, its relationship with any of the Sellers.

Section 3.21. Insurance. Section 3.21 of the Seller Disclosure Schedule sets forth a complete and accurate list of the insurance policies and insurance Contracts of the Sellers as of the date hereof, and the Sellers have made available to the Purchaser true and correct copies of all of such policies and Contracts prior to the date hereof. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) all insurance policies and insurance Contracts of the Sellers are in full force and effect and are valid and enforceable and cover against the risks as are customary for companies of similar size in the same lines of business, (b) none of the Sellers is in breach of or default under any such insurance policies and insurance Contracts, (c) no Seller has taken any action or failed to take any action that (with or without notice or lapse of time, or both), would constitute such a breach or default or permit termination or modification of any of the insurance policies or insurance Contracts, and (d) all premiums due thereunder have been paid. There are no material claims under any of the insurance policies or insurance Contracts for which coverage has been denied or disputed by the applicable insurance carrier (other than a customary reservation of rights notice). None of the Sellers has received notice of cancellation or termination with respect to any third-party insurance policies or insurance Contracts (other than in connection with normal renewals of any such insurance policies or Contracts).

Section 3.22. State Takeover Statutes. The Board of Directors of the Parent has taken all action necessary to render inapplicable to this Agreement and the transactions contemplated hereby (including the consummation of the Acquisition) Section 203 of the General Corporation Law of the State of Delaware and any similar provisions in the organizational documents of the Parent or any other Takeover Statute.

Section 3.23. Related Party Transactions. Except as set forth in the Parent SEC Documents filed with the SEC prior to the date hereof, there are no transactions, agreements, arrangements or understandings between any Seller, on the one hand, and any Affiliate (including any officer or director) thereof (but not including any wholly owned Subsidiary of the Parent) or any beneficial owner, directly or indirectly, of five percent (5%) or more of the shares of the Parent Common Stock on the other hand, that are required to be disclosed under Item 404 of Regulation S-K of the SEC that are not so disclosed.

Section 3.24. Sufficiency of DIP Budget. Funds permitted to be expended for such purposes under the budget set forth in the DIP Facility will be sufficient to permit the Sellers to comply with the terms of this Agreement and any Ancillary Documents and consummate all transactions contemplated by this Agreement and any Ancillary Documents.

Section 3.25. No Other Representations. Except for the representations and warranties contained in Article IV, each of the Sellers acknowledges that it (a) has had an opportunity to conduct any and all due diligence with respect to BH and the Purchaser and any of their respective Subsidiaries in connection with the transactions contemplated hereby, (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents in connection with the transactions contemplated hereby, and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise regarding BH or the Purchaser or any of their respective Subsidiaries or with respect to any other information provided or made available to such Seller in connection with the transactions contemplated hereby, or the completeness of any information provided in connection therewith, except, in each case for the representations and warranties contained in Article IV.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF BH AND THE PURCHASER

Except as disclosed in the BH SEC Documents publicly available prior to the date hereof (but excluding any predictive, cautionary or forward looking disclosures contained under the captions “risk factors,” “forward looking statements” or any similar precautionary sections and any other disclosures contained therein that are predictive, cautionary or forward looking in nature), each of BH and the Purchaser jointly and severally represent and warrant to the Sellers as follows:

Section 4.1. Qualification; Organization. Each of BH and the Purchaser is a legal entity duly organized, validly existing and in good standing (with respect to jurisdictions that recognize such concept) under the Laws of its respective jurisdiction of organization and has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted, except where the failure to be so existing and in good standing or to have such power and authority would not, individually or in the aggregate, materially impair or materially delay its ability to perform its obligations under this Agreement. Each of BH and the Purchaser is qualified to do business and is in good standing (with respect to jurisdictions that recognize such concept) as a foreign corporation or other entity in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so qualified or, where relevant, in good standing, would not, individually or in the aggregate, materially impair or materially delay its ability to perform its obligations under this Agreement.

Section 4.2. Authority of BH and the Purchaser. Each of BH and the Purchaser has all requisite corporate power and authority to execute and deliver and perform its obligations under this Agreement and each of the Ancillary Documents to which it is a party (subject to entry of the Bidding Procedures Order and Sale Order). The execution, delivery and performance of this

Agreement and such Ancillary Documents by BH and the Purchaser and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized and approved by all requisite corporate action of BH or the Purchaser, as applicable, and no other corporate proceedings (pursuant to any of BH or the Purchaser's organizational documents or otherwise) on the part of BH or the Purchaser is necessary to authorize the consummation of, and to consummate the transactions contemplated hereby and thereby. This Agreement and each such Ancillary Document have been, or at or prior to Closing (as the case may be) will be, duly and validly executed and delivered by BH and the Purchaser to the extent a party thereto, and, assuming the due authorization, execution and delivery of this Agreement and each such Ancillary Document by the Sellers, constitute a valid and binding agreement of BH and the Purchaser, as applicable, enforceable against BH and the Purchaser (as applicable) in accordance with its terms, subject to the Enforceability Limitations.

Section 4.3. Consents and Approvals. No consent, approval, permit or authorization of, or declaration, filing or registration with, any Governmental Entity is necessary or required to be made or obtained by BH or the Purchaser or their Affiliates in connection with the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, except in connection with or compliance with the HSR Act, except for such consents, approvals, permits, authorizations, declarations, filings or registrations that would not, individually or in the aggregate, materially impair or materially delay BH's or the Purchaser's ability to perform its obligations under this Agreement.

Section 4.4. No Violations. Except as described in Sections 3.3 and 4.3, neither the execution, delivery or performance of this Agreement and the Ancillary Documents by BH and the Purchaser to the extent a party thereto nor the consummation by BH or the Purchaser of the transactions contemplated hereby or thereby will (a) conflict with or result in any violation or breach of any provisions of the certificate of incorporation, bylaws or other organizational documents of BH or the Purchaser, (b) with or without notice or lapse of time or both, conflict with or result in any breach or violation of or constitute a default or change of control under, or give rise to a right of, or result in, termination, modification, cancellation, first offer, first refusal or acceleration of any obligation or to the loss of a benefit under any Contract to which BH or the Purchaser is a party or by or to which any of their respective properties, rights or assets are bound or subject or (c) conflict with or violate any Order or Law applicable to BH or the Purchaser or their respective properties, rights or assets, except in the case of the preceding clauses (b) and (c), for breaches, violations, defaults, rights, creations or impositions that would not reasonably be expected to, individually or in the aggregate, materially impair or materially delay BH's or the Purchaser's ability to perform its obligations under this Agreement.

Section 4.5. Brokers. Neither BH nor the Purchaser has employed any investment banker, broker or finder in connection with the transactions contemplated hereby who might be entitled to any fee or any commission from the Sellers in connection with this Agreement or upon consummation of the Acquisition or any of the other transactions contemplated hereby based upon arrangements made by BH or the Purchaser.

Section 4.6. Financing. As of the date hereof, BH has, and on the Closing Date, BH will have and will make available to the Purchaser, sufficient funds available to deliver the

Purchase Price to the Sellers and consummate the transactions contemplated by this Agreement, including the timely satisfaction of the Assumed Liabilities.

Section 4.7. Interested Stockholders. Neither the Purchaser nor any of its "affiliates" or "associates" has been an "interested stockholder" of the Parent at any time within three (3) years of the date hereof, as those terms are used in Section 203 of the General Corporation Law of the State of Delaware.

Section 4.8. No Other Representations. Except for the representations and warranties contained in Article III, each of BH and the Purchaser acknowledges that it (a) has had an opportunity to conduct any and all due diligence with respect to the Sellers' assets and liabilities in connection with the transactions contemplated hereby, (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents in connection with the transactions contemplated hereby, and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise regarding Sellers' assets or liabilities, or the completeness of any information provided in connection therewith, except, in each case for the representations and warranties contained in Article III.

ARTICLE V
COVENANTS

Section 5.1. Conduct of Business Pending the Closing.

(a) The Sellers agree that between the date hereof and the earlier of the Closing or the date, if any, on which this Agreement is validly terminated pursuant to Article VII, except as set forth in Section 5.1(a) of the Seller Disclosure Schedule, and except (1) as expressly provided in this Agreement, (2) as required by applicable Law (including the Bankruptcy Code), (3) as consented to in writing by the Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed) or (4) as required by any Order of the Bankruptcy Court, the Sellers shall use reasonable best efforts to conduct the Business (including make and collect payments, and selling Inventory) in all material respects in the ordinary course of business consistent with past practice, and use reasonable best efforts to (i) preserve intact their present business organizations, goodwill and ongoing businesses, (ii) keep available the services of their present officers and employees (other than where termination of such services is for cause), (iii) preserve in all material respects their present relationships with customers, suppliers, vendors, licensors, licensees, Governmental Entities, employees and other Persons with whom they have material business relations, (iv) maintain in effect in all material respects the Permits, (v) perform in all material respects all of its post-petition obligations under the Assigned Contracts as and when such obligations become due, and (vi) comply in all material respects with the budget and other obligations set forth by the DIP Facility, in each case, taking into account the Sellers' status as debtors in possession.

(b) The Sellers agree that between the date hereof and the earlier of the Closing or the date, if any, on which this Agreement is validly terminated pursuant to Article VII, except as set forth in Section 5.1(b) of the Seller Disclosure Schedule, and except (i)

as expressly provided in this Agreement, (ii) as required by applicable Law (including the Bankruptcy Code), (iii) as consented to in writing by the Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed) or (iv) as required by any Order of the Bankruptcy Court, the Sellers shall not, with respect to the Business, the Acquired Assets or the Assumed Liabilities, directly or indirectly:

(i) authorize, declare, set aside, make or pay any dividends on or make any distribution with respect to its outstanding shares of capital stock or other equity interests (whether in cash, assets, shares or other securities of any Seller), other than such cash distributions from Synergy Advanced Pharmaceuticals, Inc. to Parent, or enter into any agreement and arrangement with respect to voting or registration of its capital stock or other equity interests or securities;

(ii) acquire (including by merger, consolidation or acquisition of stock or assets or any other means) or authorize or announce an intention to so acquire, or enter into any agreements providing for any acquisitions of, any equity interests in or assets of any Person or any business or division thereof, or otherwise engage in any mergers, consolidations or business combinations, except for transactions solely between Sellers or acquisitions of supplies or equipment in the ordinary course of business consistent with past practice;

(iii) make any loans, advances or capital contributions to, or investments in, any other Person, except for advances for reimbursable employee expenses made in the ordinary course of business consistent with past practice;

(iv) other than sales of Inventory in the ordinary course of business consistent with past practice, sell, lease, license, assign, abandon, permit to lapse, transfer, exchange, swap or otherwise dispose of, or subject to any Encumbrance (other than Permitted Pre-Closing Encumbrances) any of the Acquired Assets, except (A) dispositions of obsolete or worthless equipment, in the ordinary course of business consistent with past practice and (B) transactions solely among the Sellers;

(v) fail to maintain, or allow to lapse, or abandon any Seller Registered Intellectual Property, except in each case as Sellers may elect in their reasonable business discretion in the ordinary course of business;

(vi) enter into or become bound by, terminate or materially amend or modify any Contract relating to the acquisition or disposition or granting of any license with respect to any Seller Intellectual Property, or otherwise subject to an Encumbrance (other than Permitted Pre-Closing Encumbrances) any Seller Intellectual Property (including by the granting of any covenant-not-to-sue or covenant-not-to-assert), other than license grants in the ordinary course of business consistent with past practice;

(vii) (A) enter into any Contract that would, if entered into prior to the date hereof, be a Material Contract or (B) modify, amend, extend or terminate any Assigned Contract or waive, release or assign any rights or claims thereunder;

(viii) (A) except in accordance with the capital budget provided to the Purchaser prior to the date hereof, make any capital expenditure or expenditures, enter into

agreements or arrangements providing for capital expenditure or expenditures or otherwise commit to do so, or (B) fail to make any capital expenditure or expenditures in accordance with such capital budget;

(ix) commence, waive, release, assign, compromise or settle any claim, litigation, investigation or Action (for the avoidance of doubt, including with respect to matters in which a Seller is a plaintiff, or in which any of their officers or directors in their capacities as such are parties) affecting the Business, the Acquired Assets or the Assumed Liabilities, other than the compromise or settlement of any claim, litigation or Action not brought by a Governmental Entity and that: (A) is for an amount not to exceed, for any such compromise or settlement individually or in the aggregate, $250,000 (determined, in each case, net of insurance proceeds), (B) does not impose any injunctive or nonmonetary relief on the Sellers and does not involve the admission of wrongdoing by any Seller or any of their respective officers or directors or otherwise establish a materially adverse precedent for similar settlements by the Purchaser and (C) does not provide for the license of any Intellectual Property or the termination, modification or amendment of any license of Seller Intellectual Property;

(x) make any change in financial accounting policies, practices, principles or procedures or any of its methods of reporting income, deductions or other material items for financial accounting purposes, except as required by GAAP or applicable Law;

(xi) make, change or revoke any material Tax election, adopt or change any material method of Tax accounting, file any amended material Tax Return, enter into any "closing agreement" within the meaning of Section 7121 of the Code (or any similar provision of state, local or non-U.S. Law), or surrender any right to claim a material refund of Taxes, in each case, except to the extent such action would not be binding on BH, the Purchaser or any of their respective Affiliates and would not reasonably be expected to affect the Taxes of BH, the Purchaser or any of their respective Affiliates;

(xii) redeem, repurchase, prepay, defease, incur, assume, endorse, guarantee or otherwise become liable for or modify in any material respects the terms of any Indebtedness or any derivative financial instruments or arrangements (including swaps, caps, floors, futures, forward contracts and option agreements), or issue or sell any debt securities or calls, options, warrants or other rights to acquire any debt securities (directly, contingently or otherwise), other than Indebtedness outstanding under the DIP Facility in an aggregate principal amount outstanding at any time not to exceed $155,000,000;

(xiii) (A) enter into any transactions or Contracts with any Affiliate or other Person that would be required to be disclosed by the Parent under Item 404 of Regulation S-K of the SEC or (B) any Person who beneficially owns, directly or indirectly, more than five percent (5%) of the outstanding shares of Parent Common Stock;

(xiv) cancel or fail to use commercially reasonable efforts to maintain in the ordinary course the Sellers' insurance policies included in, or covering any, Acquired Assets or to renew or replace existing insurance policies included in, or covering any, Acquired Assets following their termination;

(xv) (A) enter into any lease or sublease of real property as lessee or sublessee, or (B) materially modify or amend any Lease or other lease or sublease of real property, in each case other than in the ordinary course of business consistent with past practice;

(xvi) fail to maintain its Books and Records;

(xvii) terminate or modify or waive in any material respect any right under any Permit;

(xviii) adopt or otherwise implement any stockholder rights plan, "poison-pill" or other comparable agreement;

(xix) convert the Chapter 11 Case into a liquidation proceeding under Chapter 7 of the Bankruptcy Code;

(xx) participate in any scheduled meetings or teleconferences with, or correspond in writing, communicate or consult with the FDA or any similar Governmental Entity without providing the Purchaser (whenever feasible and to the extent permitted under applicable Law) with prior written notice and, within twenty four (24) hours from the time such written notice is delivered, the opportunity to consult with the Parent with respect to such correspondence, communication or consultation, in each case to the extent permitted by applicable Law;

(xxi) except as contemplated by and in accordance with this Agreement and the Bidding Procedures, take or cause to be taken any action that would reasonably be expected to materially delay, materially impede or prevent the consummation of the Acquisition;

(xxii) make any material change in billing, inventory management or cash management practices (including with respect to the timing and frequency of collection of receivables and paying of payables) or in working capital practices, or encourage any distributor or customer directly or indirectly to accelerate purchases of the Products or modify discounting, rebate and similar practices;

(xxiii) voluntarily terminate, enter into or amend any Benefit Plan;

(xxiv) with respect to all Business Employees, except as required by any Benefit Plan as in effect on the date hereof, (A) increase any compensation or benefits of such employees; or (B) grant any incentive, bonus, severance, retention or termination pay or benefits;

(xxv) hire any employees or terminate any Offer Employees (other than for cause);

(xxvi) enter into a collective bargaining agreement or other labor union Contract with respect to the Offer Employees;

(xxvii) amend, restate, supplement or otherwise modify the DIP Facility; or

(xxviii) agree or authorize, in writing or otherwise, to take any of the foregoing actions.

Without in any way limiting any party's rights or obligations under this Agreement, the parties understand and agree that (i) nothing contained in this Agreement shall give BH or the Purchaser, directly or indirectly, the right to control or direct the operations of the Sellers, or the Business prior to the Closing and (ii) prior to the Closing, the Sellers shall exercise, consistent with, and subject to, the terms and conditions of this Agreement, complete control and supervision over the Business and their operations.

Section 5.2. Access and Information.

(a) Subject to the Bidding Procedures and applicable Law, (x) the Sellers shall afford to BH, the Purchaser and their Representatives reasonable access during normal business hours and upon reasonable advance notice to all of the Sellers' properties, offices, Assigned Contracts, employees and Books and Records, (y) the Sellers shall use reasonable best efforts to afford to BH, the Purchaser and their Representatives, acting in good faith, reasonable access during normal business hours and upon reasonable advance notice (and notwithstanding any other restriction in the Confidentiality Agreement) to all of the Sellers' suppliers and manufacturers, and, with the consent of the Sellers (not to be unreasonably withheld, conditioned or delayed), to the Sellers' Regulatory Authorities, and, (z) during such period, the Sellers shall furnish as promptly as practicable to BH and the Purchaser all information (financial or otherwise) the Purchaser may reasonably request, in each case, related to the Business, the Acquired Assets or the Assumed Liabilities, for any purpose related to the transactions contemplated by this Agreement. Notwithstanding the foregoing, the Sellers shall not be required by this Section 5.2(a) to provide BH, the Purchaser, or their Representatives with access to or to disclose information (i) that is prohibited from being disclosed pursuant to the terms of a confidentiality agreement with a third party entered into prior to the date hereof (*provided*, *however*, that the Sellers shall, at the Purchaser's sole cost and expense, use reasonable best efforts to obtain the required consent of such third party to such access or disclosure or, if unable to do so, to make appropriate substitute arrangements to permit reasonable access or disclosure not in violation of such consent requirement), (ii) the disclosure of which would violate applicable Law (*provided*, *however*, that the Sellers shall, at the Purchaser's sole cost and expense, use reasonable best efforts to make appropriate substitute arrangements to permit reasonable disclosure not in violation of such Law) or (iii) the disclosure of which would cause the loss of any attorney-client, attorney work product or other legal privilege (*provided*, *however*, that the Sellers shall, at the Purchaser's sole cost and expense, use reasonable best efforts to allow for such access or disclosure to the maximum extent that does not result in a loss of such attorney-client, attorney work product or other legal privilege); *provided*, *however*, that such access and information shall be disclosed or granted, as applicable, to counsel for BH and the Purchaser to the extent reasonably required for the purpose of obtaining required approvals or consents, or making filings or providing notices, subject to prior execution of a common interest or joint defense agreement in customary form. For the avoidance of doubt, information obtained pursuant to this Section 5.2(a) shall be subject to the Confidentiality Agreement.

(b) From and after the Closing for a period of three (3) years following the Closing Date (or, if later, the confirmation of the Chapter 11 plan), Purchaser will provide the

Sellers and their advisors with reasonable access, during normal business hours, at Sellers' sole expense and upon reasonable advance notice, to the books and records, including work papers, schedules, memoranda, tax returns, tax schedules, tax rulings, and other documents (for the purpose of examining and copying) relating to the Acquired Assets or the Assumed Liabilities with respect to periods or occurrences prior to the Closing and reasonable access, during normal business hours, at Sellers' sole expense and upon reasonable advance notice, to employees, officers, advisors and accountants of Purchaser (solely for the purpose of better understanding such books and records), in each case, for purposes relating to the Chapter 11 Case, the wind-down of the operations of Sellers and their estates, actions to which any Seller is a party (other than in connection with any litigation or dispute with the Purchaser or BH), insurance claims, tax payments, returns or audits, the functions of any trusts established under a Chapter 11 plan of Sellers or any other successors of Sellers. For purposes of this Section 5.2(b), references to "Sellers" shall be construed, where applicable, to include any liquidating trust, plan administrator, or comparable person or body bearing responsibility for the administration and wind-down of the Sellers' operations, estates and Chapter 11 Case.

Section 5.3. Approvals and Consents; Cooperation; Notification.

(a) Subject to the terms and conditions of this Agreement, each party hereto shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable Law to consummate the transactions contemplated hereby as soon as practicable after the date hereof, including (i) preparing and filing or otherwise providing, in consultation with the other parties and as promptly as practicable and advisable after the date hereof, all documentation to effect all necessary applications, notices, petitions, filings, and other documents and to obtain as promptly as practicable all waiting period expirations or terminations, consents, clearances, waivers, licenses, orders, registrations, approvals, permits, and authorizations necessary or advisable to be obtained from any third party and/or any Governmental Entity in order to consummate the transactions contemplated hereby, and (ii) taking all steps as may be necessary, subject to the limitations in this Section 5.3, to obtain all such waiting period expirations or terminations, consents, clearances, waivers, licenses, registrations, permits, authorizations, orders and approvals from any third party and/or any Governmental Entity. In furtherance and not in limitation of the foregoing, each party agrees to (x) make an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the Acquisition as promptly as practicable, and in any event within the later of (I) ten (10) Business Days after the execution of this Agreement and (II) the Business Day following the approval of the Bidding Procedures and the entry of the Bidding Procedures Order pursuant to Section 5.7, and to supply as promptly as practicable and advisable any additional information and documentary materials that may be requested pursuant to the HSR Act and to take all other actions necessary to cause the expiration or termination of the applicable waiting periods under the HSR Act as soon as practicable and (y) make all other necessary filings as promptly as practicable after the date hereof, and to supply as promptly as practicable and advisable any additional information and documentary materials that may be requested under any Antitrust Laws. BH and Purchaser shall have responsibility for the filing fees associated with the HSR filings and any other similar filings required under any Antitrust Laws. Notwithstanding anything to the contrary in this Agreement, none of the parties shall be required to, and the Sellers may not, without the prior written consent of BH and the Purchaser, become subject to, consent to or offer or agree to, or otherwise take any action with

respect to, any requirement, condition, limitation, understanding, agreement or order to (A) sell, license, assign, transfer, divest, hold separate or otherwise dispose of any assets, business or portion of business of any Seller, BH, the Purchaser or any Subsidiary of any of the foregoing, (B) conduct, restrict, operate, invest or otherwise change the assets, the business or portion of the business of any Seller, BH, the Purchaser or any Subsidiary of any of the foregoing in any manner or (C) impose any restriction, requirement or limitation on the operation of the business or portion of the business of any Seller, BH, the Purchaser or any Subsidiary of any of the foregoing; *provided* that if requested by BH and the Purchaser, the Sellers or their Subsidiaries will become subject to, consent to or offer or agree to, or otherwise take any action with respect to, any such requirement, condition, limitation, understanding, agreement or order so long as such requirement, condition, limitation, understanding, agreement or order is only binding on such entity in the event the Closing occurs.

