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): September 4, 2019 (September 3, 2019)

KemPharm, Inc.
(Exact Name of Registrant as Specified in Its Charter)

Delaware	**001-36913**	**20-5894398**
(State or Other Jurisdiction of Incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

1180 Celebration Boulevard, Suite 103, Celebration, FL	**34747**
(Address of Principal Executive Offices)	**(Zip Code)**

Registrant's Telephone Number, Including Area Code: (321) 939-3416

(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 Instructions 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))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock	**KMPH**	**Nasdaq Global Market**

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 Securities 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.

Exchange Agreement and Fifth Amendment to Facility Agreement

On September 3, 2019, KemPharm, Inc., a Delaware corporation (the "***Company***"), entered into an September 2019 Exchange Agreement and Amendment to Facility Agreement (the "***Exchange Agreement***") with Deerfield Private Design Fund III, L.P. and Deerfield Special Situations Fund, L.P. (the "***Holders***"). Under the Exchange Agreement, the Company is issuing an aggregate of 1,499,894 shares of the Company's Common Stock, par value $0.0001 per share (the "***Common Stock***"), and an aggregate of 1,576 shares of the Company's Series B-1 Convertible Preferred Stock, par value $0.0001 per share (the "***Series B-1 Preferred Stock***") (such shares of Common Stock and Series B-1 Preferred Stock, the "***Initial Exchange Shares***"), in exchange for the cancellation of an aggregate of $3,000,000 principal amount of the Company's 5.50% Senior Convertible Notes due 2021 (the "***Convertible Notes***"). The Exchange Agreement provides the Holders the option to exchange up to an additional aggregate of $27,000,000 principal amount of the Convertible Notes (the "***Optional Exchange Principal Amount***") for shares of Common Stock or shares of the Company's Series B-2 Convertible Preferred Stock, par value $0.0001 per share (the "***Series B-2 Preferred Stock***" and, together with the Series B-1 Preferred Stock, the "***Series B Preferred Stock***"), subject to the terms and conditions set forth in the Exchange Agreement, including limits as to the principal amount that can be exchanged prior to specified dates therein. If the Holders choose to exchange any portion of the Optional Exchange Principal Amount for shares of Series B-2 Preferred Stock, such exchange will be effected at an exchange price of $1,000 per share. If the Holders choose to exchange any portion of the Optional Exchange Principal Amount for shares of Common Stock, such exchange will be effected at an exchange price equal to the greater of (i) $0.9494, which represents the last sale price of the Common Stock on the Nasdaq Global Market on September 3, 2019, or (ii) the average of the volume-weighted average price of the Common Stock on the Nasdaq Global Market on each of the 15 trading days immediately preceding such exchange.

The Exchange Agreement also amends that certain Facility Agreement dated as of June 2, 2014, as amended (the "***Facility Agreement***"), by and between the Company and Deerfield Private Design Fund III, L.P, in order to (i) to reduce the interest rate applicable under the Facility Agreement from 9.75% to 6.75%, (ii) to provide for "payment in kind" of interest on the Loans (as defined in the Facility Agreement), and (iii) to defer the Loan payments due on September 4, 2019 pursuant to the Facility Agreement until June 1, 2020.

The Exchange Agreement contains customary representations, warranties and covenants made by the Company and the Holders. The Exchange Agreement also requires the Company to reimburse the Holders for up to $150,000 of expenses relating to the transactions contemplated by the Exchange Agreement.

The Initial Exchange Shares shall be issued on September 4, 2019.

The foregoing description of the Exchange Agreement is a summary and is qualified in its entirety by Exhibit 10.1 attached hereto, which is incorporated by reference into this Item 1.01.

The terms of the Series B-1 Preferred Stock and the Series B-2 Preferred Stock are described in Item 5.03 of this filing. The information provided in Item 5.03 with respect to the Series B-1 Certificate of Designation and the Series B-2 Certificate of Designation (each as defined below) is hereby incorporated by reference into this Item 1.01.

License Agreement

On September 3, 2019, the Company entered into a Collaboration and License Agreement (the "***License Agreement***") with an affiliate of Gurnet Point Capital (such affiliate, "***Licensee***"). Under the License Agreement, the Company is granting to Licensee an exclusive license to develop, manufacture and commercialize the Company's product candidates containing serdexmethylphenidate and d-methylphenidate, including KP415, KP484, and, at the option of Licensee, KP879, KP922 or any other product candidate developed by the Company containing serdexmethylphenidate and developed to treat Attention deficit hyperactivity disorder or any other central nervous system disorder (the "***Additional Product Candidates***" and, collectively with KP415 and KP484, the "***Licensed Product Candidates***"). The License Agreement contains customary representations, warranties and covenants made by the Company and Licensee. Under the terms of the License Agreement, the Company has granted Licensee an exclusive, worldwide license to commercialize and develop the Licensed Product Candidates; provided that such license shall apply to an Additional Product Candidates only if Licensee exercises its option under the License Agreement related thereto. If Licensee exercise its option related to any Additional Product Candidate under the License Agreement, the parties are obligated to negotiate in good faith regarding the economic terms of such Additional Product Candidate. The Company has also granted to Licensee a right of first refusal to acquire, license or

commercialize any Additional Product Candidate, with such right of first refusal expiring upon the acceptance of a new drug application for such Additional Product Candidate. The Company has also granted Licensee a right of first negotiation and a right of first refusal, subject to specified exceptions, for any assignment of the Company's rights under the License Agreement.

Pursuant to the License Agreement, Licensee has agreed to pay the Company an upfront payment of $10,000,000 and up to $63,000,000 in milestone payments upon the occurrence of specified regulatory milestones related to the KP415 and KP484. In addition, Licensee has agreed to make additional payments upon the achievement of specified U.S. sales milestones of up to $420,000,000 in the aggregate, depending, among other things, on timing of approval for a new drug applicable for KP415 and its final approved label, if any. Further, Licensee will pay the Company quarterly, tiered royalty payments ranging from a percentage in the high single digits to the mid-twenties of Net Sales (as defined in the License Agreement) in the United States and a percentage in the low to mid-single digits of Net Sales in each country outside the United States, in each case subject to specified reductions under certain conditions as described in the License Agreement. Licensee is obligated to make such royalty payments on a product-by-product basis until expiration of the Royalty Term (as defined in the License Agreement) for the applicable product.

Licensee has agreed to be responsible and reimburse the Company for all of development, commercialization and regulatory expenses for the Licensed Product Candidates, subject to certain limitations as set forth in the License Agreement.

The License Agreement will continue on a product-by-product basis (i) until expiration of the Royalty Term for the applicable Licensed Product Candidate in the United States and (ii) perpetually for all other countries. Licensee may terminate the License Agreement at its convenience upon prior written notice prior to regulatory approval of any Licensed Product Candidate or upon prior written notice after regulatory approval of any Licensed Product Candidate. The Company may terminate the License Agreement in full if Licensee, any of its sublicensees or any of its or their affiliates challenge the validity of any Licensed Patent (as defined in the License Agreement) and such challenge is not required under a court order or subpoena and is not a defense against a claim, action or proceeding asserted by the Company. Either party may terminate the License Agreement (i) upon a material breach of the License Agreement by the other party, subject to a cure period, or (ii) if the other party encounters bankruptcy or insolvency. Upon a Serious Material Breach (as defined in the License Agreement) by the Company, subject to a cure period, Licensee may choose not to terminate the License Agreement and instead reduce the milestone and royalty payments owed to the Company. Upon termination, all licenses and other rights granted by the Company to Licensee pursuant to the License Agreement would revert to the Company. During the term of the License Agreement, the Company may not develop or commercialize any Competing Product (as defined in the License Agreement).

The License Agreement also establishes a joint steering committee, which will monitor progress in the development of the KP415 and KP484. Subject to the oversight of the joint steering committee, the Company otherwise retains all responsibility for the conduct of all regulatory activities required to obtain new drug application approval of KP415 and KP484; provided that Licensee shall be the sponsor of any clinical trials conducted by the Company on behalf of Licensee.

The foregoing description of the License Agreement is a summary and is qualified in its entirety by Exhibit 10.2 attached hereto, which is incorporated by reference into this Item 1.01.

In accordance with the terms of the Company's March 20, 2012 Termination Agreement with Aquestive Therapeutics (formerly known as MonoSol Rx, LLC), Aquestive Therapeutics has the right to receive an amount equal to a percentage in the low double digits of any royalty or milestone payments made to the Company related to KP415, KP484 or KP879 under the License Agreement.

Item 3.02. Unregistered Sales of Equity Securities.

The information contained above in Item 1.01 related to the Exchange Agreement and below in Item 5.03 related to the Series B-1 Preferred Stock is hereby incorporated by reference into this Item 3.02.

The Initial Exchange Shares were, and any shares of Series B-2 Preferred Stock or Common Stock issued upon exchange of any portion of the Optional Exchange Principal Amount and any shares of Common Stock issuable upon conversion of any shares of Series B-1 Preferred Stock or Series B-2 Preferred Stock will be, issued in reliance on the exemption from registration provided in Section 3(a)(9) of the Securities Act of 1933, as amended (the "***Securities Act***").

Item 3.03. Material Modifications to Rights of Security Holders.

The information contained above in Item 1.01 related to the Exchange Agreement and below in Item 5.03 related to the Series B Preferred Stock is hereby incorporated by reference into this Item 3.03.

Item 5.03. Amendment to Articles of Incorporation or Bylaws; Change in Fiscal Year.

Certificate of Designation of Preferences, Rights and Limitations of the Series B-1 Convertible Preferred Stock and the Series B-2 Convertible Preferred Stock

On September 3, 2019, as a condition to closing of the Exchange Agreement, the Company filed a Certificate of Designation of Preferences, Rights and Limitations of Series B-1 Convertible Preferred Stock (the "***Series B-1 Certificate of Designation***") and a Certificate of Designation of Preferences, Rights and Limitations of Series B-2 Convertible Preferred Stock (the "***Series B-2 Certificate of Designation***") with the Secretary of State of the State Delaware, setting forth the preferences, rights and limitations of the Series B-1 Preferred Stock and the Series B-2 Preferred Stock, respectively. The Series B-1 Certificate of Designation and the Series B-2 Certificate of Designation are filed as Exhibits 3.1 and 3.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

Each share of Series B-1 Preferred Stock has an aggregate stated value of $1,000 and is convertible into shares of Common Stock at a per share price equal to $0.9494 per share (subject to adjustment to reflect stock splits and similar events). There are an aggregate of 1,659,996 shares of Common Stock issuable upon conversion of the Series B-1 Preferred Stock (without giving effect to the limitation on conversion described below). Each share of Series B-2 Preferred Stock has an aggregate stated value of $1,000 and is convertible into shares of Common Stock at a per share price equal to the greater of (i) $0.9494 (subject to adjustment to reflect stock splits and similar events), or (ii) the average of the volume-weighted average prices of the Common Stock on the Nasdaq Global Market on each of the 15 trading days immediately preceding such exchange. There are an aggregate of 28,439,015 shares of Common Stock issuable upon conversion of the Series B-2 Preferred Stock (without giving effect to the limitation on conversion described below), assuming a conversion date of September 3, 2019.

The Series B Preferred Stock is convertible at any time at the option of the Holders; provided that the Holders are prohibited from converting shares of Series B Preferred Stock into shares of Common Stock if, as a result of such conversion, such Holders (together with certain affiliates and "group" members of such Holders) would beneficially own more than 4.985% of the total number of shares of Common Stock then issued and outstanding. The Series B Preferred Stock is not redeemable. In the event of the Company's liquidation, dissolution or winding up, the Holders will receive an amount equal to $0.0001 per share, plus any declared but unpaid dividends, and thereafter will share ratably in any distribution of the Company's assets with holders of Common Stock and with the holders of any shares of any other class or series of capital stock of the Company entitled to share in such remaining assets of the Company (including the Company's Series A Convertible Preferred Stock, par value $0.0001 per share (the "***Series A Preferred Stock***")) on an as-converted basis. With respect to rights upon liquidation, the Series B Preferred Stock ranks senior to the Common Stock, on parity with the Series A Preferred Stock and junior to existing and future indebtedness. Except as otherwise required by law (or with respect to approval of certain actions involving the Company's organizational documents that materially and adversely affect the holders of Series B Preferred Stock), the Series B Preferred Stock does not have voting rights. The Series B Preferred Stock is not subject to any price-based anti-dilution protections and does not provide for any accruing dividends, but provides that holders of Series B Preferred Stock will participate in any dividends on the Common Stock on an as-converted basis (without giving effect to the limitation on conversion described above). The Series B-1 Certificate of Designation and the Series B-2 Certificate of Designation also provide for partial liquidated damages in the event that the Company fails to timely convert shares of Series B-1 Preferred Stock or Series B-2 Preferred Stock, respectively, into Common Stock in accordance with the applicable Certificate of Designation.

The foregoing description of the Series B-1 Certificate of Designation, the Series B-2 Certificate of Designation and the Series B Preferred Stock is a summary and is qualified in its entirety by Exhibits 3.1 and 3.2 attached hereto, which are incorporated by reference into this Item 5.03.

Item 7.01 Regulation FD Disclosure.

On September 4, 2019, the Company issued a press release to announce the transactions described in this Current Report on Form 8-K, as well as information regarding a conference call and live audio webcast with a slide presentation related thereto. A copy of the press release and presentation are furnished as Exhibits 99.1 and 99.2, respectively, to this Current Report on Form 8-K.

The information contained in this Item 7.01, and the press release and presentation furnished as Exhibits 99.1 and 99.2, respectively, shall not be deemed "filed" for purposes of Section 18 of the Exchange Act and are not incorporated by reference into any of the Company's filings under the Securities Act, whether made before or after the date hereof, except as shall be expressly set forth by specific reference in any such filing.

Forward Looking Statements

This Current Report on Form 8-K, including the press release and presentation incorporated herein by reference, contains "forward-looking statements" within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act, including, without limitation, statements about the any payments the Company may receive under the License Agreement, the potential conversion of any future principal amounts of the Convertible Notes under the Exchange Agreement, the Company's expectations regarding its future financial position and operations and other statements containing the words "expect," "intend," "may," "will," and similar expressions, constitute forward-looking statements within the meaning of The Private Securities Litigation Reform Act of 1995. Actual results may differ materially from those indicated by such forward-looking statements as a result of various important factors, including: the uncertainties related to market conditions and the completion of the public offering on the anticipated terms or at all, uncertainties inherent in the initiation of future clinical trials and such other factors as are set forth in the risk factors detailed in the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2019. In addition, the forward-looking statements included in this Form 8-K,including the press release incorporated herein by reference, represent the Company's views as of the date hereof. The Company anticipates that subsequent events and developments will cause the Company's views to change. However, while the Company may elect to update these forward-looking statements at some point in the future, the Company specifically disclaims any obligation to do so except as required by law. These forward-looking statements should not be relied upon as representing the Company's views as of any date subsequent to the date hereof.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Exhibit Description
3.1	KemPharm, Inc. Certificate of Designation of Preferences, Rights and Limitations of Series B-1 Convertible Preferred Stock.
3.2	KemPharm, Inc. Certificate of Designation of Preferences, Rights and Limitations of Series B-2 Convertible Preferred Stock.
10.1	September 2019 Exchange Agreement and Amendment to Facility Agreement, dated as of September 3, 2019, by and among KemPharm, Inc., Deerfield Private Design Fund III, L.P. and Deerfield Special Situations Fund, L.P.
10.2#	Collaboration and License Agreement, dated as of September 3, 2019, by and between KemPharm, Inc. and Boston Pharmaceuticals Holdings SA.
99.1	Press Release, dated September 4, 2019.
99.2	Management Presentation, dated September 4, 2019.

Portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that (i) the omitted information is not material and (ii) the omitted information would likely cause competitive harm to the registrant if publicly disclosed.

SIGNATURES

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

KEMPHARM, INC.

By: /s/ R. LaDuane Clifton
R. LaDuane Clifton, CPA
Chief Financial Officer, Secretary and Treasurer

Date: September 4, 2019

KEMPHARM, INC.

**CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES B-1 CONVERTIBLE PREFERRED STOCK**

PURSUANT TO SECTION 151(g) OF THE
DELAWARE GENERAL CORPORATION LAW

KEMPHARM, INC., a Delaware corporation (the "**Corporation**"), in accordance with the provisions of Section 103 of the Delaware General Corporation Law (the "**DGCL**"), does hereby certify that, in accordance with Section 151 of the DGCL, the following resolution was duly adopted by the Board of Directors of the Corporation (the "**Board of Directors**") on September 3, 2019:

RESOLVED, that the Board of Directors, pursuant to authority expressly vested in it by the provisions of the Amended and Restated Certificate of Incorporation (as amended or restated from time to time, the "**Certificate of Incorporation**") of the Corporation, hereby authorizes the issuance of a series of Preferred Stock designated as the Series B-1 Convertible Preferred Stock, par value $0.0001 per share, of the Corporation and hereby fixes the designation, number of shares, powers, preferences, rights, qualifications, limitations and restrictions thereof (in addition to any provisions set forth in the Certificate of Incorporation of the Corporation which are applicable to the Preferred Stock of all classes and series) as follows:

SERIES B-1 CONVERTIBLE PREFERRED STOCK

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

"**Affiliate**" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 144 under the Securities Act. With respect to a Holder, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Holder will be deemed to be an Affiliate of such Holder.