(b) Each of the parties hereto shall, in connection with and without limiting the efforts referenced in Section 5.3(a) to obtain all waiting period expirations or terminations, consents, clearances, waivers, licenses, orders, registrations, approvals, permits, and authorizations for the Acquisition under the HSR Act or any other Antitrust Law, (i) cooperate in all respects and consult with the other parties in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party, including by allowing the other parties to have a reasonable opportunity to review in advance and comment on drafts of filings and submissions and reasonably considering in good faith comments of the other parties and providing the other parties with copies of filings and submissions, (ii) promptly inform the other parties of any communication received by such party from, or given by such party to, the Antitrust Division of the Department of Justice (the "DOJ"), the Federal Trade Commission (the "FTC") or any other Governmental Entity, by promptly providing copies to the other parties of any such written communications, and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the transactions contemplated hereby and (iii) permit the other parties to review in advance any communication that it gives to, and consult with each other in advance of any meeting, substantive telephone call or conference with, the DOJ, the FTC or any other Governmental Entity, or, in connection with any proceeding by a private party, with any other Person, and to the extent permitted by the DOJ, the FTC or other applicable Governmental Entity or other Person, give the other parties the opportunity to attend and participate in any in-person meetings, substantive telephone calls or conferences with the DOJ, the FTC or other Governmental Entity or other Person; *provided*, *however*, that materials required to be provided pursuant to the foregoing clauses (i)-(iii) may be redacted (A) to remove references concerning the valuation of any of the parties or any of their respective Subsidiaries, (B) as necessary to comply with contractual arrangements and (C) as necessary to address reasonable privilege or confidentiality concerns; *provided*, *further*, that any of the parties may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Section 5.3(b) as "Outside Counsel Only Material" and materials so designated shall only be provided to each party's outside counsel.

(c) In connection with and without limiting the foregoing, the Sellers shall give any notices to third parties required under the Assigned Contracts, and each of the Sellers shall use reasonable best efforts to obtain third-party consents to any Assigned Contracts that are

set forth on Section 6.3(c) of the Seller Disclosure Schedule or otherwise necessary to consummate the Acquisition.

(d) Each party shall give prompt notice to the other parties (i) of any notice or other communication from any Governmental Entity in connection with this Agreement or the Acquisition, or from any Person alleging that the consent of such Person is or may be required in connection with the Acquisition, (ii) of any legal proceeding commenced or, to the knowledge of such party, threatened against it or any of its Affiliates or otherwise relating to, involving or affecting such party or any of its Affiliates, in each case in connection with, arising from or otherwise relating to the Acquisition, (iii) in the case of the Sellers, of any material written correspondence to or from the FDA or any other Regulatory Authority with respect to (A) the receipt of any FDA 483 observations or substantially equivalent notices involving any facility of the Sellers, (B) the recall, correction, removal, market withdrawal or replacement of any Product, (C) a change in the marketing classification or a change in the labelling of any Product, the effect of which would reasonably be expected to be material to the Sellers or the conduct of the Business, (D) a non-substantial equivalence determination or denial of market approval by any Governmental Entity of any Product, (E) the mandatory or voluntary termination, enjoinment or suspension of the testing, manufacturing, marketing, export, import, or distribution of any Product or (F) a non-coverage determination by the Centers for Medicare and Medicaid Services or any other third-party payor with respect to any Product, the effect of which would reasonably be expected to be material to the Sellers or the conduct of the Business, and (iv) upon becoming aware of the occurrence or impending occurrence of any event or circumstance that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or which would reasonably be expected to prevent or materially delay or impede the consummation of the Acquisition; *provided*, *however*, that the delivery of any notice pursuant to this Section 5.3(d) shall not cure any breach of any representation or warranty requiring disclosure of such matter prior to the date hereof or otherwise limit or affect the remedies available hereunder to any party.

(e) Notwithstanding the foregoing, the obligations of the parties hereto to obtain any consent, approval or waiver from the Bankruptcy Court shall be governed exclusively by Section 5.7, Section 5.8, Section 5.9, Section 5.10 and Section 5.11.

Section 5.4. Further Assurances. In addition to the provisions of this Agreement, from time to time after the Closing Date, the Sellers, BH and the Purchaser shall use reasonable best efforts to execute and deliver such other instruments of conveyance, transfer or assumption, as the case may be, and take such other action as may be reasonably requested to implement more effectively the conveyance and transfer of the Acquired Assets to the Purchaser and the assumption of the Assumed Liabilities by the Purchaser; *provided*, that nothing in this Section 5.4 shall (a) require the Sellers or any of their Affiliates to make any expenditure or incur any obligation on their own or on behalf of the Purchaser (unless funds in the full amount thereof are advanced to the Sellers in cash) or (b) prohibit the Sellers or any of their Affiliates from ceasing operations or winding up its affairs following the Closing. In furtherance and not in limitation of the foregoing if, following the Closing, any Seller (x) receives or becomes aware that it holds any asset, property or right which constitutes an Acquired Asset, then Sellers shall transfer such asset, property or right to the Purchaser and/or, as applicable, one or more designees of the Purchaser as promptly as practicable after the Closing for no additional

consideration, and pending such conveyance the parties shall reasonably cooperate with each other to provide the Purchaser with all of the benefits of use of such asset, property or right and (y) receives any payment on accounts receivable included in the Acquired Assets, such Seller shall hold such payment in trust and promptly (and in any event within two (2) Business Days) pay the amount thereof to the Purchaser. If, following the Closing, the Purchaser receives or becomes aware that it holds any asset, property or right which constitutes an Excluded Asset, then the Purchaser shall transfer such asset, property or right to the Sellers as promptly as practicable for no additional consideration, and pending such conveyance the parties shall reasonably cooperate with each other to provide the Sellers with all of the benefits of use of such asset, property or right.

Section 5.5. Assets Held by Affiliates of the Sellers. To the extent that any other Person that is an Affiliate of a Seller owns or has rights to any assets (including any Assigned Contracts) that is or would be an Acquired Asset if a Seller owned or had rights to such assets, the Sellers shall cause such Person to promptly transfer such asset, property, Assigned Contract, or right to a Seller, and, upon such transfer, such asset, property or right shall be deemed to be an Acquired Asset under this Agreement for all purposes as if owned by the Sellers on and as of the date of execution hereof.

Section 5.6. Debtors-in-Possession. From the commencement of the Chapter 11 Case through the Closing, the Sellers shall continue to operate their business as debtors-in-possession pursuant to the Bankruptcy Code.

Section 5.7. The Sale Motion and Bidding Procedures Motion. On or prior to December 12, 2018, the Sellers shall file a sale motion with the Bankruptcy Court (the "Sale Motion") and a bidding procedures motion with the Bankruptcy Court (the "Bidding Procedures Motion"), both in form and substance reasonably acceptable to the Purchaser and the Sellers (and shall thereafter use their reasonable best efforts to cause the Bankruptcy Court to enter a corresponding Order or Orders, including the Bidding Procedures Order in substantially the form of Exhibit A hereto, the Sale Order (provided the Purchaser is the Successful Bidder) in substantially the form of Exhibit E and otherwise in form and substance reasonably acceptable to BH, the Purchaser and the Sellers) and in any event seeking the following relief from the Bankruptcy Court:

(a) authorization of the sale of the Acquired Assets to the Successful Bidder (including the assignment of the Assigned Contracts), as applicable, free and clear of all Encumbrances and other interests, other than Permitted Post-Closing Encumbrances;

(b) subject to the Bidding Procedures, approval of the proposed purchase agreement between the Sellers and the Successful Bidder;

(c) authorization of the Sellers to cause the Closing to occur as soon as practicable after the entry of the Sale Order;

(d) because the Purchaser and its Affiliates have expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Acquired Assets, approval of the Expense

Reimbursement Amount (solely to the extent payable under this Agreement) as an administrative priority expense under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code;

(e) a finding that the provisions of this Agreement, including Section 7.2 were a material inducement to the Purchaser to enter into this Agreement and are designed to achieve the highest or otherwise best offer for the Acquired Assets;

(f) approval of the Bidding Procedures and entry of the Bidding Procedures Order substantially in the form of Exhibit A attached hereto, or otherwise in form and substance reasonably acceptable to the Purchaser, no later than January 4, 2019; and

(g) scheduling the bid deadline to take place no later than February 9, 2019, and the Auction to take place no later than February 12, 2019; and

(h) scheduling the Sale Hearing to take place no later than February 15, 2019.

Section 5.8. Sale Order. The Sale Order shall be substantially in the form attached hereto as Exhibit E or otherwise in form and substance reasonably acceptable to the Purchaser and the Sellers and shall include the following findings of fact, conclusions of Law and ordering provisions:

(a) find that the Notice of Sale, and the parties who were served with copies of such Notice of Sale, were in compliance with Sections 102 and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 9014 and any other applicable provision of the Bankruptcy Code, the Bankruptcy Rules, or any local bankruptcy rule governing the sale of assets free and clear of Encumbrances and other interests;

(b) find that all requirements imposed by Section 363(f) of the Bankruptcy Code for the sale of the Acquired Assets free and clear of Encumbrances and other applicable interests, other than Permitted Post-Closing Encumbrances, have been satisfied;

(c) find that the Purchaser is a purchaser of the Acquired Assets in "good faith" pursuant to Section 363(m) of the Bankruptcy Code, and the sale is entitled to the protections of Section 363(m);

(d) find that the Purchaser and the Sellers did not engage in any conduct which would allow this Agreement to be set aside pursuant to Section 363(n) of the Bankruptcy Code;

(e) find that the consideration provided by the Purchaser pursuant to this Agreement constitutes reasonably equivalent value and fair consideration for the Acquired Assets;

(f) approve this Agreement and the consummation of the sale upon the terms and subject to the conditions of this Agreement;

(g) order that, as of the Closing Date, the transactions contemplated by this Agreement effect a legal, valid, enforceable and effective sale and transfer of the Acquired

Assets to the Purchaser and shall vest the Purchaser with title to such assets free and clear of all Encumbrances (except for Assumed Liabilities and Permitted Post-Closing Encumbrances);

(h) (A) authorize the Sellers to assume and assign to the Purchaser each of the Assigned Contracts, and (B) find that, subject to the terms of the Sale Order and the payment of Cure Costs and provision of adequate assurance of future performance by the Purchaser, as of the Closing Date, the Assigned Contracts will have been duly assigned to the Purchaser in accordance with Section 365 of the Bankruptcy Code;

(i) find that neither the Purchaser nor any of its Affiliates is acquiring any of the Excluded Assets or assuming any of the Excluded Liabilities;

(j) order that the Assigned Contracts will be transferred to, and remain in full force and effect for the benefit of, the Purchaser, notwithstanding any provision in any such contract or any requirement of applicable Law (including those described in Sections 365(b)(2) and 365(f) of the Bankruptcy Code) that prohibits, conditions, restricts or limits in any way such assignment or transfer;

(k) find that the Purchaser has satisfied all requirements under Sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code to provide adequate assurance of future performance of the Assigned Contracts;

(l) approve any other agreement to the extent provided by this Agreement;

(m) except as expressly set forth in the Sale Order, enjoin and forever bar the non-debtor party or parties to each Assigned Contract from asserting against the Purchaser or any Affiliate or designee of the Purchaser: (i) any default, action, liability or other cause of action existing as of the date of the Closing, whether asserted or not, and (ii) any objection to the assumption and assignment of such non-debtor party's Assigned Contract (except to the extent any such objection was sustained by the Order of the Bankruptcy Court);

(n) find that, to the extent permitted by applicable Law, none of the Purchaser nor any Affiliate of the Purchaser nor any designee of the Purchaser is a successor to the Sellers or the bankruptcy estate by reason of any theory of Law or equity, and none of the Purchaser nor any Affiliate of the Purchaser nor any designee of the Purchaser shall assume or in any way be responsible for any liability of the Sellers or the bankruptcy estate, except as otherwise expressly provided in this Agreement;

(o) provide that the Sellers are authorized to consummate the transactions contemplated by this Agreement and to comply in all respects with the terms of this Agreement;

(p) be made expressly binding (based upon language reasonably satisfactory to the Purchaser) upon any trustee or other estate representative in the event of conversion of the Chapter 11 Case to Chapter 7 of the Bankruptcy Code, or upon appointment of a Chapter 11 trustee in the Chapter 11 Case;

(q) enjoin assertion of any Excluded Liabilities against the Purchaser or any of its Affiliates or any assignees, designees, transferees or successors thereof or against any of the Acquired Assets; and

(r) order that, notwithstanding the provisions of Federal Rules of Bankruptcy Procedures 6004(h) and 6006(d), the Sale Order is not stayed and is effective immediately upon entry.

Section 5.9. Cooperation with Respect to Bankruptcy Court Approvals. The Purchaser shall take such actions as are reasonably requested by the Sellers to assist in obtaining entry by the Bankruptcy Court of the Bidding Procedures Order and the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes of, among other things: (a) demonstrating that the Purchaser is a "good faith" purchasers within the meaning of Section 363(m) of the Bankruptcy Code; and (b) establishing "adequate assurance of future performance" within the meaning of Section 365 of the Bankruptcy Code.

Section 5.10. Non-Solicitation of Competing Bids. Except in connection with marketing the sale of the Acquired Assets to Potential Bidders (as defined in the Bidding Procedures) in accordance with the Bidding Procedures Order (once entered by the Bankruptcy Court), the Sellers shall not, and shall cause their Representatives, Affiliates, and their Affiliate's Representatives not to, (i) solicit, negotiate or discuss with any Person (other than BH, the Purchaser and their respective Affiliates, agents and Representatives) (and the Sellers shall, and shall cause their Representatives, Affiliates, and their Affiliate's Representatives, to cease immediately any such ongoing activity), or enter into any agreement or understanding with respect to, or approve or recommend, or knowingly facilitate, any sale, transfer or disposition, directly or indirectly, whether by means of an asset sale or otherwise, of any material assets of the Sellers used in the conduct of the Business, any sale of stock, equity or voting interests in any of the Sellers, any merger, amalgamation, reorganization, restructuring, plan of reorganization, liquidation or refinancing, or any other extraordinary corporate transaction directly or indirectly involving the Sellers or a material portion of the Sellers' liabilities (any such transaction, an "Alternative Transaction") or (ii) provide any Person (other than BH, the Purchaser and their respective Affiliates, agents and Representatives) with access to the books, records, operating data, contracts, documents or other information relating to the Sellers. The Sellers shall promptly (and in any event within twenty-four (24) hours) notify BH and the Purchaser of any inquiry, indication of interest, proposal or offer from a third party with respect to an Alternative Transaction received by the Sellers or any of their Affiliates or its or their employees or Representatives after the date hereof until the Bankruptcy Court shall have entered the Bidding Procedures Order, and the Sellers shall communicate to BH and the Purchaser the material terms of, including the identity of the Person or Persons making, any such inquiry, indication of interest, proposal or offer. The Sellers shall immediately instruct any Person in possession of confidential information about the Sellers that was furnished by or on behalf of the Sellers in connection with any actual or potential Alternative Transaction to return or destroy all such information or documents or material incorporating such information in accordance with the confidentiality or similar agreement governing treatment of such confidential information. The Sellers shall not be deemed to have violated or breached their obligations set forth in the first sentence of this Section 5.10 solely as a result of their receipt, without engaging in any of the conduct prohibited by such sentence, of an unsolicited Alternative Transaction proposal.

Section 5.11. Bankruptcy Court Filings. The Sellers shall consult with the Purchaser concerning the Bidding Procedures Order, the Sale Order and any other Orders of the Bankruptcy Court relating to the transactions contemplated herein, and the bankruptcy proceedings in connection therewith, and provide BH and the Purchaser with copies of any material applications, pleadings, notices, proposed Orders and other documents to be filed by the Sellers in the Chapter 11 Case that relate in any way to this Agreement, the Acquisition, the Bidding Procedures, BH or the Purchaser at least two (2) Business Days prior to the making of any such filing or submission to the Bankruptcy Court. The Sellers shall provide BH and the Purchaser with prompt notice of (A) the filing or any objection to (or any threat or notice of intention of any Person to file any objection to) this Agreement, the Acquisition, the Bidding Procedures, BH or the Purchaser or (B) the commencement of (or any threat or notice of intention of any Person to commence), any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, that relates in any way to this Agreement, the Acquisition, the Bidding Procedures, BH or the Purchaser.

Section 5.12. Not a Back Up Bidder. The Bidding Procedures shall exclude the Purchaser from any obligation to act as a Backup Bidder (as defined in the Bidding Procedures) following the Auction (if any) in the event that the Purchaser is not selected as the Successful Bidder.

Section 5.13. Communications with Customers and Suppliers. Prior to the Closing, BH and the Purchaser shall not, and shall cause their respective Affiliates and Representatives not to, contact, or engage in any discussions or otherwise communicate with, the Sellers' customers, suppliers, licensors, licensees and other Persons with which the Sellers have material commercial dealings without obtaining the prior consent (not to be unreasonably withheld, conditioned or delayed) of the Sellers (other than (i) any such communication in the ordinary course of business of BH, the Purchaser or their Affiliates not initiated for a purpose related to the Business, the Acquired Assets, the Assumed Liabilities or the transactions contemplated by this Agreement and whereby neither BH nor the Purchaser communicates any nonpublic proprietary information related to the Business, the Acquired Assets or the Assumed Liabilities, or (ii) any communication by BH or the Purchaser, acting in good faith, with the suppliers or manufacturers of the Sellers to the extent related to integration planning).

Section 5.14. Employee Matters.

(a) The Sellers shall cause to be paid in the ordinary course of business (but in no event later than the Closing) to all Transferred Employees (i) who are eligible for any Benefit Plan that is a sales incentive plan, the full amount of any unpaid sales incentive bonuses accrued for such Transferred Employees in respect of the fourth quarter of 2018 and payable to such Transferred Employees pursuant to the applicable Benefit Plan, or (ii) who are eligible for any Benefit Plan that is an annual bonus plan, the full amount of any annual bonuses payable to such Transferred Employees under the applicable Benefit Plan in respect of 2018, if any. As of the Closing, the Sellers shall cause to be paid to all Transferred Employees: (1) the full amount of any unused paid time off/vacation/sick time of each such Transferred Employee that is accrued on the books and records of the Sellers through the Closing; and (2) any retention bonuses otherwise payable to any such Transferred Employees under an applicable Benefit Plan. The Sellers shall adopt, in the ordinary course consistent with past practice and in consultation with

BH, reasonable sales targets that relate to the first calendar quarter of 2019 for purposes of the Benefit Plans that are sales incentive plans. At Closing, the Sellers shall deliver to BH a schedule setting forth, for each Transferred Employee who participates in a Benefit Plan that is a sales incentive plan, each unpaid sales incentive bonus accrued for such Transferred Employee in accordance with the applicable Benefit Plan in respect of the period from January 1, 2019 through the Closing Date (each, a "Q1 2019 Sales Bonus"). BH shall cause each Q1 2019 Sales Bonus to be paid to the applicable Transferred Employee no later than May 15, 2019, subject to the applicable Transferred Employee's continued employment with BH and its Affiliates through the applicable payment date.

(b) BH or one of its Affiliates shall use their reasonable best efforts to provide an offer of employment to such number of individuals employed by the Sellers ("Business Employees") set forth on Section 5.14(b) of the Seller Disclosure Schedule (the employees identified to Sellers by BH or its Affiliates to receive such offers, the "Offer Employees"), in the same position the Business Employee held as of the date of such employment offer, such offer to be made no more than three (3) Business Days following the Auction (a "BH Offer"). Each offer of employment shall provide that employment with BH or one of its Affiliates shall commence effective as of the Closing, subject to the Offer Employee's continued employment with Sellers through the Closing and conditioned upon the Closing. Each Offer Employee who accepts the offer of employment delivered pursuant to this Section 5.14(b) shall be deemed a "Transferred Employee" as of the Closing.

(c) During the period commencing on the Closing Date and ending on the first anniversary thereof, BH shall or shall cause one of its Affiliates to provide each Transferred Employee with (i) a wage rate or base salary that is no less favorable than that in effect for such Transferred Employee immediately prior to the Closing, (ii) a target annual bonus opportunity that is no less favorable than that provided to the Transferred Employee prior to the Closing, and (iii) employee benefits (excluding equity incentive compensation and severance) that are, in the aggregate, no less favorable than those in effect for similarly situated employees of BH and its Subsidiaries.

(d) BH shall, or shall cause one of its Subsidiaries to, provide to each Transferred Employee full credit for such Transferred Employee's service with the Sellers or any of their respective Affiliates prior to the Closing for all purposes, including for purposes of eligibility, vesting, benefit accruals and determination of the level of benefits (including vacation, severance and retirement benefits, but excluding equity incentives), under any benefit plan of BH or its Subsidiaries in which such Transferred Employee participates on or following the Closing (the "New Plans") to the same extent recognized by the Sellers or any of their respective Affiliates immediately prior to the Closing; *provided*, that such service shall not be recognized (i) to the extent that such recognition would result in a duplication of benefits or coverage, (ii) with respect to any New Plan that provides defined benefit pension or post-retirement welfare benefits, or (iii) with respect to any New Plan that is grandfathered or frozen or under which similarly situated employees of BH and its Subsidiaries do not receive service credit. In addition, and without limiting the generality of the foregoing, (A) for purposes of each New Plan providing medical, dental, pharmaceutical or vision benefits to any Transferred Employee, BH or its applicable Subsidiary shall use its commercially reasonable efforts to cause all pre-existing condition exclusions and actively-at-work requirements of such New Plan to be

waived for such Transferred Employee and his or her covered dependents, unless such conditions would not have been waived under the equivalent Benefit Plan in which such Transferred Employee participated immediately prior to the Closing (such Benefit Plans collectively, the "Old Plans") and (B) BH or its applicable Subsidiary shall use commercially reasonable efforts to cause any eligible expenses incurred by such Transferred Employee and his or her covered dependents during the portion of the plan year of the Old Plan ending on the date such employee's participation in the corresponding New Plan begins to be taken into account under such New Plan for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Plan. Sellers will, or will cause the applicable Benefit Plan provider to, provide to BH or its applicable Subsidiary or its group health plan provider on, or as promptly as practicable following, the Closing Date, all information required by BH and its group health plan provider to (1) ensure health, dental and vision plan administration in compliance with this Section 5.14(d), and (2) comply with the obligations of BH and its Subsidiaries under Section 4980B of the Code, Sections 601 through 608 of ERISA, and any similar applicable state Law (collectively, "COBRA") to provide group health plan coverage to current and former employees of Sellers (and their beneficiaries) who constitute "M&A qualified beneficiaries" within the meaning of the COBRA regulations.

(e) At least ten (10) days prior to the Auction, BH or its Affiliate shall provide a list to Seller setting forth (i) the name of each Offer Employee and (ii) for any Offer Employee whose offer of employment from BH or its Affiliate is not expected to provide for employment in the same facility or location in which such employee worked prior to the applicable offer of employment (or for a sales employee, is not expected to cover the same sales territory that the sales employee covered immediately prior to the applicable offer of employment), the new facility, location or sales territory being offered by BH or its Affiliate to such Offer Employee. With respect to any Business Employee who is not identified by BH and its Affiliates as an Offer Employee or who is identified as a WARN Relocation Employee, the Sellers shall, in each case to the extent required by the WARN Acts, provide written notice of termination of employment (in a form and manner compliant with the WARN Acts to the extent possible), within three (3) Business Days following the conclusion of the Auction (or if no Auction occurs, within three (3) Business Days following the bid deadline established by the Bidding Procedures).

(f) Nothing in this Section 5.14 shall constitute or be construed (i) as an amendment, termination or other modification of any employee benefit or compensation plan or arrangement, or a restriction or other limitation on the right of any party hereto to amend, terminate or otherwise modify any such plans or arrangements, (ii) as a guarantee of employment for any period, or a restriction or other limitation on the right of any party hereto to terminate the employment of any individual at any time, or (iii) to create any third party rights in any Person other than the direct parties to this Agreement, including any current or former service provider of the Sellers (or any beneficiaries or dependents thereof).

Section 5.15. Parent Confidentiality Agreements; Post-Closing Confidentiality.

(a) Sellers and BH hereby agree that the Confidentiality Agreement shall terminate, and no party shall have any further obligations thereunder, effective concurrently with the Closing.

(b) Effective at the Closing, the Parent hereby assigns to the Purchaser the rights under the Parent Confidentiality Agreements to enforce the non-use, non-disclosure and return or destruction of "Confidential Information" (as such term is defined in the Parent Confidentiality Agreements) to the extent related to the Business, the Acquired Assets and the Assumed Liabilities and the non-solicitation provisions with respect to the Transferred Employees; *provided*, that the Parent retains all other rights and remedies thereunder.