"**Alternate Consideration**" shall have the meaning set forth in Section 7(b).

"**Beneficial Ownership Limitation**" shall have the meaning set forth in Section 6(c).

"**Bloomberg**" means Bloomberg Financial Markets or an equivalent, reliable reporting service mutually acceptable to and designated by the Corporation and the holders of a majority of the outstanding shares of Series B-1 Preferred Stock.

"**Board of Directors**" shall have the meaning set forth in the preamble.

"**Business Day**" means any day except Saturday, Sunday, any day which shall be a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"**Buy-In**" shall have the meaning set forth in Section 6(d)(iii).

"**Certificate of Designation**" shall mean this Certificate of Designation of Preferences, Rights and Limitations of Series B-1 Convertible Preferred Stock.

"**Certificate of Incorporation**" shall have the meaning set forth in the preamble.

"**Closing Sale Price**" means, for any security as of any date, the last closing trade price for such security prior to 4:00 p.m., New York City time, on the principal securities exchange or trading market where such security is listed or traded, as reported by Bloomberg, or if no last closing trade price is reported for such security by Bloomberg, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, L.P., or, if no last trade price is reported for such security by Bloomberg, L.P., the average of the bid prices of any market makers for such security that are listed or quoted on the OTC Bulletin Board, the OTCQX Market or the OTCQB Market or in the OTC Pink market of OTC Markets Group (or, in each case, any successor to such market). If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value mutually determined by the Corporation and the holders of a majority of the then outstanding shares of Series B-1 Preferred Stock. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

"**Commission**" means the Securities and Exchange Commission.

"**Common Stock**" means the Corporation's common stock, par value $0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

"**Common Stock Equivalents**" means any securities of the Corporation or the Subsidiaries that would entitle the holder thereof to acquire at any time Common Stock, including any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"**Conversion Date**" shall have the meaning set forth in Section 6(a).

"**Conversion Price**" means $0.9494 per share, subject to adjustment as provided herein.

"**Conversion Ratio**" shall have the meaning set forth in Section 6(b).

"**Conversion Shares**" means, collectively, the shares of Common Stock issuable upon conversion of the shares of Series B-1 Preferred Stock in accordance with the terms hereof.

"**Daily Failure Amount**" means the product of (x) 0.005 multiplied by (y) the Closing Sale Price of the Common Stock on the applicable Share Delivery Date.

"**DGCL**" shall have the meaning set forth in the preamble.

"**Distributions**" shall have the meaning set forth in Section 5(a).

"**DTC**" shall have the meaning set forth in Section 6(a).

"**DWAC**" shall have the meaning set forth in Section 6(a).

"**DWAC Delivery**" shall have the meaning set forth in Section 6(a).

"**Effective Date**" shall have the meaning given to such term in the September 2019 Exchange Agreement and Amendment to Facility Agreement, dated as of September 3, 2019 among the Corporation, Deerfield Private Design Fund III, L.P. and Deerfield Special Situations Fund, L.P. (as may be amended, restated or otherwise modified from in accordance with its terms)

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Fundamental Transaction**" shall have the meaning set forth in Section 7(b).

"**Holder**" and "**Holders**" shall have the meaning given such terms in Section 2(a).

"**Junior Securities**" shall have the meaning set forth in Section 5(a).

"**Measurement Period**" means the period of fifteen (15) consecutive Trading Days immediately preceding the Conversion Date or other applicable date of determination.

"**Notice of Conversion**" shall have the meaning set forth in Section 6(a).

"**Parity Securities**" shall have the meaning set forth in Section 5(a).

"**Person**" means any individual, sole proprietorship, partnership (general or limited), limited liability company, joint venture, company, trust (statutory or common law), unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or governmental or regulatory agency.

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

"**Senior Securities**" shall have the meaning set forth in Section 5(a).

"**Series A Preferred Stock**" means the Series A Convertible Preferred Stock, par value $0.0001 per share, of the Corporation.

"**Series B-1 Liquidation Amount**" means, with respect to each share of Series B-1 Preferred Stock, an amount equal to $0.0001.

"**Series B-1 Preferred Stock**" shall have the meaning set forth in Section 2(a).

"**Series B-1 Preferred Stock Register**" shall have the meaning set forth in Section 2(b).

"**Share Delivery Date**" shall have the meaning set forth in Section 6(d)(i).

"**Standard Settlement Period**" means the standard settlement period for equity trades effected by U.S. broker-dealers, expressed in a number of Trading Days, as in effect on the applicable date (which, as of September 3, 2019, is two (2) Trading Days).

"**Stated Value**" means $1,000.

"**Stock Event**" means a stock split, stock combination, reclassification, payment of stock dividend, recapitalization or other similar transaction of such character that the outstanding shares of Common Stock shall be changed into or become exchangeable for a larger or smaller number of shares.

"**Trading Day**" means a day on which the Common Stock is traded for any period on the principal securities exchange or other securities market on which the Common Stock is then being traded.

"**Volume Weighted Average Price**" means, for the Common Stock as of any Trading Day, the volume weighted average sale price of the Common Stock on the Principal Market as reported by Bloomberg.

Section 2. Designation, Amount and Par Value; Assignment.

a) The series of preferred stock designated by this Certificate of Designation shall be designated as the Corporation's Series B-1 Convertible Preferred Stock (the "**Series B-1 Preferred Stock**") and the number of shares so designated shall be 1,576 (which shall not be subject to increase (whether by amendment, merger, consolidation or otherwise) without the written consent of the holders of a majority of the then outstanding shares of Series B-1 Preferred Stock (each holder of any outstanding shares of Series B-1 Preferred Stock, a "**Holder**" and collectively, the "**Holders**")) and shall be designated from the 10,000,000 shares of Preferred Stock authorized to be issued under the Certificate of Incorporation. Each share of Series B-1 Preferred Stock shall have a par value of $0.0001 per share.

b) The Corporation shall register shares of the Series B-1 Preferred Stock, upon records to be maintained by the Corporation for that purpose (the "**Series B-1 Preferred Stock Register**"), in the name of the Holders thereof from time to time. The Corporation may deem and treat the registered Holder of shares of Series B-1 Preferred Stock as the absolute owner thereof for the purpose of any conversion thereof and for all other purposes. The Corporation shall register the transfer of any shares of Series B-1 Preferred Stock in the Series B-1 Preferred Stock Register, upon surrender of the certificates evidencing such shares to be transferred, duly endorsed by the Holder thereof, to the Corporation at its address specified herein. Upon any such registration or transfer, a new certificate evidencing the shares of Series B-1 Preferred Stock so transferred shall be issued to the transferee and a new certificate evidencing the remaining portion of the shares not so transferred, if any, shall be issued to the transferring Holder, in each case, within three Business Days. For the avoidance of doubt, the issuance of any such new certificate shall not be deemed a new issuance of the shares evidenced thereby for purposes of the definition of "Conversion Price." The shares of Series B-1 Preferred Stock and the rights evidenced hereby and thereby shall inure to the benefit of and be binding upon the successors and assigns of the Holder. The provisions of this Certificate of Designation are intended to be for the benefit of all Holders from time to time and shall be enforceable by any such Holder.

Section 3. Dividends.

a) Any dividends or distributions declared by the Board of Directors out of funds legally available therefor shall be distributed among the holders of Common Stock and the Series B-1 Preferred Stock on a pro rata basis based on the number of shares of Common Stock held by each such holder (determined on an as-converted to Common Stock basis based on the then-effective applicable Conversion Price, and without giving effect to the Beneficial Ownership Limitation) as of the record date fixed for determining those entitled to receive such distribution.

b) In the event the Corporation shall declare a distribution on the Common Stock payable in securities of other Persons, evidences of indebtedness issued by the Corporation or other Persons, Common Stock Equivalents or other assets (excluding cash dividends distributed in accordance with Section 3(a)), including options or rights to purchase any such securities or evidences of indebtedness or securities convertible into any of the foregoing, then, in each such case the holders of the Series B-1 Preferred Stock shall be entitled to a proportionate share of any such distribution pursuant to this Section 3(b) as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series B-1 Preferred Stock are convertible based on the then-effective applicable Conversion Price (without giving effect to the Beneficial Ownership Limitation) as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution. Notwithstanding anything herein to the contrary, (i) any distribution on the Common Stock in the form of Common Stock shall be subject to the terms of Section 7(a) and not this Section 3(b) and (ii) the conversion, exchange or exercise of any Common Stock Equivalent distributed in respect of shares of Series B-1 Preferred Stock into or for Common Stock shall be subject to the provisions of Section 6(c) hereof, as if incorporated directly in such Common Stock Equivalent, *mutatis mutandis*.