(c) For a period of ten (10) years following the Closing Date, the Sellers shall not, and shall cause their Affiliates and their respective directors and officers not to, disclose to any Person other than the directors, officers, employees and authorized representatives of the Purchaser and its Affiliates, or use or otherwise exploit for their benefit, any Confidential Information, except (i) pursuant to any Order, as required in any Action or as otherwise required by applicable Law, (ii) to enforce its rights and remedies under this Agreement or (iii) disclosure of Confidential Information in connection with the Chapter 11 Case shall not constitute a breach of this Section 5.15(c); *provided*, *however*, that in the event disclosure is required by applicable Law or in connection with the Chapter 11 Case, the Sellers shall, to the extent reasonably possible, provide the Purchaser with prompt notice of such requirement prior to making any disclosure so that the Purchaser may seek at its own cost and expense an appropriate protective order. "Confidential Information" shall mean any proprietary or confidential information to the extent related to the Business, the Acquired Assets or the Assumed Liabilities, excluding any information that (x) is (as of the Closing Date) or becomes generally available to the public other than as a result of a breach of this Section 5.15(c) or (y) becomes available to the Sellers, their Affiliates or their respective directors and officers after the Closing Date on a non-confidential basis from a source other than BH, the Purchaser or their Affiliates, provided that such source is not bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to BH, the Purchaser or their Affiliates or any other person with respect to such information.

Section 5.16. Payments Received. The Sellers and the Purchaser each agree that after the Closing they will hold and will promptly transfer and deliver to the other, from time to time as and when received by them or their respective Affiliates, any cash, checks with appropriate endorsements (using their best efforts not to convert such checks into cash) or other property that they may receive on or after the Closing which properly belongs to the other party hereto or its Affiliates and will account to the other for all such receipts.

Section 5.17. Use of Names and Marks. The Purchaser and its Affiliates acknowledge and agree that, notwithstanding the transfer of Intellectual Property included in the Acquired Assets, (a) the Sellers will continue using their current corporate names during the pendency of the Chapter 11 Case and any additional time during which the Sellers wind down their affairs, and (b) the Sellers shall be entitled to refer to names and marks included in the Acquired Assets in filings with Governmental Entities, for factual or historical reference and for any other

purposes that do not constitute trademark infringement and are not otherwise prohibited by applicable Law.

Section 5.18. NDC Code.

(a) To the extent not transferred as part of the Acquired Assets, the Sellers hereby grant, effective as of the Closing Date, to the Purchaser (and the Purchaser's Affiliates) a royalty-free, paid-up license under the Sellers' NDC numbers used in connection with the Business to the extent necessary to allow the Purchaser and its Affiliates and their designees to market, distribute and sell the inventory acquired as part of the Acquired Assets.

(b) To the extent necessary to enable the Sellers to comply with U.S. Government Pricing and Compliance submission requirements related to the Acquired Assets, the Purchaser shall use its reasonable best efforts to provide to the Sellers the following information: (i) within twenty-five (25) days after the end of each calendar quarter, (A) the Non-Federal Average Manufacturer's Price for each Product identified by NDC, (B) the "average manufacturer price" (as defined under the Social Security Act, 42 U.S.C. Sections 1396r-8(k)(l)) and units for each Product identified by NDC and (C) the "best price" (as defined under the Social Security Act, 42 U.S.C. Sections 1396r-8(c)(1)(C)) for each Product identified by NDC, (ii) within twenty-five (25) days after the end of each calendar month, the "average manufacturer price" (as defined under the Social Security Act, 42 U.S.C. Sections 1396r-8(k)(l)) and units for each Product identified by NDC and (iii) any other information reasonably requested by the Sellers to allow the Sellers to comply with such requirements, and, in each case, a certification to the best of the Purchaser's knowledge of the accuracy and completeness thereof (subject to any updates of the information included in such certification) in all material respects, within ten (10) days after BH publicly announces its quarterly financial results; *provided*, that the Purchaser's obligations pursuant to this Section 5.18(b) shall expire thirty (30) days after the end of the calendar quarter in which the Purchaser suspends its usage of the Sellers' NDC numbers in connection with the Business.

Section 5.19. Transfer of Regulatory Matters. As promptly as practicable after the Closing, Sellers and the Purchaser shall file with the FDA and any other applicable Governmental Entity the notices and information required pursuant to any applicable regulation or requirement to transfer the Regulatory Authorizations from the Sellers to the Purchaser. The parties also agree to use all commercially reasonable efforts to take any and all other actions required by the FDA and any other applicable Governmental Entity to effect the transfer of the Regulatory Authorizations from the Sellers to the Purchaser.

Section 5.20. Takeover Statutes. The Parent shall use its reasonable best efforts (a) to take all action necessary so that no Takeover Statute is or becomes applicable to the Acquisition, and (b) if any such Takeover Statute is or becomes applicable, to take all action necessary so that the Acquisition may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise to eliminate or minimize the effect of such Takeover Statute on the Acquisition.

Section 5.21. Reporting. The Sellers shall (x) deliver to the Purchaser substantially contemporaneously with its delivery to the administrative agent under the DIP Facility, all

weekly cash-flow, variance and similar financial reporting required under the DIP Facility, as well as a report setting forth the inventory level (segregated by inventory category) and (y) use their reasonable best efforts to deliver to Purchaser such additional financial information with respect to the Business and the Sellers, and on such periodic basis, as may reasonably be requested by the Purchaser.

Section 5.22. Additional Actions. None of the Sellers, BH or the Purchaser will file any pleading or take any other action in the Bankruptcy Court with respect to this Agreement or the consummation of the transactions contemplated hereby that is inconsistent with performing and carrying out the provisions of this Agreement in accordance with the terms and subject to the conditions herein; *provided*, *however*, that nothing contained in the foregoing will be construed to limit in any way BH or the Purchaser's rights under this Agreement, or to limit BH, the Purchaser's or the Sellers' rights to advocate for the approval of this Agreement and against any Alternative Transaction.

Section 5.23. Minimum Inventory Purchases. If, at any time during the thirty (30) days prior to the anticipated Closing Date, either Sellers, on the one hand, or BH or the Purchaser (as communicated in writing by BH or the Purchaser to the Sellers), on the other hand, reasonably believes that the amount of active pharmaceutical ingredient for the Trulance Product ("API") that will be in Inventory as of the Closing Date is less than 30.0 kilograms (the "Minimum API Quantity"), then the Sellers shall, prior to the Closing Date, purchase API up to the lesser of (x) the total amount of API held by third-party logistics warehouses and (y) the amount of API required to hold the Minimum API Quantity as of the Closing Date. If requested by BH or the Purchaser, the Sellers shall, prior to the Closing, deliver to BH and the Purchaser evidence reasonably satisfactory to BH and the Purchaser that such purchase has been made. If, at any time prior to the Closing Date, BH or the Purchaser requests in writing that the Sellers order API (including requesting delivery of existing API or placing orders for new API with the Sellers' API supplier), then (x) the Sellers will promptly make such order in the quantity requested by BH or the Purchaser (consistent with the rights of the Sellers to place such order with the Sellers' API supplier) and (y) the Cash Consideration will, at the time the Sellers make any cash payment to the Sellers' API supplier pursuant to this sentence (which will not exceed, in the case of existing API requested for delivery up to 70% of the original price therefor (not including any prepayments), and in the case of newly ordered API up to 30% of the price therefor) be automatically increased by the amount of such cash payment.

Section 5.24. DIP Facility.

(a) Each Seller shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, advisable or proper to obtain the DIP Facility, including using reasonable best efforts to: (i) negotiate and enter into the DIP Loan Documents prior to December 21, 2018; (ii) maintain in effect and enforce the DIP Facility Term Sheet and each DIP Loan Document and comply with its obligations thereunder; and (iii) satisfy on a timely basis and in a manner that will not impede the ability of the parties to consummate the Acquisition promptly at the Closing all conditions to the funding of the DIP Facility set forth in the DIP Facility Term Sheet (it being understood that all conditions to funding the DIP Facility are set forth therein). The Sellers shall give BH and the

Purchaser prompt notice upon obtaining knowledge of any fact, change, event or circumstance with respect to the DIP Facility that, individually or in the aggregate, could reasonably lead to an event of default under, or failure to fund all or any portion of, the DIP Facility, or materially impair or materially delay the Closing.

(b) The Sellers shall neither agree to nor permit any termination, amendment, replacement, supplement or other modification of, or waiver of any of its rights under, the DIP Facility Term Sheet or the DIP Loan Documents, without the prior written consent of BH and the Purchaser (not to be unreasonably withheld, conditioned or delayed).

(c) If all or any portion of the DIP Facility becomes unavailable, or any of the DIP Facility Term Sheet or the DIP Loan Documents shall be withdrawn, repudiated, terminated or rescinded for any reason, then the Sellers shall use their reasonable best efforts to arrange and obtain, as promptly as practicable, from the same and/or alternative financing sources, alternative financing and on terms, taken as a whole, not less favorable to BH and the Purchaser than the terms, taken as a whole, of the DIP Facility.

ARTICLE VI

CONDITIONS PRECEDENT

Section 6.1. Conditions Precedent to Obligation of the Sellers, BH and the Purchaser. The respective obligations of each party hereto to effect the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of the following conditions:

(a) *Approvals.* Any waiting period (and extensions thereof) applicable to the Acquisition under the HSR Act shall have expired or been terminated and any other required approvals, consents or clearances under any Antitrust Laws shall have been obtained; and

(b) *No Orders.* No Governmental Entity of competent jurisdiction shall have enacted, enforced or entered any Law and no Order shall be in effect on the Closing Date that prohibits the consummation of the Closing.

Section 6.2. Conditions Precedent to Obligation of the Sellers. The obligation of the Sellers to effect the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver (to the extent permitted by applicable Law) by the Sellers at or prior to the Closing of the following conditions:

(a) *Representations and Warranties*. The representations and warranties of BH and the Purchaser contained in this Agreement shall be true and correct (disregarding any exception or qualification in such representations and warranties relating to "material" or "materiality") as of the date hereof and as of the Closing Date as if made at and as of such date (except to the extent such representations and warranties speak as of another date, in which case such representations and warranties shall be true and correct as of such other date), except where the failure of such representations and warranties to be so true and correct (disregarding any exception or qualification in such representations and warranties relating to "material" or

"materiality") has not and would not reasonably be expected to, individually or in the aggregate, materially impair or materially delay BH's or the Purchaser's ability to perform their respective obligations under this Agreement or to consummate the transactions contemplated hereby;

(b) *Covenants*. The covenants and obligations of BH and the Purchaser to be performed or complied with at or prior to the Closing pursuant to this Agreement shall have been duly performed and complied with in all material respects;

(c) *Sale Order*. The Bankruptcy Court shall have entered the Sale Order and such Order shall not have been stayed as of the Closing Date, stayed pending appeal, reversed or vacated; and

(d) *Officer's Certificates*. BH and the Purchaser shall have delivered to the Sellers a certificate duly executed by an authorized officer of BH and the Purchaser certifying to the effect that the conditions set forth in Section 6.2(a) and Section 6.2(b) have been satisfied.

The foregoing conditions are for the benefit of the Sellers only and accordingly the Sellers will be entitled to waive compliance with any such conditions if they see fit to do so, without prejudice to rights and remedies at Law and in equity and also without prejudice to any rights of termination or otherwise in the event of the failure to fulfill any other conditions in whole or in part.

Section 6.3. Conditions Precedent to Obligation of BH and the Purchaser. The obligation of BH and the Purchaser to effect the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver (to the extent permitted by applicable Law) by BH and the Purchaser at or prior to the Closing of the following conditions:

(a) *Representations and Warranties*. (i) The representations and warranties of the Sellers contained in Sections 3.1, 3.2, 3.6(b) and 3.8 shall be true and correct in all material respects (disregarding any exception or qualification in such representations and warranties relating to "material," "materiality" or "Material Adverse Effect") as of the date hereof and as of the Closing Date as if made at and as of such date (except to the extent such representations and warranties speak as of another date, in which case such representations and warranties shall be true and correct as of such other date); (ii) the representations and warranties of the Sellers contained in Section 3.7(b) shall be true and correct in all respects as of the date hereof and as of the Closing Date as if made at and as of such date; and (iii) each of the other representations and warranties of the Sellers contained in this Agreement (other than those representations and warranties specified in clauses (i) and (ii) above) shall be true and correct in all respects (disregarding any exception or qualification in such representations and warranties relating to "material," "materiality" or "Material Adverse Effect") as of the date hereof and as of the Closing Date as if made at and as of such date (except to the extent such representations and warranties speak as of another date, in which case such representations and warranties shall be true and correct as of such other date), except where the failure of such representations and warranties in this clause (iii) to be so true and correct (disregarding any exception or qualification in such representations and warranties relating to "material," "materiality" or "Material Adverse Effect") has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) *Covenants*. The covenants and obligations of the Sellers to be performed or complied with at or prior to the Closing pursuant to this Agreement shall have been duly performed and complied with in all material respects;

(c) *Assigned Contracts.* The Sellers shall have assigned to the Purchaser the Assigned Contracts set forth on Section 6.3(c) of the Seller Disclosure Schedule, subject to the Purchaser's provisions of adequate assurance of future performance as required under Section 365 of the Bankruptcy Code;

(d) *Sale Order*. The Bankruptcy Court shall have entered the Sale Order substantially in the form of Exhibit E attached hereto or otherwise in form and substance reasonably acceptable to BH and the Purchaser, and such Order (i) shall not have been stayed as of the Closing Date, stayed pending appeal, reversed or vacated and (ii) shall not have been amended, supplemented or otherwise modified in any manner materially adverse to BH or the Purchaser;

(e) *Inventory Levels*. As of the Closing Date, (w) the Parent shall have at least 62,302 finished packs (trade) of the Trulance Product in Inventory, (x) the Parent shall have at least 3,380,000 pills (drug product) of the Trulance Product in Inventory, (y) the Parent shall have at least the Minimum API Quantity in Inventory, and (z) the Parent shall have at least 55,000 finished packs (samples) of the Trulance Product in Inventory.

(f) *Officer's Certificates*. Each of the Sellers shall have delivered to BH and the Purchaser a certificate duly executed by an executive officer of each Seller certifying to the effect that the conditions set forth in Section 6.3(a), Section 6.3(b), and Section 6.3(e) have been satisfied.

The foregoing conditions are for the benefit of BH and the Purchaser only and accordingly BH and the Purchaser will be entitled to waive compliance with any such conditions if they see fit to do so, without prejudice to any rights and remedies at Law and in equity and also without prejudice to any of rights of termination or otherwise in the event of the failure to fulfill any other conditions in whole or in part.

Section 6.4. Concurrent Delivery. It shall be a condition of the Closing that all matters of payment and the execution and delivery of documents, in each case, at Closing by any party to the other pursuant to the terms of this Agreement shall be concurrent requirements and that nothing will be complete at the Closing until everything required as a condition precedent to the Closing has been paid, executed and delivered, as the case may be.

ARTICLE VII

TERMINATION

Section 7.1. Termination.

(a) This Agreement may be terminated by either the Purchaser or the Sellers in the event that the Closing has not occurred on or before the date that is ninety (90) days after the date of this Agreement, or such later date as may be mutually agreed in writing by the parties

(the "Outside Date"); *provided*, *however*, that if as of such date all conditions to the Closing set forth in Article VI shall have been satisfied or waived or shall be capable of being satisfied at the Closing (but subject to the satisfaction or waiver at or prior to the Closing of all such conditions), except for Section 6.1(a) or, solely in respect of the HSR Act, Section 6.1(b), then, the Purchaser or the Parent (on behalf of the Sellers) may, by written notice to the other party, extend such date to the date that is one hundred twenty (120) days after the date of this Agreement; *provided, further,* that the right to terminate this Agreement pursuant to this Section 7.1(a) shall not be available to any party whose failure to materially perform any of its obligations under this Agreement required to be performed by it at or prior to the Closing results in the failure of the Closing to occur prior to such date.

(b) This Agreement may also be terminated prior to the Closing:

(i) at any time by the mutual written agreement of the Purchaser and the Sellers;

(ii) by the Purchaser, if (x) there shall have been a breach of any of the covenants or agreements or any of the representations or warranties set forth in this Agreement on the part of the Sellers which breach, either individually or in the aggregate with other breaches by the Sellers, would result in, if occurring or continuing on the Closing Date, the failure of the conditions set forth in Section 6.3(a) or Section 6.3(b), as the case may be, or (y) there has been any material breach by the Sellers of the Bidding Procedures Order or the Sale Order, in each case which is not cured within ten (10) Business Days following written notice to the Sellers thereof (and in any event prior to the Outside Date) or which by its nature or timing cannot be cured within such time period (*provided*, that neither BH nor the Purchaser is then in material breach of any of the covenants, agreements, representations or warranties set forth in this Agreement on the part of BH or the Purchaser);

(iii) by the Sellers, if (x) there shall have been a breach of any of the covenants or agreements or any of the representations or warranties set forth in this Agreement on the part of BH or the Purchaser which breach, either individually or in the aggregate with other breaches by BH and the Purchaser, would result in, if occurring or continuing on the Closing Date, the failure of the conditions set forth in Section 6.2(a) or Section 6.2(b), as the case may be, or (y) there has been any material breach by BH or the Purchaser of the Bidding Procedures Order or the Sale Order, in each case which is not cured within ten (10) Business Days following written notice to BH and the Purchaser thereof (and in any event prior to the Outside Date) or which by its nature or timing cannot be cured within such time period (*provided*, that the Sellers are not then in material breach of any of the covenants, agreements, representations or warranties set forth in this Agreement on the part of the Sellers);

(iv) by the Purchaser, if the Sellers shall fail to file any of the DIP Motion, the Sale Motion or the Bidding Procedures Motion with the Bankruptcy Court on or prior to December 12, 2018;

(v) by the Purchaser, if the Sellers shall fail to file the Chapter 11 Case on or prior to December 12, 2018;

(vi) by the Purchaser, if the Chapter 11 Case is dismissed or converted to a liquidation proceeding under Chapter 7 of the Bankruptcy Code;

(vii) by the Purchaser, if the Bankruptcy Court enters any Order materially inconsistent with the Bidding Procedures Order, the Sale Order or the Acquisition;

(viii) by either the Sellers or the Purchaser, if a Governmental Entity issues a final, non-appealable ruling or Order permanently prohibiting the transactions contemplated hereby; *provided*, *however*, that the right to terminate this Agreement pursuant to this Section 7.1(b)(viii) shall not be available to any party whose breach of any of its representations, warranties, covenants or agreements contained herein results in such ruling or Order;

(ix) by the Purchaser, if any creditor of any Seller obtains a final and unstayed Order of the Bankruptcy Court granting relief from the stay to foreclose on any portion of the Acquired Assets;

(x) by either the Sellers or the Purchaser, if the Auction has occurred and the Purchaser is not the Successful Bidder;

(xi) by the Purchaser, if the Purchaser is the Successful Bidder and the Sale Hearing has not been commenced on or prior to February 15, 2019; *provided* that the failure of the Sale Hearing to commence on or prior to such time is not caused by the Purchaser's material breach of this Agreement or the Court's calendar;

(xii) by the Purchaser, if the Bankruptcy Court has not entered the Bidding Procedures Order, including approval of the Break-Up Fee and Expense Reimbursement Amount, by January 4, 2019, or if the Bidding Procedures Order has been entered by such date but is stayed, stayed pending appeal, reversed or vacated, or if such Bidding Procedures Order has been entered by such date but has been amended, supplemented or otherwise modified in any manner materially adverse to BH or the Purchaser;

(xiii) by the Purchaser, if the bid deadline has not occurred by February 9, 2019, or if the Auction is not held by February 12, 2019;

(xiv) by the Purchaser, if the Bankruptcy Court has not entered the Sale Order approving the Acquisition by Purchaser by February 15, 2019, or if such Sale Order has been entered by such date but is stayed or stayed pending appeal or has been reversed or vacated, or if such Sale Order has been entered by such date but has been amended, supplemented or otherwise modified in a manner materially adverse to BH and the Purchaser and without the prior written consent of the Purchaser;

(xv) by the Purchaser, if (A) the Bankruptcy Court fails to enter the Final DIP Order on or before January 15, 2019 and such failure results in an unwaived and uncured event of default under the DIP Facility or (B) the DIP Facility Term Sheet or the DIP Facility shall have been terminated, the DIP Lenders shall have refused to advance funds on account of the failure of any condition precedent thereto or the principal amount of the loans

thereunder shall be (or shall be asserted by the lenders thereunder to be) due and payable at any time on or prior to the Closing; or

(xvi) by the Purchaser, at any time prior to the end of the Auction (or if no Auction occurs, the Closing Date), if BH or the Purchaser determines in its good faith judgment that there is a reasonable possibility of losing continuous access to supply under, and delivery to the Sellers (prior to the Closing) or to BH and the Purchaser (after the Closing) of the goods and services purchased under, the Contracts set forth on Section 7.1(b)(xvi) of the Seller Disclosure Schedule.

For the avoidance of doubt, the parties acknowledge and agree, that in the event that the Sellers determine, in their reasonable discretion, that the last Overbid (as defined in the Bidding Procedures) submitted by the Purchaser is better than all other Qualified Bids (as defined in the Bidding Procedures) as such Qualified Bids may be amended by an Overbid submitted at the Auction, then within two (2) Business Days following the conclusion of the Auction, the Sellers, BH and the Purchaser shall enter into an amendment to this Agreement to reflect the Purchaser's last Overbid; it being acknowledged and agreed that this Agreement shall not be deemed to have been terminated by virtue of the Purchaser's not having submitted the winning bid at the Auction.

Section 7.2. Effect of Termination.

(a) Except as otherwise provided in this Section 7.2, in the event of termination of this Agreement by either party hereto in accordance with Section 7.1, all rights and obligations of the parties under this Agreement shall terminate without any liability of any party to any other parties hereto, except for liability for fraud or intentional breach of this Agreement prior to such termination. The provisions of Section 1.6(b)(ii), Section 1.6(b)(iii), Section 5.12, this Section 7.2 and Article VIII (other than Section 8.1, Section 8.2 and Section 8.3) shall expressly survive the termination of this Agreement.

(b) In consideration of the Purchaser and its Affiliates having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Acquired Assets, and to compensate the Purchaser as a stalking-horse bidder, and regardless of whether or not the Purchaser makes any matching or competing bids at the Auction, the Sellers shall pay to the Purchaser a break-up fee in an amount equal to seven million dollars ($7,000,000) (the "Break-Up Fee"), (x) in the event that this Agreement is terminated pursuant to Section 7.1(b)(ii) or Section 7.1(b)(x) and (y) in the event that this Agreement is otherwise terminated pursuant to Section 7.1(a), Section 7.1(b)(iv), Section 7.1(b)(v), Section 7.1(b)(vi), Section 7.1(b)(vii), Section 7.1(b)(ix), Section 7.1(b)(xi), Section 7.1(b)(xii), Section 7.1(b)(xiii), Section 7.1(b)(xiv), or Section 7.1(b)(xv), and within nine (9) months following the termination of this Agreement (1) any Seller enters into a definitive agreement with respect to an Alternative Transaction or (2) an Alternative Transaction shall have been consummated (each of the foregoing clauses (1) and (2), an "Alternative Transaction Trigger"); such Break-Up Fee shall be due and payable (A) (i) simultaneously with any termination of this Agreement by the Sellers, or (ii) within three (3) Business Days after the termination of this Agreement by BH or the Purchaser, in the case of the foregoing clause (x), and (B) simultaneously with the earliest to

occur of any Alternative Transaction Trigger in the case of the foregoing clause (y). The Break-Up Fee shall, subject to Bankruptcy Court approval, be treated as an administrative expense in the Chapter 11 Case under Section 503(b)(1)(A) and Section 507(a)(2) of the Bankruptcy Code. The Sellers acknowledge and agree that: (i) the approval of the Break-Up Fee is an integral part of the transactions contemplated by this Agreement; (ii) in the absence of the Sellers' obligation to pay the Break-Up Fee, BH and the Purchaser would not have entered into this Agreement; (iii) the entry of BH and the Purchaser into this Agreement is necessary for preservation of the estate of the Sellers and is beneficial to the Sellers because, in the Sellers' business judgment, it will enhance the Sellers' ability to maximize the value of their assets for the benefit of their creditors and other stakeholders; (iv) the Break-Up Fee is reasonable in relation to the Purchaser's costs and efforts and to the magnitude of the transactions contemplated hereby and the Purchaser's lost opportunities resulting from the time spent pursuing the transactions contemplated hereby; and (v) time is of the essence with respect to the entry of the Bidding Procedures Order by the Bankruptcy Court, approving, among other things, the process by which bids may be solicited, including the Bidding Procedures. For the avoidance of doubt, the Break-Up Fee, if payable pursuant to this Section 7.2(b), shall be in addition to the return of the Deposit Funds and payment of the Expense Reimbursement Amount, in each case, to the extent payable to the Purchaser pursuant to Section 1.6(b)(iii) and Section 7.2(c), respectively.