Section 4. Voting Rights. Except as otherwise provided herein or as otherwise required by the DGCL, the Series B-1 Preferred Stock shall have no voting rights. However, as long as any shares of Series B-1 Preferred Stock are outstanding, without the affirmative vote or written consent of the Holders of a majority of the then outstanding shares of the Series B-1 Preferred Stock, the Corporation shall not, directly or indirectly, whether by or through any subsidiary and whether by merger, consolidation or otherwise, (a) alter or change, directly or indirectly, the powers, preferences or rights of the Series B-1 Preferred Stock so as to affect them adversely or otherwise alter or amend this Certificate of Designation; provided that this clause (a) shall not require the affirmative vote or written consent of the Holders of a majority of the then outstanding shares of the Series B-1 Preferred Stock as to the designation or issuance of any Senior Securities, Parity Securities or Junior Securities, (b) increase the number of authorized shares of Series B-1 Preferred Stock, or (c) amend, modify or repeal any provision of the Certificate of Incorporation or the Bylaws in a manner that would adversely affect or otherwise impair the rights of the Holders pursuant to this Certificate of Designation relative to the holders of Common Stock. Notwithstanding any provision of the Certificate of Incorporation or the Corporation's bylaws to the contrary, including Section D of Article V of the Certificate of Incorporation, any vote of the holders of Series B-1 Preferred Stock required under the terms of the DGCL, this Certificate of Designation or otherwise may be taken by written consent or electronic transmission.

Section 5. Rank; Liquidation.

a) Rank. The Series B-1 Preferred Stock shall rank (i) senior to all of the Common Stock; (ii) senior to any class or series of capital stock of the Corporation hereafter created specifically ranking by its terms junior to any Series B-1 Preferred Stock ("**Junior Securities**"); (iii) on parity with the Series A Preferred Stock, Series B-2 Preferred Stock and with any class or series of capital stock of the Corporation created specifically ranking by its terms on parity with the Series B-1 Preferred Stock ("**Parity Securities**"); and (iv) junior to any class or series of capital stock of the Corporation hereafter created specifically ranking by its terms senior to any Series B-1 Preferred Stock ("**Senior Securities**"), in each case, as to dividends or distributions of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntarily or involuntarily (all such distributions being referred to collectively as "**Distributions**").

b) Liquidation, Dissolution, or Winding Up. Subject to any superior liquidation rights of the holders of any Senior Securities of the Corporation, upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, each Holder shall be entitled to be paid out of the assets of the Corporation legally available for distribution to stockholders, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock and Junior Securities and *pari passu* with any distribution to the holders of Parity Securities, an amount equal to the Series B-1 Liquidation Amount for each share of Series B-1 Preferred Stock held by such Holder, plus an amount equal to any dividends declared but unpaid thereon, before any payments shall be made or any assets distributed to holders of any class of Common Stock or Junior Securities, and thereafter the Holders of the shares of Series B-1 Preferred Stock shall share ratably in any distributions and payments of any remaining assets of the Corporation, on an as converted basis (based on the then effective Conversion Price and without giving effect to the Beneficial Ownership Limitation or any other limitations on conversion set forth herein), with the holders of Common Stock and with the holders of shares of any other class or series of capital stock of the Corporation entitled to share in such remaining assets of the Corporation on an as converted to Common Stock basis.

Section 6. Conversion.

a) Conversions at Option of Holder. Each share of Series B-1 Preferred Stock shall be convertible, at any time and from time to time from and after the date of issuance, at the option of the Holder thereof, into a number of shares of Common Stock equal to the Conversion Ratio. Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as **Annex A** (a "**Notice of Conversion**") duly completed and executed. The Notice of Conversion may specify, at the Holder's election, whether the applicable Conversion Shares shall be credited to the account of the Holder's prime broker with Depository Trust Corporation ("**DTC**") through its Deposit/Withdrawal At Custodian ("**DWAC**") system (a "**DWAC Delivery**"). Other than in the case of a conversion in connection with a Fundamental Transaction, the Notice of Conversion must specify at least a number of Conversion Shares equal to the lesser of (x) 1,000 shares (such number subject to appropriate adjustment following the occurrence of an event specified in Section 7(a) hereof) and (y) the number of Conversion Shares issuable upon conversion of all shares of Series B-1 Preferred Stock then held by the Holder. The "**Conversion Date**," or the date on which a conversion shall be deemed effective, shall be defined as the Trading Day that the Notice of Conversion, completed and executed, is sent by electronic mail or facsimile to, and received during regular business hours by, the Corporation. The calculations and entries set forth in the Notice of Conversion shall control in the absence of verifiable or mathematical error. Shares of Series B-1 Preferred Stock converted into Common Stock in accordance with the terms hereof shall be canceled and shall not be reissued. The Holder shall not be required to physically surrender the certificate(s) representing the Series B-1 Preferred Stock to the Corporation until all shares of Series B-1 Preferred Stock represented by such certificate(s) have been converted in full, in which case the Holder shall surrender such certificate(s) to the Corporation for cancellation within three (3) Trading Days of the date the final Notice of Conversion is delivered to the Corporation. Execution and delivery of a Notice of Conversion with respect to a partial conversion shall have the same effect as cancellation of the original certificate(s) representing such shares of Series B-1 Preferred Stock and issuance of a certificate representing such remaining shares of Series B-1 Preferred Stock. In accordance with the preceding sentence, upon the written request of the Holder and the surrender of certificate(s) representing Series B-1 Preferred Stock, the Corporation shall, within three (3) Trading Days of such request, deliver to the Holder certificate(s) (as specified by the Holder in such request) representing such remaining Series B-1 Preferred Stock. Provided the Holder to which shares of Common Stock are to be issued represents that (i) it is not as of the Conversion Date, and for a period of three (3) months prior to the Conversion Date has not been, an "affiliate" (as such term is used in Rule 144 under the Securities Act) of the Corporation, and (ii) the shares of Series B-1 Preferred Stock being converted have not been held by such an affiliate within the six (6)-month period immediately preceding the Conversion Date, the shares of Common Stock issued upon conversion of Series B-1 Preferred Stock by such Holder will not contain or be subject to any legend or stop transfer instructions restricting the sale or transferability thereof. For the avoidance of doubt, by delivering a Notice of Conversion, a Holder shall be deemed to have made the representations contemplated by the immediately preceding sentence, unless the applicable Holder otherwise indicates in such Notice of Conversion.

b) Conversion Ratio. The "**Conversion Ratio**" for each share of Series B-1 Preferred Stock shall be equal to the Stated Value divided by the Conversion Price (as in effect on the applicable Conversion Date).

c) Beneficial Ownership Limitation. Notwithstanding anything herein to the contrary, but subject to the last sentence of this Section 6(c), the Corporation shall not effect any conversion of the Series B-1 Preferred Stock, and a Holder shall not have the right to convert any portion of the Series B-1 Preferred Stock, to the extent that, after giving effect to an attempted conversion set forth on the applicable Notice of Conversion, such Holder together with such Holder's Affiliates, and any other Person whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Exchange Act and the applicable rules and regulations of the Commission, including any "group" of which the Holder is a member would beneficially own a number of shares of Common Stock in excess of the Beneficial Ownership Limitation. Delivery of a Notice of Conversion by a Holder in respect of the conversion of Series B-1 Preferred Stock shall constitute a representation by such Holder that the issuance of shares of Common Stock in accordance with such Notice of Conversion will not cause such Holder (together with such Holder's Affiliates, and any other Person whose beneficial ownership of Common Stock would be aggregated with such Holder's for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the Commission) to beneficially own a number of shares of Common Stock in excess of the Beneficial Ownership Limitation, as determined in accordance with this Certificate of Designation. For purposes of this Section 6(a), the number of shares of Common Stock beneficially owned by such Holder and its Affiliates shall include the number of shares of Common Stock issuable upon conversion of the Series B-1 Preferred Stock subject to the Notice of Conversion with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (A) conversion of the remaining, unconverted Series B-1 Preferred Stock beneficially owned by such Holder or any of its Affiliates, and (B) exercise, exchange or conversion of the unexercised, unexchanged or unconverted portion of any other securities of the Corporation subject to a limitation on conversion, exchange or exercise analogous to the limitation contained herein (including any other class or series of preferred stock and warrants) beneficially owned by such Holder or any of its Affiliates. Except as set forth in the preceding sentence, for purposes of this Section 6(c), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. In addition, a determination as to any "group" status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(c), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the Corporation's most recent quarterly or annual report filed with the Commission, or any current report filed by the Corporation with the Commission subsequent thereto. Upon the written request of a Holder (which may be via electronic mail), the Corporation shall within two (2) Trading Days following such request, confirm in writing via electronic mail to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to any actual conversion, exchange or exercise of securities of the Corporation, including Series B-1 Preferred Stock, by such Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was last publicly reported. The "**Beneficial Ownership Limitation**" shall be 4.985% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon the conversion of Series B-1 Preferred Stock held by the applicable Holder.

d) Mechanics of Conversion

i. Delivery of Certificate or Electronic Issuance Upon Conversion. Not later than the earlier of two (2) Trading Days and the number of Trading Days constituting the Standard Settlement Period after the applicable Conversion Date (such earlier date, the "**Share Delivery Date**"), the Corporation shall (a) deliver, or cause to be delivered, to the converting Holder a certificate or certificates representing the number of Conversion Shares being acquired upon the conversion of shares of Series B-1 Preferred Stock or (b) in the case of a DWAC Delivery, electronically deliver such Conversion Shares by crediting the account of the Holder's prime broker with DTC through its DWAC system. If in the case of any Notice of Conversion such certificate or certificates are not delivered to or as directed by or, in the case of a DWAC Delivery, such shares are not electronically delivered to or as directed by, the applicable Holder by the Share Delivery Date, the applicable Holder shall be entitled to elect to rescind such Notice of Conversion by written notice to the Corporation at any time on or before its receipt of such certificate or certificates for Conversion Shares or electronic receipt of such shares, as applicable, in which event the Corporation shall promptly return to such Holder any original Series B-1 Preferred Stock certificate delivered to the Corporation and such Holder shall promptly return to the Corporation any Common Stock certificates or otherwise direct the return of any shares of Common Stock delivered to the Holder through the DWAC system, representing the shares of Series B-1 Preferred Stock unsuccessfully tendered for conversion to the Corporation; provided that the liquidated damages described in Section 6(d)(ii) shall be payable through the date such notice of rescission is given to the Corporation.

ii. Obligation Absolute; Partial Liquidated Damages. Subject to Section 6(c) hereof and subject to Holder's right to rescind a Notice of Conversion pursuant to Section 6(d)(i) above, the Corporation's obligation to issue and deliver the Conversion Shares upon conversion of Series B-1 Preferred Stock in accordance with the terms hereof is absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares. Subject to Section 6(c) hereof and subject to Holder's right to rescind a Notice of Conversion pursuant to Section 6(d)(i) above, in the event a Holder shall elect to convert any or all of its Series B-1 Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or anyone associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on

notice to Holder, restraining and/or enjoining conversion of all or part of the Series B-1 Preferred Stock of such Holder shall have been sought and obtained, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 150% of the value of the Conversion Shares into which would be converted the Series B-1 Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall, subject to Section 6(c) hereof and subject to Holder's right to rescind a Notice of Conversion pursuant to Section 6(d)(i) above, issue Conversion Shares upon a properly noticed conversion. If the Corporation fails to deliver to a Holder such certificate or certificates, or electronically deliver such shares in the case of a DWAC Delivery, pursuant to Section 6(d)(i) on or prior to the Share Delivery Date applicable to such conversion, the Corporation shall pay to such Holder, in cash, as partial liquidated damages and not as a penalty, an amount equal to the product of (x) the number of Conversion Shares issuable by the Corporation on such Share Delivery Date, (y) an amount equal to the Daily Failure Amount and (z) the number of Trading Days after the Share Delivery Date that such certificates have not been delivered, or, in the case of a DWAC Delivery, such shares have not been electronically delivered; provided that the Holder shall have no right to any such liquidated damages hereunder if the failure of the Corporation to deliver such Conversion Shares is a failure caused by incorrect or incomplete information provided by Holder to the Corporation; provided, further, that the Corporation shall notify a Holder as promptly as possible after the Corporation becomes aware of the fact that information provided by such Holder to the Corporation is incorrect or incomplete. Any such amount shall be paid on or before the fifth (5th) Trading Day of each month following a month in which such amount accrued. Nothing herein shall limit a Holder's right to pursue actual damages for the Corporation's failure to deliver Conversion Shares within the period specified herein, and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

iii. Compensation for Buy-In on Failure to Timely Deliver Certificates Upon Conversion. If the Corporation fails to deliver to a Holder a certificate or certificates representing Conversion Shares or to effect a DWAC Delivery, as applicable, by the Share Delivery Date pursuant to Section 6(d)(i), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "**Buy-In**"), then the Corporation shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount by which (x) such Holder's total purchase price (including any brokerage commissions) for the shares of Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such

purchase obligation was executed (including any brokerage commissions), and (B) at the option of such Holder, either reissue (if surrendered) the shares of Series B-1 Preferred Stock equal to the number of shares of Series B-1 Preferred Stock submitted for conversion or deliver to such Holder the number of shares of Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under Section 6(d)(i); provided that the Holder shall have no right to any such payment under clause (A) hereof if the failure of the Corporation to deliver such Conversion Shares is a failure caused by incorrect or incomplete information provided by Holder to the Corporation; provided, further, that the Corporation shall notify a Holder as promptly as possible after the Corporation becomes aware of the fact that information provided by such Holder to the Corporation is incorrect or incomplete. For example, if a Holder purchases shares of Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted conversion of shares of Series B-1 Preferred Stock with respect to which the actual sale price (including any brokerage commissions) giving rise to such purchase obligation was a total of $10,000 under clause (A) of the immediately preceding sentence, the Corporation shall be required to pay such Holder $1,000. The Holder shall provide the Corporation written notice within five (5) Trading Days after the occurrence of a Buy-In indicating the amounts payable to such Holder in respect of the Buy-In together with applicable confirmations and any other evidence reasonably requested by the Corporation related thereto. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver certificates representing shares of Common Stock upon conversion of the shares of Series B-1 Preferred Stock as required pursuant to the terms hereof.

iv. Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Series B-1 Preferred Stock and payment of dividends on the Series B-1 Preferred Stock, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holders of the Series B-1 Preferred Stock, not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments of Section 7 and without regard to the Beneficial Ownership Limitation) upon the conversion of all outstanding shares of Series B-1 Preferred Stock. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

v. Fractional Shares. No fractional shares or scrip representing fractional shares of Common Stock shall be issued upon the conversion of the Series B-1 Preferred Stock. As to any fraction of a share which a Holder would otherwise be entitled to receive upon such conversion, the Corporation shall round up to the next whole share.

vi. Taxes. The Corporation shall be responsible for paying, and the issuance of certificates for shares of the Common Stock upon conversion of the Series B-1 Preferred Stock shall be made without charge to any Holder for, any stamp, court or documentary, intangible, filing or similar taxes that may be payable in respect of the issuance or delivery thereof; provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the registered Holder(s) of such shares of Series B-1 Preferred Stock and the Corporation shall not be required to issue or deliver such certificates in a name other than that of the registered Holder(s) unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of the applicable transfer tax (if any) or shall have established to the satisfaction of the Corporation that the applicable transfer tax (if any) has been paid**.**

vii. Status as Preferred Stockholder. Effective as of the delivery by the Holder of the Notice of Conversion by the Holder by facsimile or electronic mail, as provided herein, subject to Section 6(c) hereof, (A) the shares of Series B-1 Preferred Stock being converted shall be deemed converted into shares of Common Stock, (B) the Holder shall be deemed the Holder or record of such applicable Conversion Shares, and (C) subject to a Holder's right to rescind a Notice of Conversion pursuant to Section 6(d)(i), the Holder's rights as a Holder of such converted shares of Series B-1 Preferred Stock shall cease and terminate, excepting only the right to receive certificates evidencing such shares of Common Stock, or electronic delivery of such shares in the case of DWAC Delivery, and to any remedies provided herein or otherwise available at law or in equity to such Holder because of a failure by the Corporation to comply with the terms of this Certificate of Designation. In all cases, the Holder shall retain all of its rights and remedies for the Corporation's failure to convert Series B-1 Preferred Stock.