(c) In consideration of the Purchaser and its Affiliates having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Acquired Assets, upon any termination of this Agreement, other than any termination by the Sellers pursuant to Section 7.1(b)(i) or Section 7.1(b)(iii) (unless at the time of any such termination the Purchaser would have been entitled to terminate this Agreement pursuant to Section 7.1(a) or Section 7.1(b)) the Seller shall pay to the Purchaser the Expense Reimbursement Amount within five (5) Business Day after the termination of this Agreement. The Sellers acknowledge and agree that (A) the payment of the Expense Reimbursement Amount is an integral part of the transactions contemplated by this Agreement, (B) in the absence of the Sellers' obligation to make this payment, the Purchaser would not have entered into this Agreement, (C) the damages resulting from termination of this Agreement under circumstances where the Purchaser is entitled to the Expense Reimbursement Amount are uncertain and incapable of accurate calculation and that the delivery of the Expense Reimbursement Amount to the Purchaser is not a penalty, but rather shall constitute a reasonable amount that will compensate the Purchaser in the circumstances where the Purchaser is entitled to the reimbursable expenses for the efforts and resources expended and opportunities forgone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummating of the transactions contemplated thereby, and that, without these agreements, the Purchaser would not enter into this Agreement; (D) time is of the essence with respect to the payment of the Expense Reimbursement Amount and (E) the Expense Reimbursement Amount shall, subject to Bankruptcy Court approval, constitute an administrative expense of the Sellers' estates under Sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code. For the avoidance of doubt, the Expense Reimbursement Amount, if payable pursuant to this Section 7.2(c), shall be in addition to the Deposit Funds and the Break-Up Fee, in each case, to the extent payable to the Purchaser pursuant to Section 1.6(b)(iii) and Section 7.2(b), respectively.

(d) Notwithstanding Section 7.2(a), the Purchaser's right to receive the one-time payment of the Break-Up Fee and/or the Expense Reimbursement Amount (as the case may be) from the Sellers as provided in Section 7.2(b) and Section 7.2(c), shall, other than in connection with fraud on the part of, or an intentional breach of this Agreement by, any Seller, (x) be the sole and exclusive remedy available to BH and the Purchaser against the Sellers or any of their respective former, current or future equityholders, directors, officers, Affiliates, agents or Representatives with respect to this Agreement and the transactions contemplated hereby in the event that this Agreement is validly terminated under circumstances in which the Break-Up Fee and/or the Expenses Reimbursement Amount (as the case may be) is due and payable, and (y) upon receipt by Purchaser of the Break-Up Fee and/or the Expense Reimbursement Amount (as the case may be), none of the Sellers or any of their respective former, current or future equityholders, directors, officers, Affiliates, agents or Representatives shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated hereby. The parties acknowledge and agree that in no event shall the Sellers be required to pay the Break-Up Fee on more than one occasion and the parties acknowledge and agree that in no event shall the Sellers be required to pay the or the Expense Reimbursement Amount on more than one occasion. If the Agreement is terminated by the Sellers pursuant to Section 7.1(b)(iii) (unless at the time of any such termination the Purchaser would have been entitled to terminate this Agreement pursuant to Section 7.1(a) or Section 7.1(b) and has given prior written notice to the Sellers of such claimed right), the Purchaser shall forfeit the Deposit Funds and any interest thereon and such amounts shall be delivered to the Sellers pursuant to Section 1.6(b). If this Agreement is terminated by the Sellers as contemplated by Section 1.6(b)(ii), other than in connection with fraud on the part of, or an intentional breach of this Agreement by, BH or the Purchaser, the receipt of the Deposit Funds shall be the sole and exclusive remedy available to the Sellers against BH or the Purchaser or any of their respective former, current or future equityholders, directors, officers, Affiliates, agents or Representatives with respect to this Agreement and the transactions contemplated hereby, and upon receipt by the Sellers of the Deposit Funds, none of BH or the Purchaser, or any of their respective former, current or future equityholders, directors, officers, Affiliates, agents or Representatives shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated hereby.

(e) If the Sellers fail to take any action necessary to cause the delivery of the Break-Up Fee and/or the Expense Reimbursement Amount under circumstances where the Purchaser is entitled to the Break-Up Fee and/or the Expense Reimbursement Amount and, in order to obtain such Break-Up Fee and/or Expense Reimbursement Amount the Purchaser commences a suit which results in a judgment in favor of the Purchaser, the Sellers shall pay to the Purchaser, in addition to the Break-Up Fee and/or the Expense Reimbursement Amount, an amount in cash equal to the costs and expenses (including attorney's fees) incurred by the Purchaser in connection with such suit.

(f) The parties acknowledge that the agreements contained in this Section 7.2 are an integral part of the transactions contemplated in this Agreement, that the damages resulting from termination of this Agreement under circumstances where the Sellers are entitled to the Deposit Funds are uncertain and incapable of accurate calculation and that the delivery of the Deposit Funds is not a penalty but rather shall constitute liquidated damages in a reasonable amount that will compensate the Sellers in the circumstances where the Sellers are entitled to the

Deposit Funds for the efforts and resources expended and opportunities forgone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby, and that, without these agreements, the Sellers would not enter into this Agreement. If the Purchaser fails to take any action necessary to cause the delivery of the Deposit Funds pursuant to the Escrow Agreement under circumstances where the Sellers are entitled to the Deposit Funds and, in order to obtain such Deposit Funds the Sellers commence a suit which results in a judgment in favor of the Sellers, the Purchaser shall pay to the Sellers an amount in cash equal to the costs and expenses (including attorney's fees) incurred by the Sellers in connection with such suit.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.1. Tax Matters.

(a) All sales, use, excise, transfer, documentary, stamp, value added, recordation, license, conveyance and other similar Taxes ("Transfer Taxes"), if any, imposed on or with respect to the Acquisition shall be borne fifty percent (50%) by the Purchaser and fifty percent (50%) by the Sellers and shall be paid to the appropriate Taxing Authority promptly when due by the Person having the obligation to pay such Transfer Tax under applicable Law. The party hereto responsible under applicable Law for filing a Tax Return with respect to any such Transfer Taxes shall prepare and timely file such Tax Return and promptly provide a copy of such Tax Return to the other parties. BH and Parent shall use reasonable efforts and cooperate in good faith to reduce or eliminate any Transfer Taxes to the extent permitted by applicable Law.

(b) For purposes of this Agreement, with respect to any Acquired Asset, the Sellers and the Purchaser shall apportion the liability for real and personal property Taxes, ad valorem Taxes, and similar Taxes ("Periodic Taxes") for Straddle Periods applicable to such Acquired Asset in accordance with this Section 8.1(b). The Periodic Taxes described in this Section 8.1(b) shall be apportioned between the Sellers and the Purchaser as of the Closing Date, with the Purchaser liable for that portion of the Periodic Taxes for a Straddle Period (which portion of such Taxes shall for purposes of this Agreement be deemed attributable to the Post-Closing Tax Period) equal to the Periodic Taxes for such Straddle Period *multiplied by* a fraction, the numerator of which is the number of days remaining in such Straddle Period after the Closing Date, and the denominator of which is the total number of days in such entire Straddle Period. The Sellers shall be liable for that portion of the Periodic Taxes for a Straddle Period for which the Purchaser is not liable under the preceding sentence (which portion of such Taxes shall for purposes of this Agreement be deemed attributable to the Pre-Closing Tax Period). The party hereto responsible under applicable Law for paying a Tax described in this Section 8.1(b) shall be responsible for administering the payment of such Tax. All apportionments hereunder shall be final as of the Closing Date and there will be no re-apportionments of any Periodic Taxes regardless of whether information becomes available after the Closing Date that alters the amount of Taxes that would have been due with respect to the Straddle Period. To the extent the liability for Periodic Taxes for a certain Straddle Period is not determinable at the time of Closing or such Periodic Taxes are charged in arrears, such Periodic Taxes shall be prorated for

such Straddle Period, based on the most recent ascertainable full tax year without adjustment. For purposes of this Section 8.1(b), the Straddle Period for ad valorem Taxes and real and personal property Taxes shall be the fiscal period for which such Taxes were assessed by the applicable Tax jurisdiction.

(c) The Sellers, on the one hand, or the Purchaser, on the other hand, as the case may be (the "Reimbursing Party"), shall provide reimbursement for any Tax paid by the other (the "Paying Party"), all or a portion of which is the responsibility of the Reimbursing Party in accordance with the terms of this Agreement (including this Section 8.1). Within a reasonable time prior to the payment of any such Tax, the Paying Party shall give notice to the Reimbursing Party of the Tax payable and the Paying Party's and Reimbursing Party's respective liability therefor, although failure to do so shall not relieve the Reimbursing Party from its liability hereunder except to the extent the Reimbursing Party is actually prejudiced thereby.

(d) The parties shall provide each other with such assistance as reasonably may be requested by any of them in connection with (i) the preparation of any Tax Return, (ii) the determination of any liability in respect of Taxes or the right to any refund, credit or prepayment in respect of Taxes (including pursuant to this Agreement) or (iii) any audit or other examination by any Taxing Authority, or any judicial or administrative proceeding with respect to any Taxes.

Section 8.2. Bulk Sales. The Purchaser and the Sellers hereby waive compliance with the requirements and provisions of any "bulk-transfer" or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale, conveyance, assignment or transfer of any or all of the Acquired Assets to the Purchaser.

Section 8.3. Survival of Representations, Warranties and Covenants. No representations or warranties in this Agreement or in any Ancillary Document shall survive the Closing. No covenants in this Agreement or in any Ancillary Document shall survive the Closing except (1) to the extent the terms thereof expressly contemplate performance following the Closing and (2) any covenants in Section 8.1.

Section 8.4. Public Announcements. Unless otherwise required by applicable Law or by obligations of the Sellers or the Purchaser or their respective Affiliates pursuant to any listing agreement with or rules of any securities exchange or in order to enforce a party's rights or remedies under this Agreement, the Sellers, on the one hand, and BH and the Purchaser, on the other hand, shall consult with each other before issuing any other press release or otherwise making any public statement with respect to this Agreement, the transactions contemplated hereby or the activities and operations of the other and shall not issue any such release or make any such statement without the prior written consent of the other (such consent not to be unreasonably withheld, conditioned or delayed).

Section 8.5. Notices. All notices, requests, claims, demands or other communications hereunder shall be deemed to have been duly given and made if in writing and (a) at the time personally delivered if served by personal delivery upon the party hereto for whom it is intended, (b) at the time received if delivered by registered or certified mail (postage prepaid, return receipt

requested) or by a national courier service (delivery of which is confirmed), or (c) upon confirmation if sent by facsimile or email; in each case to the Person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such Person:

(a) if to the Purchaser or to BH, to:

Bausch Health Companies Inc.
400 Somerset Corporate Boulevard
Bridgewater, NJ 08807
Email: joseph.papa@bauschhealth.com
christina.ackermann@bauschhealth.com
Facsimile: (908) 927-1568
(949) 271-3796
Attention: Joseph C. Papa
Christina M. Ackermann

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

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Email: IKirman@wlrk.com
RGMason@wlrk.com
MFVeblen@wlrk.com
MSBenn@wlrk.com
Facsimile: (212) 403-2000
Attention: Igor Kirman
Richard G. Mason
Mark F. Veblen
Michael S. Benn

and

(b) if to the Sellers, to:

Synergy Pharmaceuticals Inc.
420 Lexington Avenue, Suite 2012
New York, NY 10170
Email: thamilton@synergypharma.com
ggemignani@synergypharma.com
Attention: Troy Hamilton
Gary Gemignani

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

Skadden, Arps, Slate, Meagher & Flom LLP
500 Boylston Street
Boston, Massachusetts 02116
Email: graham.robinson@skadden.com
rogan.nunn@skadden.com
Facsimile: (617) 573-4850
Attention: Graham Robinson
Rogan Nunn

and

Skadden, Arps, Slate, Meagher & Flom LLP
155 N. Wacker Drive
Chicago, Illinois 60606
Facsimile: (312) 407-0700
Email: ron.meisler@skadden.com
christopher.dressel@skadden.com
Attention: Ron Meisler
Christopher Dressel

Section 8.6. Descriptive Headings; Interpretative Provisions. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The words "hereof," "herein" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation," whether or not they are in fact followed by those words or words of like import. Whenever the last day for the exercise of any right or the discharge of any duty under this Agreement falls on other than a Business Day, the party hereto having such right or duty shall have until the next Business Day to exercise such right or discharge such duty. Unless otherwise indicated, the word "day" shall be interpreted as a calendar day. References to "dollars" or "$" mean United States dollars, unless otherwise clearly indicated to the contrary. No summary of this Agreement prepared by or on behalf of any party hereto shall affect the meaning or interpretation of this Agreement.

Section 8.7. No Strict Construction. The Sellers, on the one hand, and BH and the Purchaser, on the other hand, participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this

Agreement shall be construed as jointly drafted by the Sellers, BH and the Purchaser, and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of the authorship of any provision of this Agreement. Without limitation as to the foregoing, no rule of strict construction construing ambiguities against the draftsperson shall be applied against any person with respect to this Agreement.

Section 8.8. Entire Agreement; Assignment. This Agreement, the Ancillary Documents and the Confidentiality Agreement constitute the entire agreement and supersede all other prior agreements and understandings, both written and oral, among the parties hereto or any of them, with respect to the subject matter hereof and thereof. Neither this Agreement nor any of the rights, interests or obligations under it may be directly or indirectly assigned, delegated, sublicensed or transferred by any of the parties hereto, in whole or in part, to any other Person by operation of law or otherwise, without the prior written consent of the other parties, and any attempted or purported assignment in violation of this Section 8.8 will be null and void; *provided*, that, the Purchaser may assign or delegate any or all of its rights and obligations under this Agreement to one or more of its Affiliates; *provided*, *however*, that in the event of such assignment the Purchaser shall continue to be jointly and severally liable with the Affiliate assignee for its duties and 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 hereto and their respective successors and permitted assigns and shall not be binding upon, inure to the benefit of, or be enforceable by, any other party.

Section 8.9. Governing Law; Submission of Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware without regard to the rules of conflict of Laws of the State of Delaware or any other jurisdiction. Each of the parties hereto irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the Bankruptcy Court for any litigation arising out of or relating to this Agreement and the transactions contemplated thereby (and agrees not to commence any litigation relating thereto except in the Bankruptcy Court), and waives any objection to the laying of venue of any such litigation in the Bankruptcy Court. Each party hereto hereby consents to service of process in the manner and at the address set forth in Section 8.5. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 8.10. Expenses. Except as otherwise expressly provided herein, whether or not the transactions contemplated by this Agreement are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated thereby shall be paid by the party hereto incurring such expenses.

Section 8.11. Amendment. This Agreement may not be amended except by an instrument in writing signed on behalf of all the parties hereto.

Section 8.12. Waiver. At any time prior to the Closing, the parties hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in

any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

Section 8.13. Counterparts; Effectiveness. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

Section 8.14. Severability; Validity; Parties in Interest. If any provision of this Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other Persons or circumstances, shall not be affected thereby, and to such end, the provisions of this Agreement are agreed to be severable. Nothing in this Agreement, express or implied, is intended to confer upon any Person not a party to this Agreement any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 8.15. Specific Performance. The parties agree that irreparable injury will occur in the event that any of the provisions of this Agreement is not performed in accordance with its specific terms or is otherwise breached. It is agreed that prior to the valid termination of this Agreement pursuant to Article VII, each party shall be entitled to seek an injunction or injunctions to prevent or remedy any breaches or threatened breaches of this Agreement by any other party, to a decree or order of specific performance specifically enforcing the terms and provisions of this Agreement and to any further equitable relief.

Section 8.16. Time of the Essence. Time shall be of the essence of this Agreement.

Section 8.17. Obligations of the Purchaser. BH, as a primary obligor and not as a surety, hereby absolutely, unconditionally and irrevocably guarantees to the Sellers the prompt payment, observance and performance when due of all the obligations and liabilities of the Purchaser arising under or related to this Agreement and the Ancillary Documents and the transactions contemplated hereby and thereby, including to cause the Purchaser to duly and timely perform and comply with all of the covenants, obligations and agreements to be performed or complied with by the Purchaser arising under or related to this Agreement and the Ancillary Documents and the transactions contemplated hereby and thereby.

Section 8.18. Mutual Releases. Effective as of the Closing, and other than with respect to any claims pursuant to, and subject to the terms, conditions and limitations of, the terms and conditions of this Agreement, each of the Sellers and the Purchaser, on behalf of itself and each of its Affiliates, hereby releases (i) each of BH and the Purchaser and their Affiliates, and their current and former officers, directors, stockholders, employees, agents, representatives, attorneys, investors, parents, predecessors, subsidiaries, successors and assigns (collectively, the "Purchaser Released Parties") and (ii) each the Sellers and their Affiliates, and their current and former officers, directors, stockholders, employees, agents, representatives, attorneys, investors, parents, predecessors, subsidiaries, successors and assigns (collectively, the "Seller Released Parties"), respectively, from any and all liabilities, actions, rights of action, contracts, Indebtedness, obligations, claims, causes of action, suits, damages, demands, costs, expenses and

attorneys' fees whatsoever, of every kind and nature, known or unknown, disclosed or undisclosed, accrued or unaccrued, existing at any time, in all circumstances arising at or prior to the Closing ("Causes of Action"), that such Seller or the Purchaser, respectively, or any of their respective Affiliates or any of their respective successors and assigns, have or may have against any of the Purchaser Released Parties or the Seller Released Parties, respectively; *provided*, *however*, that this Section 8.18 shall not apply to any Causes of Action arising from the fraud or willful misconduct of the Purchaser Released Parties or the Seller Released Parties, as applicable, or brought to enforce rights under this Agreement.

ARTICLE IX

DEFINITIONS

As used herein, the terms below shall have the following meanings:

"Action" means any claim, hearing, charge, action, suit, arbitration, litigation, mediation, grievance, audit, examination, inquiry, proceeding or investigation by or before any Governmental Entity.

"Affiliate" of a specified Person means a Person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person.

"Agreement" has the meaning set forth in the Preamble and shall include the Exhibits and Schedules annexed hereto or referred to herein.

"Ancillary Documents" means the Bill of Sale, Assignment and Assumption Agreement, Intellectual Property Assignment Agreements, Escrow Agreement and each other agreement, document or instrument (other than this Agreement) executed and delivered by the parties hereto in connection with the consummation of the transactions contemplated by this Agreement.

"Anti-Corruption Law" means any Law related to combating bribery and corruption, including the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions, the UN Convention Against Corruption and any implementing legislation promulgated pursuant to such Conventions, the Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act 2010.

"Antitrust Laws" means any applicable supranational, national, federal, state, county, local or foreign antitrust, competition or trade regulation Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening competition through merger or acquisition, including the HSR Act, the Sherman Act, the Clayton Act and the Federal Trade Commission Act, in each case, as amended, and other similar antitrust, competition or trade regulation Laws of any jurisdiction other than the United States.

"Auction" has the meaning set forth in the Bidding Procedures.

"Benefit Plan" means a plan, program, agreement or other arrangement providing for employment, compensation, retirement, deferred compensation, severance, separation, relocation, repatriation, expatriation, termination pay, performance awards, bonus, incentive, stock option, stock purchase, stock bonus, phantom stock, stock appreciation right, supplemental retirement or other pension or welfare benefits, whether written or unwritten, including each "employee benefit plan" within the meaning of Section 3(3) of ERISA, (i) which is or has been sponsored, maintained, contributed to, or required to be contributed to by the Sellers or any of their Subsidiaries or any of their respective ERISA Affiliates for the benefit of any employee or former employee of the Sellers or any of their Subsidiaries or (ii) with respect to which Sellers or any of their Subsidiaries or any of their respective ERISA Affiliates would reasonably be expected to have any liability.

"BH SEC Documents" means all forms, statements, documents and reports filed or furnished prior to the date hereof by BH with the SEC since January 1, 2015, as amended through the date hereof.

"Bidding Procedures" means the bidding procedures substantially in the form attached as Exhibit 1 to the Bidding Procedures Order with such changes as the Purchaser and the Sellers find reasonably acceptable, to be approved by the Bankruptcy Court pursuant to the Bidding Procedures Order.

"Bidding Procedures Order" means the Order of the Bankruptcy Court, pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code, that has not been stayed, vacated or stayed pending appeal: (a) authorizing and scheduling the Auction, (b) approving procedures for the submission of Qualified Bids, (c) in the case of any subsequent Qualified Bids, approving the initial Overbid of at least two million dollars ($2,000,000) and further incremental Overbids of at least one million dollars ($1,000,000), (d) approving the Break-Up Fee and the Expense Reimbursement Amount, (e) scheduling a hearing to consider approval of such sale, and (f) approving the form and manner of notice of the Auction procedures and Sale Hearing, which Order shall be substantially in the form attached hereto as Exhibit A with such changes as the Purchaser and the Sellers find reasonably acceptable.

"Books and Records" means all documents of, or otherwise in the possession, custody or control of, or used by, the Sellers in connection with, or relating to, the Business, the Acquired Assets, the Assumed Liabilities, or the operations of the Sellers, including all files, instruments, papers, books, microfilms, photographs, letters, budgets, forecasts, ledgers, journals, title policies, lists of past, present and/or prospective customers, supplier lists, regulatory filings, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), data, reports (including environmental reports and assessments), plans, mailing lists, price lists, marketing information and procedures, advertising and promotional materials, equipment records, warranty information, architects agreements, construction contracts, drawings, plans and specifications, records of operations, standard forms of documents, Tax Returns and related books, records and workpapers, manuals of operations or business procedures and other similar procedures (including all discs, tapes and other media-storage data containing such information), in each case whether or not in electronic form.

"Business Day" means any day, other than a Saturday, Sunday and any day which is a legal holiday under the Laws of the Province of British Columbia or the State of Delaware or is a day on which banking institutions located in the Province of British Columbia or the State of Delaware are authorized or required by applicable Law or other governmental action to close.

"Cash" means all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and marketable securities, and any bank accounts and lockbox arrangements of the Sellers as of the Closing.

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

"Confidentiality Agreement" means the Confidentiality Agreement, between BH and the Parent, dated January 17, 2017, as amended on September 10, 2018, and as may be further amended from time to time.

"Contract" means any agreement, contract, subcontract, settlement agreement, lease, sublease, instrument, permit, concession, franchise, binding understanding, note, option, bond, mortgage, indenture, trust document, loan or credit agreement, license, sublicense, insurance policy or other legally binding commitment or instrument.

"Copyrights" means all protectable subject matter under U.S. copyright Law, copyrights and any other rights in works of authorship (including Software) and any related rights of authors.

"Cure Costs Deduction" means (x) the aggregate amount of all Cure Costs to the extent not included in Section 1.3(d) *plus* (y) the amount of all claims related to or arising from sales discounts, wholesaler chargebacks and wholesaler fee for service credits assumed by the Purchaser pursuant to Section 1.3(d) not related to accounts receivables included in the Acquired Assets.

"DIP Facility" means the Sellers' debtor-in-possession financing facility, entered into connection with the Chapter 11 Case, as the same may be amended, restated, supplemented or refinanced from time to time in accordance with the terms of this Agreement, including any orders approving or authorizing the Sellers' entry into and performance under such facility.

"DIP Facility Term Sheet" means that certain Summary of Terms and Conditions, dated December 11, 2018, among the Sellers, CRG Partners III (Cayman) Unlev AIV I L.P., CRG Partners III — Parallel Fund "A" L.P. and CRG Issuer 2017-1, the form of which is attached as Exhibit G hereto.

"DIP Lenders" means the lender under the DIP Loan Documents.

"DIP Loan Documents" means the definitive documentation for the DIP Facility, as the same may be amended, restated, supplemented or refinanced from time to time in accordance with the terms of this Agreement.

"DIP Motion" means the Debtors' Motion for Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting

Adequate Protection to Prepetition Lenders, (III) Modifying Automatic Stay, (IV) Granting Related Relief, and (V) Scheduling a Final Hearing, in form and substance reasonably acceptable to BH and the Purchaser.

"Effect" means any change, effect, development, circumstance, condition, fact, state of facts, event or occurrence.

"EMA" means the European Medicines Agency.

"Encumbrance" means any lien, pledge, hypothecation, mortgage, deed of trust, security interest, encumbrance, covenant, charge, claim, option, right of first refusal, easement, right of way, encroachment, occupancy right, preemptive right, community property interest or restriction of any nature, whether arising prior to or subsequent to the commencement of the Chapter 11 Case, and whether voluntarily incurred or arising by operation of Law.

"Environmental Laws" means any and all applicable Laws which (a) regulate or relate to the protection or clean-up of the environment, the use, treatment, storage, transportation, handling, disposal or release of Hazardous Substances, the preservation or protection of waterways, groundwater, drinking water, air, wildlife, plants or other natural resources, or the health and safety of Persons or property, including protection of the health and safety of employees or (b) impose liability or responsibility with respect to any of the foregoing, including the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*), or any other Law of similar effect.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated and rulings issued thereunder.

"ERISA Affiliate" means, with respect to any entity, trade or business, any other entity, trade or business that is a member of a group described in Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes the first entity, trade or business, or that is a member of the same "controlled group" as the first entity, trade or business pursuant to Section 4001(a)(14) of ERISA.

"Excluded Taxes" means any (i) Taxes imposed on or payable by any Seller or its Affiliates for any taxable period; (ii) Taxes imposed on or with respect to the Acquired Assets, the Assumed Liabilities or the Business for any Pre-Closing Tax Period; (iii) Taxes imposed on or with respect to the Excluded Assets or the Excluded Liabilities for any taxable period, (iv) Taxes imposed on or with respect to the Acquisition (including any Transfer Taxes for which Sellers are responsible pursuant to Section 8.1(a), but excluding any Transfer Taxes for which Purchaser is responsible pursuant to Section 8.1(a)), (v) Liability of the Purchaser or any of its Affiliates for any Taxes as a transferee or successor to any Seller or its Affiliates and (vi) Periodic Taxes for which Sellers are responsible pursuant to Section 8.1(b). For purposes of this Agreement, in the case of any Straddle Period, (a) Periodic Taxes shall be allocated between the Pre-Closing Tax Period and the Post-Closing Tax Period in the manner set forth in Section 8.1(b) and (b) Taxes (other than Periodic Taxes) relating to the Acquired Assets, the Assumed Liabilities or the Business for the Pre-Closing Tax Period shall be computed as if such taxable period ended as of the closing of business on the Closing Date.

"Expense Reimbursement Amount" means the dollar amount equal to the lesser of (i) one million, nine hundred and fifty thousand dollars ($1,950,000) and (ii) the aggregate amount of all reasonable and documented out of pocket costs, expenses and fees incurred by BH, the Purchaser or their Affiliates, in connection with evaluating, negotiating, documenting and performing the transactions contemplated by this Agreement and the Ancillary Documents, including fees, costs and expenses of any professionals (including financial advisors, outside legal counsel, accountants, experts and consultants) retained by BH, the Purchaser or their Affiliates in connection with or related to the authorization, preparation, investigation, negotiation, execution and performance of this Agreement, the transactions contemplated hereby, including the Chapter 11 Case and other judicial and regulatory proceedings related to such transactions, which amount shall, subject to Bankruptcy Court approval, constitute an administrative expense priority claim under Section 503(b)(1)(A) and Section 507(a)(2) of the Bankruptcy Code and shall be payable as set forth in Section 7.2(c).

"Export Controls" means all applicable export and reexport control Laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by OFAC and the International Traffic in Arms Regulations maintained by the U.S. Department of State and any applicable anti-boycott compliance regulations.

"FDA" means the United States Food and Drug Administration.

"FDCA" means the U.S. Food, Drug and Cosmetic Act of 1938, as amended.

"Final DIP Order" means a Final Order of the Bankruptcy Court (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Granting Related Relief, in form and substance reasonably acceptable to BH and the Purchaser.

"GAAP" means United States generally accepted accounting principles.

"Good Clinical Practices" means, with respect to the Sellers, standards for clinical trials for pharmaceuticals (including all applicable requirements relating to protection of human subjects), as set forth in the FDCA and applicable regulations promulgated thereunder (including, for example, 21 C.F.R. Parts 50, 54, and 56), as amended from time to time, and such standards of good clinical practice (including all applicable requirements relating to protection of human subjects) as are required by other organizations and Regulatory Authorities in any other countries, including applicable regulations or guidelines from the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use, in which Products are sold or intended to be sold, to the extent such standards are not less stringent than in the United States.

"Good Laboratory Practices" means, with respect to the Sellers, standards for pharmaceutical laboratories, as set forth in the FDCA and applicable regulations promulgated thereunder, as amended from time to time, and such standards of good laboratory practices as are required by other organizations and Governmental Entities in any other countries, including

applicable regulations or guidelines from the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use in which the Products are sold or intended to be sold, to the extent such standards are not less stringent than in the United States.

"Good Manufacturing Practices" means, with respect to the Sellers, standards for the manufacture, processing, packaging, testing, transportation, handling and holding of drug products, as set forth in the FDCA and applicable regulations promulgated thereunder, as amended from time to time, and such standards of good manufacturing practices as are required by other organizations and Governmental Entities in any other countries, including applicable regulations or guidelines from the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use in which the Products are sold or intended to be sold, to the extent such standards are not less stringent than in the United States.

"Governmental Entity" means (a) any supranational, national, federal, state, county, municipal, local, or foreign government or any entity exercising executive, legislative, judicial, regulatory, taxing, or administrative functions of or pertaining to government, (b) any public international governmental organization or (c) any agency, division, bureau, department, commission, board, arbitral or other tribunal, branch or other political subdivision of any government, entity or organization described in the foregoing clause (a) or (b) of this definition (including patent and trademark offices and self-regulatory organizations).

"GTN Accrued Cash-Settled Liabilities" means the total of accrued liabilities as of the Closing Date in the following sub-accounts on the Parent's balance sheet: (a) Managed Care; (b) Coupons; (c) Medicaid; (d) Medicare; and (e) Medicare Coverage Gap.

"GTN Adjustment Amount" means (a) the GTN Accrued Cash-Settled Liabilities *minus* (b) the GTN Contribution Amount.

"GTN Contribution Amount" means the product of (i) the GTN Receivables and (ii) the "GTN Assumed Percentage" calculated in accordance with Exhibit F.

"GTN Receivables" means the amount of gross accounts receivables (determined in accordance with GAAP, applied on a consistent basis during the periods involved) of the Sellers relating to the Acquired Assets as of the Closing Date.

"Hazardous Substance" means any pollutant, chemical, substance and any toxic, infectious, carcinogenic, reactive, corrosive, ignitable or flammable chemical, chemical compound, hazardous substance, material or waste, whether solid, liquid or gas, that is subject to regulation, control or remediation under any Environmental Laws, including any quantity of petroleum product or byproduct, solvent, flammable or explosive material, radioactive material, asbestos, lead paint, polychlorinated biphenyls (or PCBs), dioxins, dibenzofurans, heavy metals and radon gas.

"Health Laws" means any Law of any Governmental Entity (including multi-country organizations) the purpose of which is to ensure the safety, efficacy and quality of medicines or pharmaceuticals by regulating the research, development, manufacturing and distribution of

these products, including Laws relating to Good Laboratory Practices, Good Clinical Practices, investigational use, product marketing authorization, manufacturing facilities compliance and approval, Good Manufacturing Practices, labeling, advertising, promotional practices, safety surveillance, record keeping and filing of required reports and their respective counterparts promulgated by Regulatory Authorities in countries outside the United States and shall also include, without limitation (a) the FDCA and the regulations promulgated thereunder, (b) the Public Health Service Act, and the regulations promulgated thereunder, (c) all federal and state fraud and abuse Laws, including the Federal Anti-Kickback Statute, the civil False Claims Act, the administrative False Claims Law, the Anti-Inducement Law, the exclusion Laws, and the regulations promulgated pursuant to such statutes, (d) the Health Insurance Portability and Accountability Act of 1996, the regulations promulgated thereunder and comparable state Laws, (e) the Controlled Substances Act, (f) Titles XVIII and XIX of the Social Security Act and the regulations promulgated thereunder, (g) the Clinical Laboratories Improvement Amendments and (h) all applicable Laws, rules and regulations, ordinances, judgments, decrees, orders, writs and injunctions administered by Regulatory Authorities, each of clauses (a) through (h) as may be amended from time to time.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented by the Health Information Technology for Clinical Health Act of the American Recovery and Reinvestment Act of 2009.

"Import Restrictions" means all applicable U.S. and foreign import Laws, including Title 19 of the U.S. Code and Title 19 of the Code of Federal Regulations.

"IND" means an Investigational New Drug Application submitted to the FDA pursuant to 21 C.F.R. Part 312 (as amended from time to time) with respect to the Products, or the equivalent application or filing submitted to any equivalent agency or Governmental Entity outside the United States of America (including any supra-national agency such as the EMA), and all supplements, amendments, variations, extensions and renewals thereof that may be submitted with respect to the foregoing.

"Indebtedness" means, with respect to any Person, (a) all obligations for borrowed money, (b) all obligations evidenced by bonds, debentures, notes or similar instruments, (c) all Indebtedness of others secured by any Encumbrance on owned or acquired property of the reference Person, whether or not the Indebtedness secured thereby has been assumed, (d) all guarantees (or any other arrangement having the economic effect of a guarantee) of Indebtedness of others, (e) all capital lease obligations and all synthetic lease obligations, (f) all obligations, contingent or otherwise, of such Person as an account party in respect of financial guaranties, letters of credit, letters of guaranty, surety bonds and other similar instruments, (g) all securitization transactions, (h) all obligations representing the deferred and unpaid purchase price of property (other than trade payables incurred in the ordinary course of business consistent with past practice), (i) all obligations, contingent or otherwise, in respect of bankers' acceptances and (j) net cash payment obligations of such Person under swaps, options, derivatives and other hedging agreements or arrangements that will be payable upon termination thereof (assuming they were terminated on the date of determination).

"Information Privacy and Security Laws" means any applicable Laws issued by a Governmental Entity and all guidance issued by any Governmental Entity thereunder, relating to: (a) the privacy, protection, or security of Protected Information, including as relevant to the collection, storage, processing, transfer, sharing and destruction of Protected Information or (b) requirements for websites and mobile applications, online behavioral advertising, call or electronic monitoring or recording, or any outbound communications, including outbound calling and text messaging, telemarketing and email marketing. Without limiting the foregoing, "Information Privacy and Security Laws" includes the Federal Trade Commission Act, the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, the Children's Online Privacy Protection Act, the Computer Fraud and Abuse Act, the Electronic Communications Privacy Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Reporting Act, HIPAA, the Gramm-Leach-Bliley Act, state data security Laws, state social security number protection Laws, state data breach notification Laws, state consumer protection Laws, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 as amended (and any European Union member states' Laws and regulations implementing them), the European General Data Protection Regulation, the Canadian Personal Information Protection and Electronic Documents Act, India's Information Technology Act, Japan's Act on the Protection of Personal Information, Hong Kong's Personal Data (Privacy) Ordinance, and Australia's Privacy Amendment (Private Sector) Act 2000 as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012, and other applicable data protection Laws of the jurisdictions in which Business is operated.

"Intellectual Property" means any and all common law and statutory rights anywhere in the world arising under or associated with: (a) Patents; (b) Trademarks; (c) inventions and designs; (d) Trade Secrets; (e) Copyrights; (f) all industrial designs and any registrations and applications therefor; (g) Internet Properties; (h) applications for, registrations of, rights of priority in, and divisions, continuations, continuations-in-part, reissuances, renewals, extensions, restorations and reversions of the any of the foregoing (as applicable); and (i) all other similar or equivalent intellectual property or proprietary rights anywhere in the world.

"Internet Properties" means rights in domain names, uniform resource locators and other names and locators associated with Internet addresses and sites.

"Knowledge of the Sellers" means the knowledge, following due inquiry, of the individuals set forth on Article IX of the Seller Disclosure Schedule.

"Law" means any law (including common law), statute, requirement, code, rule, regulation, order, ordinance, judgment or decree or other pronouncement of any Governmental Entity.

"Material Adverse Effect" means (a) any Effect that, individually or in the aggregate, would reasonably be expected to materially impair or materially delay the ability of the Sellers to timely consummate the transactions contemplated by this Agreement or to perform their respective obligations hereunder or (b) any Effect that, individually or in the aggregate, results in a material adverse effect on the assets, business, condition (financial or otherwise) or results of

operations of the Business or the Acquired Assets or the Assumed Liabilities, taken as a whole; *provided*, *however*, that the fact that the Chapter 11 Case has been filed and that, accordingly, the Sellers have been conducting the Business in the ordinary course of business as the same is being conducted as of the date of this Agreement in the Chapter 11 Case, shall not, in and of itself, be deemed to be a Material Adverse Effect for purposes of clause (b) of this definition; *provided*, *however*, that no Effects resulting or arising from the following shall be deemed to constitute a Material Adverse Effect or shall be taken into account when determining whether a Material Adverse Effect exists or has occurred: (i) the Excluded Assets or the Excluded Liabilities, (ii) changes after the date hereof in general economic, financial or securities markets or geopolitical conditions, (iii) general changes or developments after the date hereof in regulatory or macroeconomic conditions or the industries and markets in which the Business operates, (iv) the announcement of the Acquisition or the identity of BH or the Purchaser, (v) any action or omission by BH or the Purchaser in breach of this Agreement, (vi) any action which is expressly requested in writing by BH or the Purchaser, (vii) changes after the date hereof in any applicable Laws or applicable accounting regulations or principles or the enforcement or interpretation thereof, (viii) any outbreak or escalation of hostilities or war or any act of terrorism or natural disaster or act of God and (ix) any failure of the Business to meet any budgets, plans, projections or forecasts (internal or otherwise) or any decline in the trading price or trading volume of Parent's common stock or any change in the ratings or ratings outlook for Parent (it being understood that the facts or occurrences giving rise or contributing to such failure that are not otherwise excluded from the definition of a "Material Adverse Effect" may be taken into account); *provided*, *further*, that the exceptions set forth in clauses (ii), (iii), (vii) and (viii) above shall only apply to the extent that such Effect is materially and disproportionately adverse to the Business, taken as a whole, compared to other companies of similar size that operate in the industries or markets in which the Sellers operate.

"NDA" means a new drug application for a drug submitted to the FDA pursuant to 21 C.F.R. Part 314 (as amended from time to time), and all amendments or supplements thereto, including all documents, data and other information concerning the applicable drug which are necessary for FDA approval to market such drug in the United States, and any equivalent application submitted to any other health authority.

"NDC" means the unique, three-segment National Drug Code issued by the FDA that serves as a universal product identifier for pharmaceuticals, or the equivalent in countries outside of the United States.

"Notice of Sale" means a notice of the sale of the Acquired Assets and the Sale Hearing.

"Order" means any order, injunction, judgment, decree, ruling, writ, assessment or award of a Governmental Entity.

"Ordinary Course Licenses" means licenses to generally available third party technology or software on standard terms for annual consideration of less than $250,000.

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

"Parent Confidentiality Agreements" means those agreements by and between the Parent, on the one hand, and Persons expressing an interest in acquiring an ownership interest in the Parent or the Business, on the other hand, with respect to the use and confidentiality of information about the Parent and its Affiliates and the Business and certain other obligations.

"Parent SEC Documents" means all forms, statements, documents and reports filed or furnished prior to the date hereof by the Parent with the SEC since January 1, 2015, as amended through the date hereof.

"party" and "parties" have the meaning set forth in the Preamble.

"Patents" means patents and patent applications, and similar or equivalent rights in inventions, including invention disclosures.

"Permitted Post-Closing Encumbrances" means any Encumbrance that is not extinguished by the Sale Order under applicable Law, it being understood that the Sale Order shall extinguish Encumbrances to the maximum extent permissible under applicable Law.

"Permitted Pre-Closing Encumbrances" means, prior to the Closing Date, (i) liens for Taxes not yet due and payable or being contested in good faith by appropriate proceedings, (ii) statutory liens and rights of set-off of carriers, warehousemen, mechanics, repairmen, workmen, suppliers and materialmen, in each case, incurred in the ordinary course of business (A) for amounts not yet overdue, (B) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of thirty (30) days) are being contested in good faith, or (C) for amounts as to which payment and enforcement is stayed under the Bankruptcy Code or pursuant to orders of the Bankruptcy Court, (iii) liens securing rental payments under capitalized lease obligations entered into in the ordinary course of business, (iv) rights of setoff or banker's liens upon deposits of cash in favor of banks or other depositary institutions, (v) pledges or deposits under worker's compensation, unemployment insurance and social security Laws to the extent required by applicable Law, (vi) rights of third parties pursuant to ground leases, leases, subleases, licenses, concessions or similar agreements, that do not individually or in the aggregate in any material respect interfere with the present use of the property subject thereto, (vii) easements, covenants, conditions, restrictions and other similar matters of record or imperfections of title with respect to real property that do not individually or in the aggregate in any material respect interfere with the present use of the real property subject thereto, (viii) local, county, state and federal ordinances, regulations, building codes or permits, now or hereafter in effect, relating to real property, that do not individually or in the aggregate in any material respect interfere with the present use of the real property subject thereto, (ix) restrictions or requirements set forth in any Permits relating to the Business, (x) violations, if any, arising out of the adoption, promulgation, repeal, modification or reinterpretation of any Order or Law which occurs subsequent to the date hereof and prior to the Closing Date, (xi) Encumbrances arising by operation of Law under Article 2 of any state's Uniform Commercial Code (or successor statute) in favor of a seller of goods or buyer of goods, (xii) non-exclusive licenses or other non-exclusive grants of rights to use or obligations with respect to Intellectual Property, in each case entered into in the ordinary course of business; (xiii) any lien securing Indebtedness outstanding under the DIP Facility and (xiv) any liens securing Indebtedness under the Prepetition Credit Agreement.

"Person" means a natural person, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Entity or other entity or organization.

"Personal Data" means any and all information that can reasonably be associated with an individual natural person, including information that identifies an individual natural person, including name, physical address, telephone number, email address, financial account number, passwords or PINs, device identifier or unique identification number, government-issued identifier (including Social Security number and driver's license number), medical, health or insurance information, gender, date of birth, educational or employment information, religious or political views or affiliations and marital or other status (to the extent any of these data elements can reasonably be associated with an individual natural person). Personal Data also includes any information not listed above if such information is defined as "personal data," "personally identifiable information," "individually identifiable health information," "protected health information" or "personal information" under any applicable Law and is regulated by such Law.

"Post-Closing Tax Period" means any taxable period or portion thereof beginning after the Closing Date and, in the case of any Straddle Period, the portion of such Straddle Period beginning after the Closing Date.

"Pre-Closing Tax Period" means any taxable period ending on or before the Closing Date and, in the case of any Straddle Period, the portion of such Straddle Period ending on the Closing Date.

"Prepetition Credit Agreement" means that certain Term Loan Agreement, dated as of September 1, 2017 (as later modified or amended prior to the Petition Date), the Sellers, the lenders party thereto, and CRG Servicing LLC as administrative agent and collateral agent.

"Privacy Statements" means, collectively, all of the Sellers' publicly posted privacy policies (including if posted on the Sellers' products and services) in effect as of the date hereof regarding the collection, use, disclosure, transfer, storage, maintenance, retention, deletion, disposal, modification or processing of Protected Information.

"Product IP" means any Intellectual Property owned by a third party that is licensed by such third party to a Seller and that is required for a Seller to make, have made, sell, distribute or license any Product.

"Products" means the medicinal or pharmaceutical products, product candidates or therapies that are or have been researched, developed, tested (including through clinical trials), commercialized, manufactured, stored, sold, licensed, or distributed by or on behalf of any of the Sellers.

"Protected Information" means (a) Personal Data or (b) any information that is governed or regulated by one or more Information Privacy and Security Laws that a Seller receives, creates, transmits or maintains in electronic form through any of Seller's systems networks or other information technology systems.

"Registered Intellectual Property" means all applications, registrations and filings for Intellectual Property that have been registered or filed with or by any state, government or other public or quasi-public legal authority anywhere in the world, including the United States Patent and Trademark Office or United States Copyright Office, including issued Patents and Patent applications, registered Trademarks and Trademark applications, registered Copyrights and Copyright applications, and Internet Properties registrations and applications.

"Regulatory Authority" means any national or supranational governmental authority, including the FDA or the EMA, with responsibility for granting any license, registrations or approvals with respect to the Products.

"Regulatory Authorizations" means any approvals, clearances, authorizations, registrations, certifications, licenses and permits granted by any Regulatory Authority, including any INDs, NDAs and MAAs.

"Relocation Employee" means each Offer Employee whose offer of employment from BH or its Affiliate (a) if such Offer Employee is not a sales employee, requires a relocation of the employee to a facility or a location that increases the one-way commute of the employee by more than fifty (50) miles based on the employee's commute immediately prior to the applicable offer of employment or (b) if such Offer Employee is a sales employee, requires a relocation of the employee's personal residence to a location that is more than fifty (50) miles from the location of such employee's personal residence immediately prior to the applicable offer of employment.

"Representatives" means, when used with respect to any Person, the directors, officers, employees, consultants, financial advisors, accountants, legal counsel, investment bankers and other agents, advisors and representatives of such Person and its Subsidiaries.

"Retained Books and Records" means the company seal, minute books, stock certificates, stock or equity record books, income Tax Returns and other books, records and work papers related to income Taxes paid or payable by the Sellers or their Affiliates, work papers and such other books and records as pertain to the organization, qualification to do business, existence or capitalization of any Seller or any Affiliate thereof, books and records that the Sellers are required to retain under applicable Law and books and records that relate exclusively to an Excluded Asset or Excluded Liability.

"Sale Hearing" means the hearing conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement.

"Sale Order" means an Order of the Bankruptcy Court in substantially the form attached hereto as Exhibit E, that has not been stayed, vacated or stayed pending appeal, authorizing and approving the sale of the Acquired Assets to the Purchaser on the terms and conditions set forth herein.

"SEC" means the Securities and Exchange Commission.

"Seller Disclosure Schedule" has the meaning set forth in the introductory paragraph to Article III.

"Seller Intellectual Property" means all Intellectual Property owned or purported to be owned by any Seller other than Intellectual Property that is an Excluded Asset.

"Seller Registered Intellectual Property" means all Registered Intellectual Property that is registered or recorded in the name of, is or was filed or recorded in the name of, or that has been assigned to, any Seller.

"Software" means all types of computer software programs including operating systems, application programs, software tools, firmware and software imbedded in equipment, including both object code and source code versions thereof, and all related documentation.