Section 7. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Series B-1 Preferred Stock is outstanding: (A) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of this Series B-1 Preferred Stock); (B) subdivides outstanding shares of Common Stock into a larger number of shares; (C) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares; or (D) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock (or in the event that clause (D) of this Section 7(a) shall apply, shares of reclassified capital stock), outstanding immediately after such event (excluding any treasury shares of the Corporation). Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Fundamental Transaction. If, at any time while this Series B-1 Preferred Stock is outstanding, (i) the Corporation, directly or indirectly in one or more related transactions, effects any merger or consolidation of the Corporation with or into another Person (other than a merger in which the Corporation is the surviving or continuing entity and its capital stock outstanding immediately prior to the merger or consolidation is not exchanged for or converted into other securities, cash or other property), (ii) the Corporation, directly or indirectly in one or more related transactions, effects any sale of all or substantially all of its assets in one transaction or a series of related transactions and distributes the proceeds thereof to its stockholders, (iii) any tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (iv) the Corporation, directly or indirectly in one or more related transactions, effects any reclassification of the Common Stock or any compulsory share exchange pursuant (other than as a result of a dividend, subdivision or combination covered by Section 7(a) above) to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a "**Fundamental Transaction**"), then, upon the effectiveness of such Fundamental Transaction, each Holder of Series B-1 Preferred Stock shall receive for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to the Beneficial Ownership Limitation), the same kind and amount of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of one share of Common Stock (the "**Alternate Consideration**"). For purposes of any such conversion, the determination of the Conversion Ratio shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall adjust the Conversion Ratio in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holders shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Series B-1 Preferred Stock in connection with such Fundamental Transaction on the same terms and conditions as given to the holders of Common Stock. To the extent necessary to effectuate the foregoing provisions, the Corporation shall cause any successor to the Corporation or surviving entity in such Fundamental Transaction (or any direct or indirect parent entity thereof) to assume in writing all of the obligations of the Corporation under this Certificate in accordance with the provisions of this Section 7(b) pursuant to written agreements in form and substance approved by the holders of a majority of the then outstanding shares of Series B-1 Preferred Stock prior to such Fundamental Transaction. The Corporation shall not have the power to enter into any agreement to which the Corporation or any of its Affiliates is a party and pursuant to which a Fundamental Transaction is effected unless such agreement shall include terms in compliance with the provisions of this Section 7(b).

c) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

d) Notice to the Holders.

i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation or any Fundamental Transaction, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of this Series B-1 Preferred Stock, and shall cause to be delivered to each Holder at its last address as it shall appear upon the stock books of the Corporation, at the same time any notice related to any such transaction is delivered to the holders of Common Stock, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants or Fundamental Transaction, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange or Fundamental Transaction is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice.

Section 8. Miscellaneous.

a) Notice. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including any Notice of Conversion, shall be in writing and delivered personally, by electronic mail (lclifton@kempharm.com), or sent by a nationally recognized overnight courier service, addressed to the Corporation, at its principal place of business, to the attention of the Chief Financial Officer of the Corporation, or such other electronic mail address or address as the Corporation may specify for such purposes by notice to the Holders delivered in

accordance with this Section 8. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by confirmed electronic mail or facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the electronic mail address, facsimile number or address of such Holder appearing on the books of the Corporation, or if no such facsimile number or address appears on the books of the Corporation, at the principal place of business of such Holder. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the time and date of transmission, if such notice or communication is delivered via electronic mail to the e-mail address specified in this Section 8, (ii) the second Business Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iii) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designation shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay liquidated damages on the shares of Series B-1 Preferred Stock at the time, place and rate, and in the coin or currency, herein prescribed.

c) Lost or Mutilated Series B-1 Preferred Stock Certificate. If a Holder's Series B-1 Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Series B-1 Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership thereof reasonably satisfactory to the Corporation and, in each case, customary and reasonable indemnity, if requested.

d) Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation. Any waiver by the Corporation or a Holder must be in writing. Notwithstanding any provision in this Certificate of Designation to the contrary, any provision contained herein (other than Section 6(c) which cannot be waived by the Holders) and any right of the Holders of Series B-1 Preferred Stock granted hereunder may be waived as to all shares of Series B-1 Preferred Stock (and the Holders thereof) upon the affirmative vote or written consent of the Holders of not less than a majority of the then outstanding shares of Series B-1 Preferred Stock, unless a higher percentage is required by the DGCL, in which case the affirmative consent or written consent of the Holders of not less than such higher percentage shall be required.

e) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

f) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

g) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

h) Status of Converted Series B-1 Preferred Stock. If any shares of Series B-1 Preferred Stock shall have been converted into shares of Common Stock or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series B-1 Preferred Stock.

i) Determinations Made by Accountants. In the case of an inability of the Corporation and the holders of a majority of outstanding shares of Series B-1 Preferred Stock to reach a mutual agreement as to any arithmetic calculation hereunder, the Corporation or the Holders of a majority of the then outstanding Series B-1 Preferred Stock shall submit to the other their arithmetic calculations via electronic transmission within two (2) Trading Days of receipt, or deemed receipt, of any notice or other event giving rise to such dispute, as the case may be. If such Holder(s) and the Corporation are unable to agree upon such calculation within two (2) Trading Days after the submission of such disputed calculation, then the Corporation shall, within two (2) Trading Days thereafter, submit via electronic transmission the disputed arithmetic calculation, to an independent, reputable registered public accounting firm selected by the Corporation and approved by such Holder(s), which approval shall not be unreasonably withheld. The accountants shall perform the determinations or calculations and notify the Corporation and such Holder(s) of the results no later than five (5) Trading Days from the time it receives from the Corporation and such Holder(s) their respective calculations. Such accountants' determination or calculation, as the case may be, shall be binding upon all parties absent verifiable error. Notwithstanding the foregoing, in the event of an inability of the Corporation and the holders of a majority of the outstanding shares of Series B-1 Preferred Stock to reach a mutual determination as to the Conversion Price as contemplated by a Notice of Conversion, if requested by a Holder submitting such Notice of Conversion, the Corporation shall issue to such Holder the Conversion Shares, if any, that are not in dispute in accordance with the terms hereof. For the avoidance of doubt, any determinations made by the accountants, as the case may be, pursuant to this Section 8(i) shall be deemed to be "facts ascertainable" outside of this Certificate of Designation within the meaning of Sections 102(d) and 151(a) of the DGCL, and shall not be deemed to be a determination in or relating to arbitration or made by an arbitrator.

j) Benefit of Holders. The provisions of this Certificate of Designation are intended to be for the benefit of all Holders from time to time and shall be enforceable by any such Holder.

k) Interpretative Matters. Unless otherwise indicated or the context otherwise requires, (i) all references to Sections are to Sections contained in this Certificate of Designation, (b) words in the singular or plural include the singular and plural and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter, (c) the words “hereof,” “herein” and words of similar effect shall reference this Certificate of Designation in its entirety, and (d) the use of the word “including” in this Certificate of Designation shall be by way of example rather than limitation.

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RESOLVED, FURTHER, that the chief executive officer, the president, the chief financial officer or any vice-president, and the secretary or any assistant secretary, of the Corporation be and they hereby are authorized and directed to prepare and file this Certificate of Designation in accordance with the foregoing resolution and the provisions of Delaware law.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Designation this day of September 3, 2019.

/s/ R. LaDuane Clifton

Name: R. LaDuane Clifton
Title: Chief Financial Officer

ANNEX A
CONVERSION NOTICE

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES
OF SERIES B-1 PREFERRED STOCK)

Reference is made to the Certificate of Designation of Preferences, Rights and Limitations of Series B-1 Convertible Preferred Stock (the "**Certificate of Designation**"). In accordance with and pursuant to the Certificate of Designation, the undersigned hereby elects to convert the number of shares of Series B-1 Convertible Preferred Stock, par value $0.0001 per share and with a stated value of $1,000 per share (the "**Series B-1 Preferred Stock**"), of KemPharm, Inc., a Delaware corporation (the "**Corporation**"), indicated below into shares of common stock, par value $0.0001 per share (the "**Common Stock**"), of the Corporation, by tendering the stock certificate(s), if applicable, representing the shares of Series B-1 Preferred Stock specified below as of the date specified below.

Date of Conversion: _____

Number of shares of Series B-1 Preferred Stock to be converted: ____

This Conversion is conditioned upon the consummation of the following transaction: _____ [1]

Please confirm the following information:

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the shares of Common Stock in accordance with the terms of the Certificate of Designation as follows:

☐ Deposit/Withdrawal At Custodian ("**DWAC**") system; or

☐ Physical Certificate

Issue to: _____

Address (for delivery of physical certificate): _____

_____

E-mail: _____

DTC Participant Number and Name (if through DWAC): _____

Account Number (if through DWAC): _____

[1] No such condition applies if left blank.

Unless otherwise indicated below, by delivering this Conversion Notice, the undersigned represents that (i) it is not as of the date hereof (the "**Conversion Date**"), and for a period of three (3) months prior to the Conversion Date has not been, an "affiliate" (as such term is used in Rule 144 under the Securities Act of 1933, as amended) of the Corporation, and (ii) the shares of Series B-1 Preferred Stock being converted hereby have not been held by such an affiliate within the six (6)-month period immediately preceding the Conversion Date.

_____

_____

[HOLDER]

KEMPHARM, INC.

**CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES B-2 CONVERTIBLE PREFERRED STOCK**

PURSUANT TO SECTION 151(g) OF THE
DELAWARE GENERAL CORPORATION LAW

KEMPHARM, INC., a Delaware corporation (the "**Corporation**"), in accordance with the provisions of Section 103 of the Delaware General Corporation Law (the "**DGCL**"), does hereby certify that, in accordance with Section 151 of the DGCL, the following resolution was duly adopted by the Board of Directors of the Corporation (the "**Board of Directors**") on September 3, 2019:

RESOLVED, that the Board of Directors, pursuant to authority expressly vested in it by the provisions of the Amended and Restated Certificate of Incorporation (as amended or restated from time to time, the "**Certificate of Incorporation**") of the Corporation, hereby authorizes the issuance of a series of Preferred Stock designated as the Series B-2 Convertible Preferred Stock, par value $0.0001 per share, of the Corporation and hereby fixes the designation, number of shares, powers, preferences, rights, qualifications, limitations and restrictions thereof (in addition to any provisions set forth in the Certificate of Incorporation of the Corporation which are applicable to the Preferred Stock of all classes and series) as follows:

SERIES B-2 CONVERTIBLE PREFERRED STOCK

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

"**Affiliate**" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 144 under the Securities Act. With respect to a Holder, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Holder will be deemed to be an Affiliate of such Holder.

"**Alternate Consideration**" shall have the meaning set forth in Section 7(b).

"**Beneficial Ownership Limitation**" shall have the meaning set forth in Section 6(c).

"**Bloomberg**" means Bloomberg Financial Markets or an equivalent, reliable reporting service mutually acceptable to and designated by the Corporation and the holders of a majority of the outstanding shares of Series B-2 Preferred Stock.

"**Board of Directors**" shall have the meaning set forth in the preamble.

"**Business Day**" means any day except Saturday, Sunday, any day which shall be a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"**Buy-In**" shall have the meaning set forth in Section 6(d)(iii).

"**Certificate of Designation**" shall mean this Certificate of Designation of Preferences, Rights and Limitations of Series B-2 Convertible Preferred Stock.

"**Certificate of Incorporation**" shall have the meaning set forth in the preamble.

"**Closing Sale Price**" means, for any security as of any date, the last closing trade price for such security prior to 4:00 p.m., New York City time, on the principal securities exchange or trading market where such security is listed or traded, as reported by Bloomberg, or if no last closing trade price is reported for such security by Bloomberg, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, L.P., or, if no last trade price is reported for such security by Bloomberg, L.P., the average of the bid prices of any market makers for such security that are listed or quoted on the OTC Bulletin Board, the OTCQX Market or the OTCQB Market or in the OTC Pink market of OTC Markets Group (or, in each case, any successor to such market). If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value mutually determined by the Corporation and the holders of a majority of the then outstanding shares of Series B-2 Preferred Stock. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

"**Commission**" means the Securities and Exchange Commission.

"**Common Stock**" means the Corporation's common stock, par value $0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

"**Common Stock Equivalents**" means any securities of the Corporation or the Subsidiaries that would entitle the holder thereof to acquire at any time Common Stock, including any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"**Conversion Date**" shall have the meaning set forth in Section 6(a).

"**Conversion Price**" means as of any Conversion Date or other date of determination, the greater of (A) the arithmetic average of the Volume Weighted Average Price of the Common Stock on each Trading Day during the Measurement Period; provided, that in the event that a Stock Event is consummated during the Measurement Period, the Volume Weighted Average Price for each Trading Day during the Measurement Period prior to the effectiveness of the Stock Event shall be appropriately adjusted to reflect such Stock Event or (B) $0.9494 per share, subject to adjustment as provided herein.

"**Conversion Ratio**" shall have the meaning set forth in Section 6(b).

"**Conversion Shares**" means, collectively, the shares of Common Stock issuable upon conversion of the shares of Series B-2 Preferred Stock in accordance with the terms hereof.

"**Daily Failure Amount**" means the product of (x) 0.005 multiplied by (y) the Closing Sale Price of the Common Stock on the applicable Share Delivery Date.

"**DGCL**" shall have the meaning set forth in the preamble.

"**Distributions**" shall have the meaning set forth in Section 5(a).

"**DTC**" shall have the meaning set forth in Section 6(a).

"**DWAC**" shall have the meaning set forth in Section 6(a).

"**DWAC Delivery**" shall have the meaning set forth in Section 6(a).

"**Effective Date**" shall have the meaning given to such term in the September 2019 Exchange Agreement and Amendment to Facility Agreement, dated as of September 3, 2019 among the Corporation, Deerfield Private Design Fund III, L.P. and Deerfield Special Situations Fund, L.P. (as may be amended, restated or otherwise modified from in accordance with its terms)

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Fundamental Transaction**" shall have the meaning set forth in Section 7(b).

"**Holder**" and "**Holders**" shall have the meaning given such terms in Section 2(a).

"**Junior Securities**" shall have the meaning set forth in Section 5(a).

"**Measurement Period**" means the period of fifteen (15) consecutive Trading Days immediately preceding the Conversion Date or other applicable date of determination.

"**Notice of Conversion**" shall have the meaning set forth in Section 6(a).

"**Parity Securities**" shall have the meaning set forth in Section 5(a).

"**Person**" means any individual, sole proprietorship, partnership (general or limited), limited liability company, joint venture, company, trust (statutory or common law), unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or governmental or regulatory agency.

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

"**Senior Securities**" shall have the meaning set forth in Section 5(a).

"**Series A Preferred Stock**" means the Series A Convertible Preferred Stock, par value $0.0001 per share, of the Corporation.

"**Series B-2 Liquidation Amount**" means, with respect to each share of Series B-2 Preferred Stock, an amount equal to $0.0001.

"**Series B-2 Preferred Stock**" shall have the meaning set forth in Section 2(a).

"**Series B-2 Preferred Stock Register**" shall have the meaning set forth in Section 2(b).

"**Share Delivery Date**" shall have the meaning set forth in Section 6(d)(i).

"**Standard Settlement Period**" means the standard settlement period for equity trades effected by U.S. broker-dealers, expressed in a number of Trading Days, as in effect on the applicable date (which, as of September 3, 2019, is two (2) Trading Days).

"**Stated Value**" means $1,000.

"**Stock Event**" means a stock split, stock combination, reclassification, payment of stock dividend, recapitalization or other similar transaction of such character that the outstanding shares of Common Stock shall be changed into or become exchangeable for a larger or smaller number of shares.

"**Trading Day**" means a day on which the Common Stock is traded for any period on the principal securities exchange or other securities market on which the Common Stock is then being traded.

"**Volume Weighted Average Price**" means, for the Common Stock as of any Trading Day, the volume weighted average sale price of the Common Stock on the Principal Market as reported by Bloomberg.

Section 2. Designation, Amount and Par Value; Assignment.

a) The series of preferred stock designated by this Certificate of Designation shall be designated as the Corporation's Series B-2 Convertible Preferred Stock (the "**Series B-2 Preferred Stock**") and the number of shares so designated shall be 27,000 (which shall not be subject to increase (whether by amendment, merger, consolidation or otherwise) without the written consent of the holders of a majority of the then outstanding shares of Series B-2 Preferred Stock (each holder of any outstanding shares of Series B-2 Preferred Stock, a "**Holder**" and collectively, the "**Holders**")) and shall be designated from the 10,000,000 shares of Preferred Stock authorized to be issued under the Certificate of Incorporation. Each share of Series B-2 Preferred Stock shall have a par value of $0.0001 per share.

b) The Corporation shall register shares of the Series B-2 Preferred Stock, upon records to be maintained by the Corporation for that purpose (the "**Series B-2 Preferred Stock Register**"), in the name of the Holders thereof from time to time. The Corporation may deem and treat the registered Holder of shares of Series B-2 Preferred Stock as the absolute owner thereof for the purpose of any conversion thereof and for all other purposes. The Corporation shall register the transfer of any shares of Series B-2 Preferred Stock in the Series B-2 Preferred Stock Register, upon surrender of the certificates evidencing such shares to be transferred, duly endorsed by the Holder thereof, to the Corporation at its address specified herein. Upon any such registration or transfer, a new certificate evidencing the shares of Series B-2 Preferred Stock so transferred shall be issued to the transferee and a new certificate evidencing the remaining portion of the shares not so transferred, if any, shall be issued to the transferring Holder, in each case, within three Business Days. For the avoidance of doubt, the issuance of any such new certificate shall not be deemed a new issuance of the shares evidenced thereby for purposes of the definition of "Conversion Price." The shares of Series B-2 Preferred Stock and the rights evidenced hereby and thereby shall inure to the benefit of and be binding upon the successors and assigns of the Holder. The provisions of this Certificate of Designation are intended to be for the benefit of all Holders from time to time and shall be enforceable by any such Holder.