"Straddle Period" means a taxable period that includes but does not end on the Closing Date.

"Subsidiary" means with respect to any Person, any corporation, limited liability company, partnership or other organization, whether incorporated or unincorporated, of which (a) at least a majority of the outstanding shares of capital stock of, or other equity interests, having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation, limited liability company, partnership or other organization is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries, or (b) with respect to a partnership, such Person or any other Subsidiary of such Person is a general partner of such partnership.

"Successful Bidder" has the meaning set forth in the Bidding Procedures.

"Takeover Statutes" means any "business combination," "control share acquisition," "fair price," "moratorium" or other takeover or anti-takeover statute or similar Law.

"Tax" or "Taxes" means any and all U.S. federal, state, local and non-U.S. taxes, assessments, levies, duties, tariffs, imposts and other similar charges and fees imposed by any Governmental Entity, including income, franchise, windfall or other profits, gross receipts, property, sales, use, net worth, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation, excise, withholding, ad valorem, stamp, transfer, value-added, occupation, environmental, disability, real property, personal property, registration, alternative or add-on minimum, or estimated tax, including any interest, penalty, additions to tax and any additional amounts imposed with respect thereto.

"Tax Return" means any report, return, certificate, claim for refund, election, estimated Tax filing or declaration filed or required to be filed with any Governmental Entity with respect to Taxes, including any schedule or attachment thereto, and including any amendments thereof.

"Taxing Authority" means any federal, state, local or foreign Governmental Entity or authority responsible for the imposition, collection or administration of any Tax.

"Trade Secrets" means trade secret and industrial secret rights, and rights in know-how and confidential or proprietary information.

"Trademarks" means trademarks, trade names, service marks, trade dress and other designations of origin.

"Trulance Product" means the Parent's plecanatide product for the treatment of chronic idiopathic constipation and irritable bowel syndrome with constipation, which, as of the date hereof, is branded in the United States as TRULANCE®.

"WARN Relocation Employee" means any Offer Employee whose offer of employment from BH or its Affiliate (a) if such Offer Employee is not a sales employee, requires a relocation of the employee to a facility or location that increases the one-way commute of the employee by more than twenty-five (25) miles based on the employee's commute immediately prior to the applicable offer of employment or (b) if such Offer Employee is a sales employee, provides for a sales territory that increases the distance between the employee's personal residence and the furthest point in the sales territory from the employee's personal residence by more than twenty-five (25) miles compared to the employee's sales territory immediately prior to the applicable offer of employment, except for any such sales employee whose new sales territory has been agreed prior to the Auction by Sellers and BH to represent a reasonable commuting distance under the WARN Acts.

Terms Defined Elsewhere. The following terms are defined elsewhere in this Agreement, as indicated below:

Term	Section
Acquired Assets	Section 1.1
Acquisition	Recitals
Allocation	Section 1.9
Alternative Transaction	Section 5.10
Alternative Transaction Trigger	Section 7.2(b)
API	Section 5.23
Assigned Contracts	Section 1.1(c)
Assignment and Assumption Agreement	Section 2.2(a)(iii)
Assumed Liabilities	Section 1.3
Avoidance Actions	Section 1.1(m)
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
BH	Preamble
BH Offer	Section 5.14(b)
Bidding Procedures Motion	Section 5.7
Bill of Sale	Section 2.2(a)(i)
BIS	Section 3.14(e)
Break-Up Fee	Section 7.2(b)
Business	Recitals
Business Employees	Section 5.14(b)
Cash Consideration	Section 1.6(a)(i)
Causes of Action	Section 8.18
Chapter 11 Case	Recitals
Closing	Section 2.1

Closing Date	Section 2.1
COBRA	Section 5.14(d)
Confidential Information	Section 5.15(c)
Cure Costs	Section 1.5(a)
Deposit Funds	Section 1.6(b)
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[Signature Page Follows]

IN WITNESS WHEREOF, the Sellers, BH and the Purchaser have caused this Agreement to be executed on their behalf by their officers thereunto duly authorized, as of the date first above written.

SELLERS:

SYNERGY PHARMACEUTICALS INC.

By: /s/ Gary G. Gemignani
Name: Gary G. Gemignani
Title: Executive Vice President and Chief Financial Officer

SYNERGY ADVANCED PHARMACEUTICALS, INC.

By: /s/ Gary G. Gemignani
Name: Gary G. Gemignani
Title: Executive Vice President and Chief Financial Officer

BAUSCH HEALTH COMPANIES INC.

By: /s/ Joseph C. Papa
Name: Joseph C. Papa
Title: Chairman and Chief Executive Officer

PURCHASER:

BAUSCH HEALTH IRELAND LIMITED

By: /s/ Graham Jackson
Name: Graham Jackson
Title: Director

[Signature Page to Asset Purchase Agreement]

Exhibit 10.1

EXECUTION

SYNERGY PHARMACEUTICALS INC.

SUPERPRIORITY DIP FACILITY

Binding Term Sheet

December 11, 2018

This binding term sheet (the "***Binding Term Sheet***") sets forth the terms and conditions with respect to the New Money DIP Loans (as defined below), the DIP Facility (as defined below), the treatment of the Prepetition Obligations (as defined below), which terms and conditions will be set forth in the DIP Loan Documents (as defined below).

The obligations of the DIP Lenders to provide financing pursuant to this Binding Term Sheet shall be subject to the terms and conditions set forth herein and conditioned upon (i) the execution and delivery of definitive DIP Loan Documents (as defined below), (ii) the execution and delivery of signature pages to this Binding Term Sheet by each of the parties hereto, and (iii) the entry in the Bankruptcy Court (as defined below) of the Financing Orders (as defined below).

Borrower:	Synergy Pharmaceuticals Inc., a debtor-in-possession in the cases (the "***Chapter 11 Cases***") pending with respect to itself and Synergy Advanced Pharmaceuticals, Inc., its wholly owned subsidiary (each a "***Debtor***" and, collectively, the *"**Debtors***) under Chapter 11 of Title 11 of the United States Code (as amended, the "***Bankruptcy Code***") and filed with the United States Bankruptcy Court for the Southern District of New York (the "***Bankruptcy Court***"). (As used herein, the term "***Petition Date***" shall mean the date upon which the Chapter 11 Cases are commenced in the Bankruptcy Court.)
Guarantor:	Synergy Advanced Pharmaceuticals, Inc., a wholly owned subsidiary of the Borrower (the Borrower and the Guarantor, together, the "***DIP Loan Parties***").
DIP Lenders and Commitments:	Each of the entities and their respective commitments set forth on Exhibit A hereto, as such exhibit may be amended prior to the entry of the Final Order (as defined below) solely to adjust the "proportionate shares" of the DIP Lenders, but not to reduce the aggregate commitments of the DIP Lenders, collectively.
Administrative Agent and Collateral Agent:	CRG Servicing LLC (the *"**DIP Administrative Agent**"* and collectively with the DIP Lenders, the "***DIP Secured Parties***").
Prepetition Credit Agreement:	That certain Term Loan Agreement (the "***Prepetition Credit Agreement***"), dated as of September 1, 2017 (as later modified or amended), among Synergy Pharmaceuticals Inc. (the "***Prepetition Borrower***"), the Subsidiary Guarantors party thereto (the "***Prepetition Guarantors***"), the lenders party thereto (the "***Prepetition Lenders***"), and CRG Servicing LLC as Administrative Agent and Collateral Agent (the "***Prepetition Administrative Agent***" and collectively with the Prepetition Lenders, the "***Prepetition Secured Parties***"). Unless

otherwise defined herein, terms defined in the Prepetition Credit Agreement are used herein with such defined meanings.

DIP Facility: Debtor-in-possession senior secured superpriority term loan facility in an aggregate principal amount equal to [$155,000,000], comprised of [$45,000,000] of "new money" loans (the "***New Money DIP Loans***"), plus approximately [$110,000,000] of loans representing a "roll up" of a portion of the Prepetition Obligations (as defined below) equal to the sum of (i) outstanding principal, plus (ii) accrued and unpaid interest, including accrued and unpaid postpetition interest at the Default Rate specified in the Prepetition Credit Agreement (the "***Prepetition Default Rate***") from the Petition Date through and including the date of the entry of the Second Interim Order (and as otherwise provided in the Second Interim Order), plus (iii) any and all unreimbursed costs, fees and expenses of the Prepetition Secured Parties incurred in accordance with the Prepetition Credit Agreement (the "***Roll Up Dip Loans***" and together with the New Money DIP Loans, the "***DIP Loans***").

Interest Rate: Interest shall accrue on the DIP Loans at the rate of Libor + 9.50% per annum, and shall be payable monthly, on the first (1st) business day of each month, in arrears, in accordance with the Budget (defined below).

Default Rate: At all times while an Event of Default (as defined in the DIP Loan Documents) exists, principal, interest and other amounts shall bear interest at a rate per annum equal to 4.00% in excess of the interest rate set forth in "Interest Rate" above.

New Money DIP Loan Fees:

1. An "***Upfront Fee***" equal to 2.00% of the total amount of New Money DIP Loans shall be paid upon entry of the Final Order (as defined below).

2. An "***Exit Fee***" equal to 3.00% of the total amount of New Money DIP Loans shall be paid upon the Maturity Date (as defined below).

Nature of Fees: Fully earned and non-refundable under all circumstances.

Expenses of DIP Secured Parties: The reasonable and documented professional fees and expenses incurred by the DIP Secured Parties shall be promptly paid by the Debtors on no less than a monthly basis.

Maturity Date: The earliest of (a) April 9, 2019; (b) the consummation of a sale of all or substantially all of the Borrower's assets; (c) acceleration of the DIP Loans pursuant to the DIP Loan Documents (as defined below); and (d) such later date as the DIP Lenders in their sole discretion may agree in writing with the Debtors.

Budget: All advances under the DIP Facility and any Cash Collateral shall be used by the DIP Loan Parties solely in accordance with a rolling 13-

week budget (the "***Budget***"), for the period commencing on the Petition Date through and including March 31, 2019 (the "***Budget Period***"), setting forth all forecasted (i) cash receipts of the DIP Loan Parties (the "***Cash Receipts***") (ii) cash operating disbursements (the "***Cash Operating Disbursements***") of the DIP Loan Parties, and (iii) non-operating, bankruptcy-related cash disbursements of the DIP Loan Parties (the "***Cash Bankruptcy Disbursements***"), which Budget shall be approved by the DIP Administrative Agent in its sole and absolute discretion and may be modified by the DIP Loan Parties with the written consent of the DIP Administrative Agent in its sole and absolute discretion and without further order of the Bankruptcy Court; provided, that (i) the total amount of funding provided pursuant to the Budget shall not exceed the total amount of the DIP Facility authorized by each of the Financing Orders (as defined below), and (ii) the reasonable and documented professional fees and expenses incurred by the DIP Secured Parties shall not be subject to a cap. A copy of the Budget approved by the DIP Administrative Agent is attached hereto as Exhibit B.

Compliance with the Budget will be measured every week, starting with the third week following the Petition Date, for the period beginning as of the week of the Petition Date and ending the week prior to the week on which compliance is measured. For purposes of illustration, on the third week following the Petition Date, the DIP Loan Parties' compliance with the Budget for the first two weeks following the Petition Date shall be measured. Each date on which compliance with the Budget is measured is referred to herein as a "***Testing Date***". As of any applicable Testing Date:

1. the cumulative Cash Receipts may vary from the Budget by no more than the following: (a) 20.00% for the first four-week period (and each week thereof), beginning as of the week of the Petition Date, (b) 15.00% for the first five-week period beginning as of the week of the Petition Date, and (c) 10.00% for the first six-week period and all subsequent weeks of the period beginning as of the week of the Petition Date (the "***Cash Receipt Variance***");

2. the cumulative Cash Operating Disbursements may vary from the Budget by no more than the following: (a) 20.00% for the first four-week period (and each week thereof), beginning as of the week of the Petition Date, (b) 15.00% for the first five-week period beginning as of the week of the Petition Date, and (c) 10.00% for the first six-week period and all subsequent weeks of the period beginning as of the week of the Petition Date (the "***Cash Operating Variance***"); and

3. the cumulative Cash Bankruptcy Disbursements shall not exceed at any time during the Budget Period the aggregate capped amount set forth in the Budget with respect thereto (the "***Cash Bankruptcy Disbursement Cap***"), subject to a variance of no more than 10% (the "***Cash Bankruptcy Disbursement Variance***" and together with the Cash Receipt Variance and the Cash Operating Variance, the "***Permitted Variances***").

The DIP Loan Parties shall be deemed to be in compliance with the Budget for all purposes under this Binding Term Sheet, the DIP Loan Documents, and the Financing Orders unless, as of any applicable date of determination, the DIP Loan Parties' (x) cumulative Cash Receipts, (y) cumulative Cash Operating Disbursements, or (z) cumulative Bankruptcy Disbursements, as applicable, vary from the Budget by more than the applicable Permitted Variance as measured on any Testing Date; *provided*, *however*, that with respect to cumulative Cash Receipts, the DIP Loan Parties shall not be deemed to have failed to comply with the Budget unless the DIP Loan Parties' cumulative Cash Receipts fall beneath the amounts set forth in the Budget as measured on any two consecutive Testing Dates during the first four week period beginning as of the Petition Date. All references to compliance with the "Budget" in this Term Sheet shall be construed as being qualified by the phrase, "subject to Permitted Variances."

As further set forth below, after the first three weeks following the Petition Date, the Debtors shall provide the DIP Administrative Agent with weekly and cumulative variance reporting on a line item basis for Cash Receipts, Cash Operating Disbursements and Cash Bankruptcy Disbursements, which reporting shall (i) detail the variance, if any, of actual cash disbursements and actual cash receipts from the Budget and (ii) provide an explanation of any per line item variance greater than 5.00% (the "***Variance Report***").

Mandatory Prepayments: Mandatory prepayment of the DIP Loans shall be required: (i) upon the consummation of an Acceptable 363 Sale (as defined below), or (ii) upon the effectiveness of an Acceptable Plan (as defined below), as an alternative to a sale.

DIP Obligations: As used herein, the term "***DIP Obligations***" means (a) the due and punctual payment by the Debtors of (i) the unpaid principal amount of and interest on (including interest accruing after the maturity of the DIP Loans and interest accruing after the commencement of the Chapter 11 Cases) the DIP Loans, as and when due, whether at maturity, by acceleration or otherwise, and (ii) all other monetary obligations, including advances, debts, liabilities, obligations, fees, costs, expenses and indemnities, whether primary, secondary, direct,

	indirect, absolute or contingent, due or to become due, now existing or hereafter arising, fixed or otherwise, of the Debtors to the DIP Lenders under the DIP Loan Documents and the Financing Orders, and (b) the due and punctual payment and performance of all covenants, duties, agreements, obligations and liabilities of the Debtor to the DIP Lender under or pursuant to the DIP Loan Documents and the Financing Orders.
Prepetition Obligations:	As used herein, the term "***Prepetition Obligations***" means, as of the Petition Date, the indebtedness of the Debtors to the to the Prepetition Lenders under the Prepetition Credit Agreement and all other documents executed and delivered in connection therewith (collectively, the "***Prepetition Loan Documents***") in the approximate aggregate amount of $[147,100,000], which amount is the sum of: (i) principal in the amount of $107,551,191.90, plus (ii) accrued and unpaid interest in the amount of $2,322,806.99 (including interest at the Prepetition Default Rate in the amount of $250,952.78), plus (iii) Prepayment Premium(1) in the amount of $34,954,137.37, plus (iv) Back-End Facility Fee(2) in the amount of $2,151,023.84, plus (v) unreimbursed costs, fees and expenses in accordance with the Prepetition Loan Documents (collectively, the "***Prepetition Obligations***").
Cash Collateral:	The Prepetition Lenders shall consent to the use of their "cash collateral" as defined in section 363(a) of the Bankruptcy Code (the "***Cash Collateral***"), all in accordance with the terms and conditions set forth in this Binding Term Sheet, the Financing Orders (as defined below), and the Budget; provided, that the DIP Loan Parties shall operate their cash management system in a manner that is the same as or substantially similar to their prepetition cash management system, including daily "sweeps" of cash from the DIP Loan Parties' revenue lock-box to their main operating account which shall continue in the same or substantially similar manner as prior to the Petition Date.
Use of New Money DIP Loan Proceeds and Cash Collateral:	The proceeds of the New Money DIP Loans and Cash Collateral shall be available to finance, in each case in accordance with the Budget (as defined below): 1. working capital and general corporate purposes of the Debtors, 2. the pursuit of an Acceptable 363 Sale (as defined below), and 3. bankruptcy-related costs and expenses, subject to the Carve Out (as defined below).

(1) Prepayment Premium calculated in accordance with Section 3.03(a) (i) (B) of the Prepetition Credit Agreement.
(2) Back-End Facility Fee is defined and set forth in the Fee Letter dated September 1, 2017.

Initial Approval by the Bankruptcy Court:	The use of Cash Collateral, the DIP Facility, this Binding Term Sheet and all terms and conditions set forth herein (collectively, the "***Transactions***") shall be subject to the entry in the Bankruptcy Court of an interim order, in form and substance acceptable to the DIP Administrative Agent in its sole and absolute discretion, approving the Transactions (the "***First Interim Order***). In the event that the Second Interim Order (as defined below) is not entered in the Bankruptcy Court on or prior to December 21, 2018, the consent of the Prepetition Lenders to the use of Cash Collateral shall automatically terminate.
Documentation:	Definitive financing documentation with respect to the DIP Loans satisfactory in form and substance to the DIP Secured Parties (the "***DIP Loan Documents***") shall be executed and delivered by the parties thereto on or prior to December 18, 2018, and shall be approved upon the entry in the Bankruptcy Court of a second interim order, in form and substance acceptable to the DIP Administrative Agent in its sole and absolute discretion, approving (among other things) the DIP Loan Documents (the "***Second Interim Order***").
Documentation Principles:	The DIP Loan Documents shall, except as otherwise set forth herein, be based on and consistent with the Prepetition Credit Agreement and the other Prepetition Loan Documents, as modified by the terms set forth in this Binding Term Sheet and subject to (i) materiality qualifications and other exceptions that give effect to, permit and/or accommodate the structure of any Acceptable 363 Sale or Acceptable Plan, as applicable, (ii) modifications to reflect the status of the DIP Loan Parties as debtors-in-possession in the Chapter 11 Cases, and (iii) be negotiated in good faith within a reasonable (consistent with the term of this Binding Term Sheet) time period. This paragraph collectively referred to herein as the "***Documentation Principles***".
Initial Funding, Roll Up and Prepetition Claim:	Subject to the terms and conditions set forth in the DIP Loan Documents and this Binding Term Sheet, including the Conditions Precedent (defined below): 1. Upon the entry in the Bankruptcy Court of the Second Interim Order, in form and substance acceptable to the DIP Administrative Agent in its sole and absolute discretion, approving the DIP Loans, the continued use of Cash Collateral in accordance with this Binding Term Sheet, and providing Adequate Protection for the Prepetition Lenders in accordance with this Binding Term Sheet: (i) $11,500,000 of the New Money DIP Loans will be advanced for the liquidity needs of the Debtors in accordance with the Budget (the "***First Advance***"), and (ii) 100% of the Rollup DIP Loans will be used to discharge, on a dollar for dollar basis, all outstanding Prepetition Obligations, other than the Prepayment Premium and the Back-End Facility Fee. The indebtedness represented by the Prepayment Premium and the Back-End Facility Fee, including all accrued and unpaid

postpetition interest from the Petition Date through and including the date of the entry of the Second interim Order (and as otherwise provided in the Second Interim Order), shall constitute a prepetition secured claim of the Prepetition Administrative Agent on behalf of the Prepetition Lenders (the "***Remaining Prepetition Secured Claim***").

2. The remaining $33,500,000 of New Money DIP Loans will be advanced for the liquidity needs of the Debtors in accordance with the Budget (the "***Second Advance***") upon the entry in the Bankruptcy Court of a final order, in form and substance acceptable to the DIP Administrative Agent in its sole and absolute discretion, approving (among other things) the DIP Loans (the "***Final Order***" and collectively with the First Interim Order and the Second Interim order, the "***Financing Orders***").

Security: As security for the DIP Obligations, each Debtor shall grant to the DIP Lenders a security interest in and continuing lien on all of such Debtor's right, title and interest in, to and under all the Debtor's assets, including, but not limited to the following, in each case, whether now owned or existing or hereafter acquired, created or arising and wherever located (all of which being hereafter collectively referred to as the "***DIP Collateral"***): all assets and property of each Debtor and its estate, real or personal, tangible or intangible, now owned or hereafter acquired, whether arising before or after the Petition Date, including, without limitation, all contracts, contract rights, licenses, general intangibles, instruments, equipment, accounts, documents, goods, inventory, fixtures, documents, cash, cash equivalents, chattel paper, letters of credit and letter of credit rights, investment property, commercial tort claims, money, insurance, receivables, receivables records, deposit accounts, collateral support, supporting obligations and instruments, all interests in leaseholds and real properties, all patents, copyrights, trademarks, trade names and other intellectual property (whether such intellectual property is registered in the United States or in any foreign jurisdiction), all equity interests, all books and records relating to the foregoing, all other personal and real property of the Debtor, and all other collateral pledged under the DIP Loan Documents, any actions under sections 544, 545, 547, 548 and 550 of the Bankruptcy Code, other than any such actions acquired by the purchaser under an Acceptable 363 Sale (the "***Avoidance Actions****"*), and all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (in each case as the foregoing are defined in the Uniform Commercial Code as in effect from time to time in the State of Delaware (and, if defined in more than one Article of such Uniform Commercial Code, shall have the meaning given in Article 9 thereof)); provided, that (i) the DIP Lender shall receive perfected security interests in and a lien on Avoidance Actions and their proceeds only upon entry of the Final Order; and (ii) the DIP Collateral shall not include the

Company's directors and officers insurance policy or any proceeds thereof.

Priority and Liens:

All of the claims of the DIP Administrative Agent and the DIP Lenders under the DIP Facility with respect to the DIP Loans and the DIP Obligations shall at all times:

1. pursuant to Section 364(c)(1) of the Bankruptcy Code, be entitled to superpriority claim status in the Chapter 11 Cases (which claims shall be payable from and have recourse to all DIP Collateral);

2. pursuant to Section 364(c)(2) of the Bankruptcy Code, be secured by a perfected first priority lien on all DIP Collateral other than all property of the Debtors that is subject to valid and perfected liens in existence at the time of the commencement of the Chapter 11 Cases or subject to valid liens in existence at the time of such commencement that are perfected subsequent to such commencement as permitted by Section 546(b) of the Bankruptcy Code (the "***Prior Senior Liens***");

3. pursuant to Section 364(c)(3) of the Bankruptcy Code, be secured by a perfected junior lien on all property of the Debtors that is subject to a Prior Senior Lien; and

4. pursuant to Section 364(d)(1) of the Bankruptcy Code, be secured by a perfected first priority, senior priming lien on all of the property of the Debtors (including, without limitation, inventory, receivables, equipment, machinery, intellectual property, general intangibles, real property, capital stock of subsidiaries, membership interests in limited liability companies) that is subject to the existing liens that secure the obligations of the Debtors to the Prepetition Lenders under or in connection with the Prepetition Loan Documents and the Prepetition Obligations.

Adequate Protection:

The Second Interim Order shall provide, as adequate protection for the use of the collateral securing the Remaining Prepetition Secured Claim and the priming of the liens and security interests granted to the Prepetition Secured Parties under the Prepetition Loan Documents (the "***Prepetition Liens***"), the Prepetition Lenders shall be entitled to receive, to the extent of any use of, or diminution in the value of, the collateral securing the Prepetition Obligations (the "***Prepetition Obligations***"):

1. superpriority claim status;

2. replacement liens on all DIP Collateral, junior only to the liens of the DIP Administrative Agent and the DIP Lenders, but subject to any Prior Senior Liens;

3. commencing on the date upon which the Second Interim Order is entered in the Bankruptcy Court, payment on a monthly basis of postpetition interest accruing from such date at the Default Rate specified in the Prepetition Credit Agreement; and

4. reimbursement of all fees, costs and expenses incurred in connection with defending the validity and enforceability of the Prepetition Obligations, the Prepetition Liens (as defined below) or the Remaining Prepetition Secured Claim.

Carve Out:

The liens on and security interests in the DIP Collateral and the super-priority administrative expense claims shall be subject to the "***Carve Out***." For purposes hereof, the "Carve Out" means: (i) all unpaid fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code, (ii) all reasonable fees and expenses up to $50,000 incurred by a trustee under Section 729(b) of the Bankruptcy Code (the "***Chapter 7 Trustee Fee Cap***"); and (iii) in the event of the occurrence and during the continuance of an Event of Default, the payment of documented unpaid professional fees and disbursements incurred by the Borrower and any statutory committees appointed in the Chapter 11 Cases, in each case to the extent allowed by the Court, in an aggregate amount not to exceed all accrued and unpaid professional fees and disbursements owing as of the date of the Event of Default (whether allowed as of such date or subsequent thereto), plus $2,500,000; provided, that (a) no portion of the Carve Out shall be utilized for the payment of professional fees and disbursements incurred in connection with any challenge to (i) the amount, extent, priority, validity, perfection or enforcement of the indebtedness of, or other claims against, the Debtors owing to the DIP Lenders or the Prepetition Lenders or (ii) the collateral securing such indebtedness or the perfection, priority or validity of the liens granted in favor of the DIP Lenders or the Prepetition Lenders with respect thereto, and (b) the Carve Out shall not reduce the amounts payable to the DIP Lenders under the DIP Loan Documents and to the Prepetition Lenders under the Prepetition Loan Documents.

Acceptable 363 Sale:

As used herein, the term "***Acceptable 363 Sale***" means a sale of all or substantially all of the Debtor's assets pursuant to Section 363 of the Bankruptcy Code, subject to the following conditions:

1. the DIP Administrative Agent shall have reviewed and approved in writing any bid procedures, "stalking horse" asset purchase agreement (the "***Stalking Horse Purchase Agreement***"), or any other related agreement; it being understood and agreed that the DIP Administrative Agent has reviewed and approved the form of

Stalking Horse Purchase Agreement with [BH], a corporation organized under the laws of British Columbia Canada ("***BH***") and its wholly owned subsidiary [PURCHASER], a private limited company organized under the laws of Ireland (the "***BH APA***"), the agreements, schedules and exhibits thereto, and bid procedures related to it presented to the DIP Administrative Agent prior to the Petition Date;

2. the sale order shall provide for the indefeasible repayment in full in cash of the DIP Facility upon consummation of the sale; and

3. the sale shall be consummated not later than April 9, 2019.

Acceptable Plan: As used herein, the term "***Acceptable Plan***" means a plan of reorganization or liquidation for each of the Chapter 11 Cases that:

1. Is confirmed on or prior to March 15, 2019; provided, that the closing of the BH APA (or the asset purchase agreement of a higher bidder pursuant to an auction), has occurred on or before April 9, 2019.

2. Either: (a) Pays the Remaining Prepetition Secured Claim (estimated to be $37.1 million) indefeasibly in full in cash on the effective date of such Acceptable Plan; ***OR***

(b) Offers to the class of unsecured creditors, if they vote to accept such Acceptable Plan, the amounts set forth below, and satisfies the Remaining Prepetition Secured Claim by the applicable amounts below:

(i) If there is a "shortfall" (i.e. the amount of remaining sale proceeds held for distribution is less than $37.1 million per the Budget) of $0.00 to $5 million, then the Prepetition Secured Parties shall receive $20 million in cash to satisfy the Remaining Prepetition Claim and $12 million in cash shall be made available for distributions to general unsecured creditors;

(ii) If there is no shortfall but the amount of remaining sale proceeds exceeds $37.1 million then the excess proceeds up to $5 million shall be shared 75% to the Prepetition Secured Lenders and 25% to the general unsecured creditors, such that the Prepetition Secured Parties would receive a total up to $24 million in cash to satisfy in full the Remaining Prepetition Secured Claim and the general unsecured creditors up to $13 million in cash; and

(iii) If there is no shortfall but the amount of remaining sale proceeds exceeds $42.1 million, then such excess proceeds shall be shared 50/50 as between the Prepetition Secured Lenders and the general unsecured creditors until, as applicable, the Prepetition Secured

Parties have received $37.1 million cash to satisfy the Remaining Prepetition Secured Claim and the general unsecured creditors have received payment in the full amount of their allowed claims.

(For the avoidance of doubt, a chart illustrating each waterfall scenario is attached as Exhibit C.)

3. Assigns to the Debtors the Avoidance Actions (and/or proceeds thereof) given to the Prepetition Secured Lenders as adequate protection.

4. Contains, to the maximum extent permissible by law, releases and other exculpatory provisions for the DIP Secured Parties, Prepetition Secured Parties and each of their respective affiliates in form and substance satisfactory to the DIP Administrative Agent and the Prepetition Administrative Agent in their sole and absolute discretion.

5. Becomes effective on or before April 10, 2019.

6. Is otherwise in form and substance reasonably satisfactory to the DIP Administrative Agent with respect to any provision that may adversely affect the DIP Secured Parties and/or the Prepetition Secured Parties.

Credit Bidding:

Each of the Financing Orders and the DIP Loan Documents shall provide that, in connection with an Acceptable 363 Sale or an Acceptable Plan that provides for the sale of the DIP Collateral, the DIP Administrative Agent and the Prepetition Administrative Agent shall have the right to credit bid up to and including the full amount of the DIP Obligations plus the full amount of the Remaining Prepetition Secured Claim for the DIP Collateral. Any such credit bid may provide for the assignment of the right to purchase the acquired assets to a newly formed acquisition vehicle. Notwithstanding the foregoing, the DIP Administrative Agent and the Prepetition Administrative Agent shall not be entitled to exercise such right to credit bid unless and until the BH APA is terminated or modified in a manner adverse in any material respect to the DIP Secured Parties.

Marshalling and Waiver of 506(c) Claims 552(b) Rights:

(i) Each of the Financing Orders shall provide, effective upon the entry of the Final Order, that in no event shall the DIP Administrative Agent, the DIP Lenders, the Prepetition Administrative Agent, or the Prepetition Lenders be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral (as defined below), (ii) the First Interim Order shall approve the waiver of all 506(c) claims on account of amounts covered by the Carve-Out, and (iii) the Final Order shall approve the waiver of all 506(c) claims and similar rights under 552(b).

Automatic Stay:

Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Financing Orders, as the case may be, upon the Maturity Date (whether by acceleration or otherwise), the DIP Secured Parties shall be entitled to immediate payment of all obligations under the DIP Facility and to enforce the remedies provided for under the DIP Loan Documents or under applicable law, without further notice, motion or application to, hearing before, or order from, the Bankruptcy Court, but subject to the following conditions (the "***Waiting Period Procedures***"):

1. The DIP Secured Parties shall notify the DIP Loan Parties that the Maturity Date has occurred (such notice, a "***Maturity Date Notice***" and the date of any such notice, the "***Maturity Date Notice Date***"). A copy of any Maturity Date Notice shall be provided by email to the Debtors' counsel.

2. A waiting period shall commence upon delivery of the Maturity Date Notice and shall expire four (4) business days after the Maturity Date Notice Date (the "***Waiting Period***"). During the Waiting Period, the Debtors shall be entitled to seek an emergency hearing before the Bankruptcy Court for the sole purpose of contesting the occurrence of a Maturity Date (including, for the avoidance of doubt, contesting the occurrence of any breach, default, or Event of Default alleged to underlie the occurrence of the Maturity Date.

3. During the Waiting Period, the Debtors may continue to use the DIP Collateral, including the Cash Collateral.

None of the DIP Secured Parties or the Prepetition Secured Parties shall object to any motion filed by the Debtors during the Waiting Period seeking such expedited hearing nor seek to reduce such Waiting Period.

Conditions Precedent:

The several obligations of the DIP Lenders to make the DIP Loans shall be conditioned on the satisfaction or waiver of the following:

1. with respect to the First Advance of the New Money Dip Loans and the "Roll Up":

    a. the filing by the Debtors of an Acceptable Plan and disclosure statement in the Bankruptcy Court not later than December 21, 2018;

    b. definitive DIP Loan Documents in form and substance acceptable to the DIP Administrative Agent in its sole and absolute discretion, shall have been executed and delivered by the parties thereto on or prior to December 18, 2018;

    c. the entry by the Bankruptcy Court of the Second Interim Order in form and substance acceptable to the

DIP Administrative Agent in its sole and absolute discretion; and

d. the Debtors shall have been at all times in compliance with the Budget (subject to the Permitted Variances).

2. with respect to the Second Advance of the New Money DIP Loans, the entry of the Final Order in form and substance acceptable to the DIP Administrative Agent in its sole and absolute discretion;

3. with respect to the BH APA, the Bid Procedures Motion, the Sale Motion and the respective orders of the Bankruptcy Court related thereto shall not have been modified or amended in a manner adverse in any material respects to the rights and interests of the DIP Secured Parties without the prior written consent of the DIP Administrative Agent in its sole and absolute discretion; and

4. other than the Designated Defaults or a Liquidity Covenant Default (as such terms are defined in the Limited Forbearance Agreement dated November 19, 2018, among the Debtors and the Prepetition Secured Parties, as amended by Amendment to Limited Forbearance Agreement dated December 5, 2018) and the event of default under the Prepetition Credit Agreement resulting from the Debtors filing for bankruptcy (and any default or other event of default arising therefrom or related thereto), no Default or Event of Default shall have occurred.

Representations and Warranties: The representations and warranties of the DIP Loan Parties under the DIP Loan Documents shall be substantially similar to those set forth in the Prepetition Credit Agreement, subject to the Documentation Principles, and include the following, in each case subject to certain exceptions, qualifications, and carve outs to be set forth in the DIP Loan Documents and substantially consistent with the Documentation Principles:

a. The Debtor is duly organized, validly existing, in good standing and qualified to do business in the state of its organization.

b. As of the Petition Date, the approximate aggregate outstanding amount of the Prepetition Obligations is [$147,100,000], which amount is the sum of: (i) principal in the amount of $107,551,191.90, plus (ii) accrued and unpaid interest in the amount of $2,322,806.99 (including interest at the Prepetition Default Rate in the amount of $250,952.8), plus (iii) Prepayment Premium in the amount of $34,954,137.37, plus (iv) Back-End Facility Fee in the

amount of $2,151,023.84, plus (v) unreimbursed costs, fees and expenses in accordance with the Prepetition Loan Documents.

c. The stipulations of the Debtors in each of the Financing Orders are true, accurate and correct.

d. The Debtor has full power and authority to operate and conduct its business, to execute, deliver and perform this Binding Term Sheet and associated documents and to incur obligations under this Binding Term Sheet, the DIP Loan Documents and the Financing Orders.

e. Neither the DIP Obligations nor the Prepetition Obligations shall be subject to setoff or recoupment or any such rights under Bankruptcy Code section 553 or otherwise with respect to any claim the Debtor may have against the DIP Lender arising on or before the Petition Date.

f. All material contracts and agreements with critical Vendors (the "***Vendor Contracts***") and key customers (the "***Customer Contracts***") shall remain in full force and effect and no defaults or termination events exist or have been asserted with respect to any such contracts, other than a default resulting from the commencement of the Chapter 11 Cases, or the insolvency or financial condition of the DIP Loan Parties; provided, that no such default shall result in a termination of the (i) BH APA or (ii) any material Vendor Contracts or Customer Contracts.

Affirmative Covenants: The affirmative covenants of the DIP Loan Parties under the DIP Loan Documents shall be limited to the following, in each case subject to certain exceptions, qualifications, and carve outs to be set forth in the DIP Loan Documents and substantially consistent with the Documentation Principles:

a. use the advances made under the DIP Facility and/or the Cash Collateral only for the purposes set forth herein and identified in the Budget, except as would not cause the Borrower's cash disbursements on an aggregate basis for operating expenses to vary from the Budget by more than the applicable Operating Variance, and shall not use such funds to commence any action against the DIP Administrative Agent, the DIP Lenders or their respective affiliates, employees, directors, officers or principals;

b. permit the DIP Secured Parties and their representatives and designees to visit and inspect the properties, books and

records of the Debtor upon reasonable notice at the Debtor's expense;

c. subject to the Budget, pay all taxes, assessments, contributions and other governmental charges imposed upon any Debtor or any of its properties or assets as they become due and payable, to the extent payment and/or enforcement thereof is not stayed as a result of the Chapter 11 Cases;

d. maintain in good working order all material properties used in the Borrower's business, as and to the extent in good working order as of the Petition Date;

e. maintain insurance with respect to the business and property of the Debtors against loss of the kind and in the amounts maintained by the Debtors as of the Petition Date;

f. comply in all material respects with the requirements of all applicable laws;

g. cause its financial professionals to provide the DIP Secured Parties and the Prepetition Secured Parties with detailed weekly status reports regarding the post-petition marketing efforts and provide any information regarding the Acceptable Sale that the DIP Lenders/Prepetition Lenders may request;

h. comply in all material respects with the schedule of Case Milestones (as defined below);

i. promptly upon request execute and deliver such documents and do such other acts as the DIP Secured Parties may reasonably request in connection with the DIP Facility, and in accordance with the DIP Loan Documents (including but not limited to execution of any additional security documents that may be required); and

j. comply with all obligations of the Debtors under the DIP Loan Documents and the Financing Orders.

Negative Covenants: The negative covenants of the DIP Loan Parties under the DIP Loan Documents shall be limited to the following, in each case subject to certain exceptions, qualifications, and carve outs to be set forth in the DIP Loan Documents and substantially consistent with the Documentation Principles:

a. incur any indebtedness (other than the borrowings under the DIP Facility and obligations permitted to be incurred under the Budget, any other indebtedness permitted to be incurred by the DIP Lenders and the Bankruptcy Court, and any unsecured obligations incurred in the ordinary course of

business by the Debtors and permitted to be incurred by the Budget);

b. incur any liens other than liens permitted in writing by the DIP Administrative Agent in its sole and absolute discretion;

c. make any investments in any person or make any loan to any person (other than as permitted in writing by the DIP Administrative Agent in its sole and absolute discretion);

d. engage in any business other than the business engaged in by the Debtors on the Petition Date;

e. sell any assets outside the ordinary course of business (i) except with the written consent of the DIP Administrative Agent in its sole and absolute discretion, or (ii) unless such sale results in the indefeasible payment in full in cash of the DIP Obligations;

f. acquire assets, merge, consolidate or dissolve without the consent of the DIP Administrative Agent in its sole and absolute discretion;

g. terminate or agree to any modification to any organizational documents of any Debtor except with the written consent of the DIP Administrative Agent in its sole and absolute discretion;

h. engage in any transactions with insiders without the written consent of DIP Administrative Agent in its sole and absolute discretion, except as set forth in the Budget;

i. use proceeds of the Carve Out, DIP Collateral or Prepetition Collateral except as set forth herein, including, but not limited to, investigate or challenge the validity, perfection, priority, extent, or enforceability of Prepetition Liens; provided, that not more than $75,000 of the proceeds of the Carve Out, DIP Collateral or Prepetition Collateral may be set aside for use by any statutory committees appointed in the Chapter 11 Cases for purposes of investigating such validity, perfection, priority, extent or enforceability of Prepetition Liens

j. amend the any of the Financing Orders or the Budget without the DIP Lenders' consent;

k. agree to entry of any order precluding or modifying the DIP Lenders' and Prepetition Lenders' rights to "credit bid" up to the full amount of the outstanding DIP Loans plus the Remaining Prepetition Secured Claim for the Debtor's assets; or

l. other than the Carve Out, consent to the granting of adequate protection payments or liens, super-priority administrative expense claims or liens having priority senior or *pari passu* with those granted to the DIP Lenders or Prepetition Lenders, except as permitted by the DIP Loan Documents.

Case Milestones: The milestone schedule with which the Debtors shall comply, for the purpose of ensuring the timely pursuit and consummation of an Acceptable 363 Sale on or before April 9, 2019 or the consummation of an Acceptable Plan on or before April 10, 2019, shall be as set forth on Exhibit D hereto.

Events of Default: The Events of Default under the DIP Loan Documents shall be substantially similar to those set forth in the Prepetition Credit Agreement, subject to the Documentation Principles, and include the following, in each case subject to certain exceptions, qualifications, cure periods, and carve-outs to be set forth in the DIP Loan Documents and substantially consistent with the Documentation Principles:

a. The failure by the Debtors to perform or comply with any term, condition, covenant or obligation (including a payment obligation) contained in the DIP Loan Documents or any of the Financing Orders.

b. The cessation of the DIP Facility to be in full force and effect or the DIP Facility being declared by the Bankruptcy Court to be null and void or the validity or enforceability of the DIP Facility being contested by any Debtor or any Debtor denying in writing that it has any further liability or obligation under the DIP Facility or the DIP Lenders ceasing to have the benefit of the liens granted by the Financing Orders.

c. The entry of any order of the Bankruptcy Court granting to any third party a claim or lien *pari passu* with or senior to that granted to the DIP Lenders hereunder.

d. Until the DIP Obligations are repaid in full, the Debtors shall make any payment of principal or interest or otherwise on account of any indebtedness for borrowed money or payables other than the DIP Obligations under the DIP Facility or other than in accordance with the Budget

approved by the DIP Administrative Agent in its sole and absolute discretion.

e. The Debtor fails to make any interest payments due under the any of the Financing Orders within three (3) business days of when due.

f. Failure of the Debtor to meet any of the applicable Case Milestones (other than as the result of any action or omission of the DIP Secured Parties).

g. Failure of the Debtors to maintain cash disbursements and collections within the Permitted Variance under the Budget.

h. The entry of an order converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, or the Debtors filing a motion or not opposing a motion seeking such relief.

i. The entry of an order dismissing the Chapter 11 Cases, or the Debtors filing a motion or not opposing a motion seeking such relief without the consent of the DIP Lenders.

j. The entry of an order in the Chapter 11 Cases appointing any examiner having expanded powers or a trustee to operate all or any part of the Borrower's business.

k. The entry of an order in the Chapter 11 Cases granting relief from the automatic stay so as to allow a third party or third parties to proceed against any material (in the DIP Administrative Agent's sole discretion) property, including the collateral pledged pursuant to the DIP Facility and the Prepetition Liens, of the Debtor or to commence or continue any prepetition litigation against the Debtors involving potential liability not covered by insurance, in excess of $1,000,000 in the aggregate.

l. The entry of an order in the Chapter 11 Cases charging any of the DIP Collateral or Prepetition Collateral under Section 506(c) of the Bankruptcy Code against the DIP Secured Parties or Prepetition Secured Parties or the commencement of other actions by any DIP Loan Party or affiliate thereof that challenges the rights and remedies of any of the DIP Secured Parties under the DIP Facility or Prepetition Secured Parties under the Prepetition Credit Agreement in any of the Chapter 11 Cases or in a manner inconsistent with the DIP Loan Documents.

m. Without the prior written consent of the Agent and other than in respect of the DIP Facility and the Carve-Out, the bringing of any motion or taking of any action seeking entry of an order, or the entry of an

order by the Bankruptcy Court, in any of the Chapter 11 Cases (i) granting superpriority administrative expense status to any claim *pari passu* with or senior to the claims of the DIP Secured Parties or the Prepetition Secured Parties, (ii) permitting the Debtors to obtain financing under Section 364 of the Bankruptcy Code, (iii) permitting the Debtors to grant security interests or liens under Section 364 of the Bankruptcy Code, (iv) permitting the Debtors to use cash collateral under Section 364 of the Bankruptcy Code, or (v) authorizing the Debtors to take other actions adverse to any DIP Credit Party or any Prepetition Credit Party or their rights and remedies under the DIP Loan Documents, the Prepetition Credit Agreement or their interest in Prepetition Collateral or the DIP Collateral under Section 364 of the Bankruptcy Code.

n. The entry of any order terminating any Debtor's exclusive right to file a plan of reorganization or the expiration of any Debtor's exclusive right to file a plan of reorganization.

o. There shall arise any superpriority claim in the Chapter 11 Case which is *pari passu* with or senior to the priority of the claims of the DIP Secured Parties, except with respect to the Carve-Out and as set forth in the DIP Loan Documents.

p. The entry of any order in the Chapter 11 Cases which provides adequate protection, or the granting by any DIP Loan Party of similar relief in favor of any one or more of any DIP Loan Party's prepetition creditors, contrary to the terms and conditions of any of the Financing Orders or the DIP Loan Documents.

q. The DIP Loan Parties or any of their subsidiaries or affiliates, or any person claiming by or through any of the foregoing, shall obtain court authorization to commence, or shall commence, join in, assist, acquiesce to, or otherwise participate as an adverse party in any suit or other proceeding against any DIP Credit Party or any Prepetition Credit Party regarding the DIP Facility or the Prepetition Secured Parties regarding the Prepetition Credit Agreement.

r. A plan of reorganization shall be filed by the Debtors, or be confirmed in any of the Chapter 11 Cases that is not an Acceptable Plan, or any order shall be entered which dismisses any of the Chapter 11 Cases and which order (i) does not provide for termination of the unused commitments under the DIP Facility and payment in full in cash of the DIP Loan Parties' obligations under the DIP Facility, (ii) does not provide, to the extent permitted by applicable law, for release and exculpatory provisions relating to the DIP Secured Parties and the Prepetition Secured Parties that are satisfactory to the

DIP Administrative Agent and the Prepetition Administrative Agent in their sole and absolute discretion and (iii) is not otherwise reasonably satisfactory to the DIP Administrative Agent and the Prepetition Administrative Agent in their sole and absolute discretion, or any of the DIP Loan Parties or any of their subsidiaries or affiliates, shall file, propose, support, or fail to contest in good faith the filing or confirmation of such a plan or the entry of such an order.

s. Any judgment or order as to liability not covered by insurance, or debt for the payment of money, in excess of $1,000,000 shall be rendered against the Debtors (individually or in the aggregate), and the enforcement thereof shall not have been stayed.

t. The Bankruptcy Court shall enter an order authorizing the sale of all or substantially all of the assets of the Debtors unless (i) such order contemplates indefeasible repayment in full in cash of the DIP Facility upon consummation of the sale or (ii) consummated as part of an Acceptable Plan.

u. The entry of an order in the Chapter 11 Cases avoiding or permitting recovery of any portion of the payments made on account of the obligations under the DIP Facility, the DIP Loan Documents, the Prepetition Credit Agreement or any related documents or the taking of any action by any DIP Loan Party to challenge, support or encourage a challenge of any such payments.

v. The Final Order and the terms thereof shall cease to create a valid and perfected security interest and lien on the DIP Collateral.

w. The Final Order does not include a waiver, in form and substance satisfactory to the Agent in its sole and absolute discretion, of (i) the right to surcharge the Prepetition Collateral and/or the DIP Collateral under Section 506(c) of the Bankruptcy Code; (ii) any ability to limit the extension under Section 552(b) of the Bankruptcy Code of the liens of the Prepetition Administrative Agent on the Prepetition Collateral to any proceeds, products, offspring, or profits of the Prepetition Collateral acquired by any DIP Loan Party after the Petition Date and (iii) the doctrine of marshalling.

x. The filing or support of any pleading by any DIP Loan Party (or any affiliate thereof) seeking, or otherwise consenting to, any relief the granting of which could reasonably be expected to result in the occurrence of an Event of Default.

y. Any non-monetary, judgment or order with respect to a post-petition event shall be rendered against any Debtor which

does or would reasonably be expected to (i) cause a material adverse change in the financial condition, business, prospects, operations or assets of the Debtors as a whole or (ii) have a material adverse effect on the rights and remedies of the DIP Lenders, and, in each case, there shall be a period of ten (10) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect.

z. Any of the Financing Orders being amended or modified without the consent of the DIP Lenders.

aa. Any Vendor Contract or Customer Contract is terminated or modified without the prior written consent of the DIP Administrative Agent in its sole and absolute discretion, and such modification or termination does or would reasonably be expected to (i) cause a material adverse change in the financial condition, business, prospects, operations or assets of the Debtors as a whole, (ii) have a material adverse effect on the rights and remedies of the DIP Secured Parties, or (iii) result in a termination of the BH APA.

bb. The commencement of any investigation by, or issuance of any recall order by, the U.S. Food and Drug Administration, and such FDA investigation or recall order does or would reasonably be expected to (i) cause a material adverse change in the financial condition, business, prospects, operations or assets of the Debtors as a whole, (ii) have a material adverse effect on the rights and remedies of the DIP Secured Parties, or (iii) result in a termination of the BH APA.

cc. The commencement of any investigation of any Debtor by any federal or state agency or other governmental or judicial entity, and such investigation does or would reasonably be expected to (i) cause a material adverse change in the financial condition, business, prospects, operations or assets of the Debtors as a whole, (ii) have a material adverse effect on the rights and remedies of the DIP Secured Parties, or (iii) result in a termination of the BH APA.

dd. The issuance by the Internal Revenue Service or any state tax authority of one or more deficiency notices exceeding, in the aggregate, $1,000,000 at any time.

ee. The closing of an Acceptable 363 Sale shall not have occurred on or prior to March 31, 2019, and the Budget shall not have been modified by the DIP Loan Parties (with the consent of the DIP Administrative Agent in its sole an absolute discretion) to reflect and forecast the DIP Loan Parties' Cash Receipts, Cash Operating Disbursements and Cash

Bankruptcy Disbursements for the period commencing on April 1, 2019 through and including April 10, 2019 (subject to Permitted Variances).

Remedies:

Notwithstanding the provisions of Section 362 of the Bankruptcy Code, but subject to the Waiting Period Procedures and any other applicable provisions of the Financing Orders, as the case may be, if any Event of Default occurs and is continuing, the DIP Secured Parties may take any or all of the following actions:

a. declare by a Maturity Date Notice the commitment of the DIP Lenders to make Loans and consent to use of Cash Collateral to be terminated, whereupon such commitment and consent shall be terminated;

b. declare a Maturity Date Notice the unpaid amount of the DIP Obligations and the Prepetition Obligations, all interest accrued and unpaid thereon, and all other amounts owing or payable under the DIP Loan Documents, the Prepetition Loan Documents, this Binding Term Sheet and the Financing Orders;

c. to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Debtor; or

d. take any other action or exercise any other right or remedy (including, without limitation, with respect to the liens in favor of the DIP Administrative Agent and the DIP Lenders) permitted under the Dip Loan Documents, or by applicable law.

Expenses and Indemnification:

The DIP Administrative Agent and the DIP Lenders (and their affiliates and respective officers, directors, employees, advisors and agents) (each such person, an "***Indemnitee***") will have no liability for, and will be indemnified and held harmless against, any losses, claims, damages, liabilities or expenses incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof, except to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to arise from the gross negligence or willful misconduct of the relevant indemnified person. Such indemnity shall not be available (i) to the extent arising from a material breach of any obligation of such Indemnitee under the DIP Loan Documents or (ii) to the extent arising out of any loss, claim, damage, liability or expense that does not involve an act or omission of the DIP Loan Parties and that is brought by an Indemnitee against another Indemnitee (other than claims against an Indemnitee in its capacity or in fulfilling its role as DIP Administrative Agent or any similar role under the DIP Loan Documents).

Governing Law: New York.

{Signatures follow.}

IN WITNESS WHEREOF, the parties hereto have caused this Binding Term Sheet to be executed as of the date first set forth above.

DIP LOAN PARTIES:

SYNERGY PHARMACEUTICALS INC., as Borrower

By: /s/ Gary G. Gemignani

Name: Gary G. Gemignani

Title: EVP, Chief Financial Officer

SYNERGY ADVANCED PHARMACEUTICALS, INC., as Guarantor

By: /s/ Gary G. Gemignani

Name: Gary G. Gemignani

Title: EVP, Chief Financial Officer

CRG SERVICING LLC, as DIP Administrative Agent

By /s/ Nathan Hukill
Nathan Hukill
President

DIP LENDERS:

CRG PARTNERS III L.P.
By CRG PARTNERS III GP L.P., its General Partner
By CRG PARTNERS III GP LLC, its General Partner

By /s/ Nathan Hukill
Nathan Hukill
Authorized Signatory

CRG PARTNERS III (CAYMAN) UNLEV AIV I L.P.
By CRG PARTNERS III (CAYMAN) GP L.P., its General Partner
By CRG PARTNERS III GP LLC, its General Partner

By /s/ Nathan Hukill
Nathan Hukill
Authorized Signatory

Witness: /s/ Nicole Nesson
Name: Nicole Nesson

CRG PARTNERS III—PARALLEL FUND "A" L.P.
By CRG PARTNERS III—PARALLEL FUND "A" GP L.P., its General Partner
By CRG PARTNERS III GP LLC, its General Partner

By /s/ Nathan Hukill
Nathan Hukill
Authorized Signatory

CRG PARTNERS III—PARALLEL FUND "B" L.P.
By CRG PARTNERS III—PARALLEL FUND "B" GP L.P., its General Partner
By CRG PARTNERS III GP LLC, its General Partner

By /s/ Nathan Hukill
Nathan Hukill
Authorized Signatory

CRG PARTNERS III (CAYMAN) LEV AIV I L.P.
By CRG PARTNERS III (CAYMAN) GP L.P., its General Partner
By CRG PARTNERS III GP LLC, its General Partner

By /s/ Nathan Hukill
Nathan Hukill
Authorized Signatory

Witness: /s/ Nicole Nesson
Name: Nicole Nesson

CRG ISSUER 2017-1
By CRG SERVICING LLC, acting by power of attorney

By /s/ Nathan Hukill
Nathan Hukill
Authorized Signatory

EXHIBIT A: DIP LENDERS AND COMMITMENTS

Lender	$ Amount	Proportionate Share
CRG Partners III L.P.	7,618,864	4.919%
CRG Partners III (Cayman) Unlev AIV I L.P.	7,743,700	5.000%
CRG Partners III — Parallel Fund "A" L.P.	12,497,080	8.069%
CRG Partners III — Parallel Fund "B" L.P.	18,000,000	11.622%
CRG Partners III (Cayman) Lev AIV I L.P.	13,500,000	8.717%
CRG Issuer 2017-1	95,514,355	61.672%
Total	**154,873,999**	**100.000%**

EXHIBIT B: BUDGET

Prepared at the Direction of Counsel
Privileged and Confidential
DRAFT -Subject to Material Change
For Professional Eyes ONLY

($ in Thousands)

Fiscal Year:	2018	2018	2018	2019	2019	2019	2019	2019	2019	2019	2019	2019	2019	2018-2019
Week Ended:	12/14/18	12/21/18	12/28/18	01/04/19	01/11/19	01/18/19	01/25/19	02/01/19	02/08/19	02/15/19	02/22/19	03/01/19	03/08/19	03/08/19
Actual / Forecast:	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Post-Petition Week:	**Week 1**	**Week 2**	**Weak 3**	**Week 4**	**Week 5**	**Week 6**	**Week 7**	**Week 8**	**Week 9**	**Week 10**	**Week 11**	**Week 12**	**Week 13**	**Total**
13-Week Cash Flow Budget														
Operating Receipts														
Sales Receipts	$ 1,039	$ 1,712	$ 1,806	$ 1,891	$ 1,766	$ 1,766	$ 1,766	$ 1,766	$ 1,766	$ 1,766	$ 1,766	$ 1,766	$ —	$ 20,579
Other Receipts	—	—	—	40	—	—	—	40	—	—	—	40	—	120
Total Operating Receipts	$ 1,039	$ 1,712	$ 1,806	$ 1,931	$ 1,766	$ 1,766	$ 1,766	$ 1,806	$ 1,766	$ 1,766	$ 1,766	$ 1,806	$ —	$ 20,699
Operating Disbursements														
Payroll	—	—	(1,823)	—	(1,823)	—	—	(1,823)	—	(3,545)	—	(1,823)	—	(10,837)
Sales & Marketing	—	(101)	—	(713)	(4)	(4)	(4)	(887)	(4)	(139)	(4)	(887)	—	(2,749)
GTN (Relay/TC)	—	(89)	(386)	(1,920)	(372)	—	(150)	(970)	(476)	(1,333)	(150)	(8,163)	—	(14,009)
Inventory	—	(15)	(3,716)	(103)	(157)	(1)	(1)	(4,353)	(1)	(1)	(1)	(43)	—	(8,390)
R&D / Regulatory	—	—	(342)	(666)	—	—	(405)	(425)	(95)	—	—	(385)	—	(2,318)
G&A	—	—	—	(201)	(15)	(15)	(15)	(201)	(15)	(125)	(15)	(481)	—	(1,083)
Other Disbursements	—	(733)	(131)	—	(700)	(72)	(733)	(131)	(700)	(447)	(733)	(131)	(500)	(5,010)
Total Operating Disbursements	$ —	$ (939)	$(6,397)	$(3,603)	$(3,070)	$ (92)	$(1,308)	$(8,790)	$(1,291)	$(5,589)	$ (903)	$(11,912)	$ (500)	$(44,395)
Operating Cash Flow	$ 1,039	$ 773	$(4,591)	$(1,672)	$(1,304)	$ 1,674	$ 458	$(6,983)	$ 475	$(3,823)	$ 863	$(10,106)	$ (500)	$(23,696)
Non-Operating Disbursements														
Interest	—	—	(258)	(279)	—	—	—	(2,095)	—	—	—	(1,837)	—	(4,469)
Total Non-Operating Disbursements	$ —	$ —	$ (258)	$ (279)	$ —	$ —	$ —	$(2,095)	$ —	$ —	$ —	$ (1,837)	$ —	$ (4,469)
Bankruptcy Related Disbursements														
DIP Financing Fees	—	(900)	—	—	—	—	—	—	—	—	—	(1,350)	—	(2,250)
Professional Fees	—	(200)	—	—	—	(650)	—	(395)	—	(4,153)	—	(1,490)	—	(6,889)
Utility Deposit	(30)	—	—	—	—	—	—	—	—	—	—	—	—	(30)
Total Bankruptcy Related Disbursements	$ (30)	$(1,100)	$ —	$ —	$ —	$ (650)	$ —	$ (395)	$ —	$(4,153)	$ —	$ (2,840)	$ —	$ (9,169)
Net Cash Flow before Financing	$ 1,009	$ (827)	$(4,849)	$(1,950)	$(1,304)	$ 1,024	$ 458	$(9,474)	$ 475	$(7,976)	$ 863	$(14,784)	$ (500)	$(37,884)
Cash Balance														
Beginning Cash Balance	14,328	15,336	26,509	21,660	53,210	51,906	52,930	53,389	43,915	44,390	36,414	37,277	52,171	14,328
Net lash Flow before Financing	1,009	(327)	(4,849)	(1,950)	(1,304)	1,024	458	(9,474)	475	(7,976)	863	(14,784)	(500)	(37,334)
DIP Proceeds (New Money)	—	11,500	—	33,500	—	—	—	—	—	—	—	—	—	45,000
DIP Paydown	—	—	—	—	—	—	—	—	—	—	—	(155,323)	—	(155,323)
363 Sale Proceeds	—	—	—	—	—	—	—	—	—	—	—	185,000	—	185,000
Ending Cash														

Balance	$15,336	$26,500	$21,660	$53,210	$51,906	$52,930	$53,389	$43,915	$44,390	$36,414	$37,277	$ 52,171	$51,671	$ 51,671

EXHIBIT C: ACCEPTABLE PLAN ILLUSTRATION

Synergy Pharmaceuticals
Illustrative Sharing Waterfall

Confidential Preliminary Working Draft
Work Product Prepared at the Direction of Counsel:
For Discussion Purposes Only

Distributable Cash After Wind-Down		30,100	32,100	34,100	37,100	39,600	42,100	44,600	47,100	49,600	52,100	54,600	57,100	59,600	62,100	64,600	67,100	69,600	72,100
(Shortfall) / Excess		(7,000)	(5,000)	(3,000)	—	2,500	5,000	7,500	10,000	12,500	15,000	17,500	20,000	22.500	25,000	27,500	30,000	32,500	35,000
Initial Sharing																				
Proceeds to Secured Lender		30,100	20,100	20,100	20,100	20,100	20,100	20,100	20,100	20,100	20,100	20,100	20,100	20,100	20,100	20,100	20,100	29,100	20,100
Proceeds to Unsecureds		—	12,000	12,000	12,000	12.000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000
Range 1 (Shortfall <5M)	100%	N/A	—	2,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Range 2 (Excess up to 5M)	75%	N/A	—			1,875	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,750	3,760	3,750	3,750
Range 3 (Excess Above 5M)	50%	N/A	—			—	—	1,250	2,500	3,750	5,000	6,250	7,500	8,750	10,000	11,250	12,500	13,750	15,000
Total Sharing Proceeds to Secured Lender			—	2,000	5,000	6,875	8,750	10,000	11,250	12,500	13,750	15,000	16,250	17,000	17,000	17,000	17,000	17,000	17,000
Total Proceeds from Distributable Cash After Wind-Down																				
Secured Lender		30,100	20,100	22,100	25,100	26,975	28,850	30,100	31,350	32,600	33,850	35,100	36,350	37,100	37,100	37,100	37,100	37,100	37,100
Unsecureds			12,000	12,000	12,000	12,625	13,250	14,500	15,750	17,000	18,250	19,500	20,750	22,500	25,000	27,500	30,000	32,500	35,000
Secured Claim Deficiency																				
Recovery %	37,100	*81%*	*54%*	*60%*	*68%*	*73%*	*78%*	*81%*	*85%*	*88%*	*91%*	*95%*	*98%*	*100%*	*100%*	*100%*	*100%*	*100%*	*100%*
Unsecured Claims																				
Recovery %	38,603	*0%*	*31%*	*31%*	*31%*	*33%*	*34%*	*38%*	*41%*	*44%*	*47%*	*51%*	*54%*	*58%*	*65%*	*71%*	*78%*	*84%*	*91%*

EXHIBIT D: CASE MILESTONE SCHEDULE

Budget

1. On or before the Petition Date, the DIP Administrative Agent shall have approved, based on then current information, the Budget.

2. On or before December 18, 2018, the DIP Administrative Agent shall have reaffirmed its approval, based on then then current information, of the Budget, or the DIP Loan Parties shall have adopted a revised budget acceptable to the DIP Administrative Agent in its sole and absolute discretion.

DIP Facility

1. Not later than the Petition Date, the Debtors shall file with the Bankruptcy Court a motion seeking approval of the DIP Facility, this Binding Term Sheet, the DIP Loans, and all fees, expenses, indemnification, and other obligations contemplated thereunder.

2. Not later than 3 days following the Petition Date, the Bankruptcy Court shall have entered the First Interim Order.

3. Not later than December 18, 2018, finalize DIP Credit Agreement.

4. Not later than December 21, 2018, the Bankruptcy Court shall have entered the Second Interim Order.

5. Not later than January 15, 2019, the Bankruptcy Court shall have entered the Final Order.

Acceptable 363 Sale

1. Not later than December 12, 2019, the Debtors shall file with the Bankruptcy Court Sale Motion and Bid Procedures Motion, in each case acceptable to the DIP Administrative Agent in its sole and absolute discretion.

2. Not later than January 4, 2019, a Bid Procedures Hearing shall be held in the Bankruptcy Court.

3. The deadline for bidding shall be a date not later than February 9, 2019.

4. The date specified for an auction, if necessary, shall be a date not later than February 12, 2019.

5. Not later than February 15, 2019, a Sale Hearing shall be held in the Bankruptcy Court.

6. The closing of the Acceptable 363 Sale shall occur on or before April 9, 2019.

Acceptable Plan

1. Not later than January 4, 2019, the Debtors shall file their Schedules and Statement of Financial Affairs.

2. The bar date for filing proofs of claim shall be a date not later than February 11, 2019.

3. Not later than December 21, 2019, the Debtors shall file with the Bankruptcy Court an Acceptable Plan and a disclosure statement with respect thereto.

4. Not later than February 18, 2019, the Bankruptcy Court shall enter an order approving a disclosure statement with respect to an Acceptable Plan.

5. Not later than March 15, 2019, the Bankruptcy Court shall enter an order confirming an Acceptable Plan.

6. Not later than Apri1 10, 2019, such Acceptable Plan shall become effective.

Exhibit 99.1

Press Release

Synergy Pharmaceuticals Announces Agreement for Bausch Health to Acquire Its Business Assets

Company Initiates Voluntary Chapter 11 Process to Effectuate Sale; Secures Commitment for DIP Financing to Support Normal-Course Operations

NEW YORK, December 12, 2018 — Synergy Pharmaceuticals Inc. (NASDAQ:SGYP) (the "Company" or "Synergy"), a biopharmaceutical company focused on the development and commercialization of novel gastrointestinal (GI) therapies, today announced an agreement with Bausch Health Companies Inc., through which Bausch Health would acquire substantially all of Synergy's assets, including all rights to TRULANCE® (plecanatide), dolcanatide and related intellectual property, for approximately $200 million in cash, subject to certain adjustments at closing, plus the assumption of certain liabilities related to the assets to be acquired. The sale is subject to a competitive process and the Company's receipt of higher and better offers.

To facilitate the sale and address its debt obligations, Synergy initiated voluntary proceedings under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of New York. The Company fully intends to operate its business as usual while it works to complete the sale through the Chapter 11 process.

"We have worked diligently to serve our patients, health care professionals and other stakeholders by bringing TRULANCE® to market and developing other GI therapies to address previously unmet needs. Unfortunately, we have now reached a point where our financial challenges are preventing us from taking this important work to the next level," said Troy Hamilton, Chief Executive Officer of Synergy Pharmaceuticals Inc. "We are pleased to reach this agreement with Bausch Health and to move forward with the court-supervised auction process. We are confident that this process will result in a strong new owner that has the necessary funding and commercialization capabilities to continue providing TRULANCE to the patients and providers who have come to rely on this treatment and will allow us to maximize value for all stakeholders. We thank our employees for their continued hard work, dedication and commitment to serving our health care professionals and their patients."

Synergy has entered into a binding term sheet with its existing first lien lenders for debtor-in-possession (DIP) financing in an aggregate principal amount equal to $155 million, comprised of $110 million of roll up pre-petition loan obligations and $45 million of new money loans to support operations during the Chapter 11 and sale process. This financing, combined with existing cash on its balance sheet and normal operating cash flows, will allow Synergy to operate its business as usual and help fund its ongoing financial commitments while it works to complete the sale. The Company also has filed customary motions with the Court seeking authorization to continue employee wages and benefit programs, honor future vendor payments and maintain customer programs in the normal course in addition to certain other relief.

The proposed sale to Bausch Health is expected to be conducted through a supervised sale process under Section 363 of the Bankruptcy Code and will be subject to Court-approved bidding procedures, receipt of higher and better offers at auction and approval of the Court. As part of the sale through the Chapter 11 process, Synergy and its advisors will evaluate competing bids that may be submitted in order to ensure the Company receives the highest and best offer for its assets. The agreement with Bausch Health comprises the initial stalking horse bid in the Court-supervised auction process. Synergy aims to complete this process by the end of the first quarter of 2019. The agreement will be filed with the Securities and Exchange Commission.

Additional information about Synergy's Chapter 11 cases can be found at https://cases.primeclerk.com/Synergy.

Synergy is advised in this transaction by Skadden, Arps, Slate, Meagher & Flom LLP, Sheppard, Mullin, Richter & Hampton LLP, Centerview Partners and FTI Consulting.

Forward-Looking Statements

This press release contains forward-looking statements, which are based on our current expectations, estimates, and projections about the businesses and prospects of the Company and its subsidiaries ("we" or "us"), as well as management's beliefs, and certain assumptions made by management. Words such as "anticipates," "expects," "intends," "plans," "believes," "seeks," "estimates," "may," "should," "will" and variations of these words are intended to identify forward-looking statements. Such statements speak only as of the date hereof and are subject to change. The Company undertakes no obligation to revise or update publicly any forward-looking statements for any reason. These statements are not guarantees of future performance and are subject to certain risks, uncertainties, and assumptions that are difficult to predict. Forward-looking statements discuss, among other matters: our financial and operational results, as well as our expectations for future financial trends and performance of our business in future periods; our strategy; risks and uncertainties associated with Chapter 11 proceedings; the negative impacts on our businesses as a result of filing for and operating under Chapter 11 protection; the time, terms and ability to confirm a Chapter 11 plan of reorganization for our businesses; the adequacy of the capital resources of our businesses and the difficulty in forecasting the liquidity requirements of the operations of our businesses; the unpredictability of our financial results while in Chapter 11 proceedings; our ability to discharge claims in Chapter 11 proceedings; negotiations with the holders of our indebtedness and our trade creditors; risks and uncertainties with performing under the terms of the debtor-in-possession ("DIP") financing arrangements and any other arrangement with lenders or creditors while in Chapter 11 proceedings; the Company's ability to operate our businesses within the terms of our respective DIP financing arrangements; the forecasted uses of funds in the Company's DIP budgets; our ability to conduct business as usual in the United States and worldwide; our ability to continue to serve customers, suppliers and other business partners at the high level of service and performance they have come to expect from us; our ability to continue to pay suppliers and vendors; our ability to fund ongoing business operations through the applicable DIP financing arrangements; the use of the funds anticipated to be received in the DIP financing arrangements; the ability to control costs during Chapter 11 proceedings; the risk that our Chapter 11 Cases may be converted to cases under Chapter 7 of the Bankruptcy Code; the ability of the Company to preserve and utilize the NOLs following Chapter 11 proceedings; the Company's ability to secure operating capital; the Company's ability to take advantage of opportunities to acquire assets with upside potential; the Company's ability to execute on its strategic plan to evaluate and close potential M&A opportunities; our long-term outlook; our preparation for future market conditions; and any statements or assumptions underlying any of the foregoing. Such statements are not guarantees of future performance and are subject to certain risks, uncertainties, and assumptions that are difficult to predict. Accordingly, actual results could differ materially and adversely from those expressed in any forward-looking statements as a result of various factors.

Important factors that may cause such differences include, but are not limited to, the decisions of the Court; negotiations with our debtholders, our creditors and any committee approved by the Court; negotiations with lenders on the definitive DIP financing documents; the Company's ability to meet the closing conditions of its DIP financing; the Company's ability to meet the requirements, and compliance with the terms, including restrictive covenants, of their respective DIP financing arrangements and any other financial arrangement while in Chapter 11 proceedings; changes in our operational or cash needs from the assumptions underlying our DIP budgets and forecasts; changes in our cash needs as compared to our historical operations or our planned reductions in operating expense; adverse litigation; changes in domestic and international demand for TRULANCE; our ability to control operating costs and other expenses; that general economic conditions may be worse than expected; that competition may increase significantly; changes in laws or government regulations or policies affecting our current business operations and, as well as those risks and uncertainties disclosed under the sections entitled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Forms 10-Q filed with the Securities and Exchange Commission ("SEC") on May 10, 2018, August 8, 2018 and November 9, 2018 and Form 10-K filed with the SEC on March 1, 2018, and similar disclosures in subsequent reports filed with the SEC.

About Synergy Pharmaceuticals

Synergy is a biopharmaceutical company focused on the development and commercialization of novel gastrointestinal (GI) therapies. The company has pioneered discovery, research and development efforts around analogs of uroguanylin, a naturally occurring human GI peptide, for the treatment of GI diseases and disorders. Synergy's proprietary GI platform includes one commercial product TRULANCE® (plecanatide) and a second product candidate - dolcanatide. For more information, please visit www.synergypharma.com.

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