Section 3. Dividends.

a) Any dividends or distributions declared by the Board of Directors out of funds legally available therefor shall be distributed among the holders of Common Stock and the Series B-2 Preferred Stock on a pro rata basis based on the number of shares of Common Stock held by each such holder (determined on an as-converted to Common Stock basis based on the then-effective applicable Conversion Price, and without giving effect to the Beneficial Ownership Limitation) as of the record date fixed for determining those entitled to receive such distribution.

b) In the event the Corporation shall declare a distribution on the Common Stock payable in securities of other Persons, evidences of indebtedness issued by the Corporation or other Persons, Common Stock Equivalents or other assets (excluding cash dividends distributed in accordance with Section 3(a)), including options or rights to purchase any such securities or evidences of indebtedness or securities convertible into any of the foregoing, then, in each such case the holders of the Series B-2 Preferred Stock shall be entitled to a proportionate share of any such distribution pursuant to this Section 3(b) as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series B-2 Preferred Stock are convertible based on the then-effective applicable Conversion Price (without giving effect to the Beneficial Ownership Limitation) as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution. Notwithstanding anything herein to the contrary, (i) any distribution on the Common Stock in the form of Common Stock shall be subject to the terms of Section 7(a) and not this Section 3(b) and (ii) the conversion, exchange or exercise of any Common Stock Equivalent distributed in respect of shares of Series B-2 Preferred Stock into or for Common Stock shall be subject to the provisions of Section 6(c) hereof, as if incorporated directly in such Common Stock Equivalent, *mutatis mutandis*.

Section 4. Voting Rights. Except as otherwise provided herein or as otherwise required by the DGCL, the Series B-2 Preferred Stock shall have no voting rights. However, as long as any shares of Series B-2 Preferred Stock are outstanding, without the affirmative vote or written consent of the Holders of a majority of the then outstanding shares of the Series B-2 Preferred Stock, the Corporation shall not, directly or indirectly, whether by or through any subsidiary and whether by merger, consolidation or otherwise, (a) alter or change, directly or indirectly, the powers, preferences or rights of the Series B-2 Preferred Stock so as to affect them adversely or otherwise alter or amend this Certificate of Designation; provided that this clause (a) shall not require the affirmative vote or written consent of the Holders of a majority of the then outstanding shares of the Series B-2 Preferred Stock as to the designation or issuance of any Senior Securities, Parity Securities or Junior Securities, (b) increase the number of authorized shares of Series B-2 Preferred Stock, or (c) amend, modify or repeal any provision of the Certificate of Incorporation or the Bylaws in a manner that would adversely affect or otherwise impair the rights of the Holders pursuant to this Certificate of Designation relative to the holders of Common Stock. Notwithstanding any provision of the Certificate of Incorporation or the Corporation's bylaws to the contrary, including Section D of Article V of the Certificate of Incorporation, any vote of the holders of Series B-2 Preferred Stock required under the terms of the DGCL, this Certificate of Designation or otherwise may be taken by written consent or electronic transmission.

Section 5. Rank; Liquidation.

a) Rank. The Series B-2 Preferred Stock shall rank (i) senior to all of the Common Stock; (ii) senior to any class or series of capital stock of the Corporation hereafter created specifically ranking by its terms junior to any Series B-2 Preferred Stock ("**Junior Securities**"); (iii) on parity with the Series A Preferred Stock, Series B-1 Preferred Stock and with any class or series of capital stock of the Corporation created specifically ranking by its terms on parity with the Series B-2 Preferred Stock ("**Parity Securities**"); and (iv) junior to any class or series of capital stock of the Corporation hereafter created specifically ranking by its terms senior to any Series B-2 Preferred Stock ("**Senior Securities**"), in each case, as to dividends or distributions of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntarily or involuntarily (all such distributions being referred to collectively as "**Distributions**").

b) Liquidation, Dissolution, or Winding Up. Subject to any superior liquidation rights of the holders of any Senior Securities of the Corporation, upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, each Holder shall be entitled to be paid out of the assets of the Corporation legally available for distribution to stockholders, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock and Junior Securities and *pari passu* with any distribution to the holders of Parity Securities, an amount equal to the Series B-2 Liquidation Amount for each share of Series B-2 Preferred Stock held by such Holder, plus an amount equal to any dividends declared but unpaid thereon, before any payments shall be made or any assets distributed to holders of any class of Common Stock or Junior Securities, and thereafter the Holders of the shares of Series B-2 Preferred Stock shall share ratably in any distributions and

payments of any remaining assets of the Corporation, on an as converted basis (based on the then effective Conversion Price and without giving effect to the Beneficial Ownership Limitation or any other limitations on conversion set forth herein), with the holders of Common Stock and with the holders of shares of any other class or series of capital stock of the Corporation entitled to share in such remaining assets of the Corporation on an as converted to Common Stock basis.

Section 6. Conversion.

a) Conversions at Option of Holder. Each share of Series B-2 Preferred Stock shall be convertible, at any time and from time to time from and after the date of issuance, at the option of the Holder thereof, into a number of shares of Common Stock equal to the Conversion Ratio. Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as **Annex A** (a "**Notice of Conversion**") duly completed and executed. The Notice of Conversion may specify, at the Holder's election, whether the applicable Conversion Shares shall be credited to the account of the Holder's prime broker with Depository Trust Corporation ("**DTC**") through its Deposit/Withdrawal At Custodian ("**DWAC**") system (a "**DWAC Delivery**"). Other than in the case of a conversion in connection with a Fundamental Transaction, the Notice of Conversion must specify at least a number of Conversion Shares equal to the lesser of (x) 1,000 shares (such number subject to appropriate adjustment following the occurrence of an event specified in Section 7(a) hereof) and (y) the number of Conversion Shares issuable upon conversion of all shares of Series B-2 Preferred Stock then held by the Holder. The "**Conversion Date**," or the date on which a conversion shall be deemed effective, shall be defined as the Trading Day that the Notice of Conversion, completed and executed, is sent by electronic mail or facsimile to, and received during regular business hours by, the Corporation. The calculations and entries set forth in the Notice of Conversion shall control in the absence of verifiable or mathematical error. Shares of Series B-2 Preferred Stock converted into Common Stock in accordance with the terms hereof shall be canceled and shall not be reissued. The Holder shall not be required to physically surrender the certificate(s) representing the Series B-2 Preferred Stock to the Corporation until all shares of Series B-2 Preferred Stock represented by such certificate(s) have been converted in full, in which case the Holder shall surrender such certificate(s) to the Corporation for cancellation within three (3) Trading Days of the date the final Notice of Conversion is delivered to the Corporation. Execution and delivery of a Notice of Conversion with respect to a partial conversion shall have the same effect as cancellation of the original certificate(s) representing such shares of Series B-2 Preferred Stock and issuance of a certificate representing such remaining shares of Series B-2 Preferred Stock. In accordance with the preceding sentence, upon the written request of the Holder and the surrender of certificate(s) representing Series B-2 Preferred Stock, the Corporation shall, within three (3) Trading Days of such request, deliver to the Holder certificate(s) (as specified by the Holder in such request) representing such remaining Series B-2 Preferred Stock. Provided the Holder to which shares of Common Stock are to be issued represents that (i) it is not as of the Conversion Date, and for a period of three (3) months prior to the Conversion Date has not been, an "affiliate" (as such term is used in Rule 144 under the Securities Act) of the Corporation, and (ii) the shares of Series B-2 Preferred Stock being converted have not been held by such an affiliate within the six (6)-month period immediately preceding the Conversion Date, the shares of Common Stock issued upon conversion of Series B-2 Preferred Stock by such Holder will not contain or be subject to any legend or stop transfer instructions restricting the sale or transferability thereof. For the avoidance of doubt, by delivering a Notice of Conversion, a Holder shall be deemed to have made the representations contemplated by the immediately preceding sentence, unless the applicable Holder otherwise indicates in such Notice of Conversion.

b) Conversion Ratio. The "**Conversion Ratio**" for each share of Series B-2 Preferred Stock shall be equal to the Stated Value divided by the Conversion Price (as in effect on the applicable Conversion Date).

c) Beneficial Ownership Limitation. Notwithstanding anything herein to the contrary, but subject to the last sentence of this Section 6(c), the Corporation shall not effect any conversion of the Series B-2 Preferred Stock, and a Holder shall not have the right to convert any portion of the Series B-2 Preferred Stock, to the extent that, after giving effect to an attempted conversion set forth on the applicable Notice of Conversion, such Holder together with such Holder's Affiliates, and any other Person whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Exchange Act and the applicable rules and regulations of the Commission, including any "group" of which the Holder is a member would beneficially own a number of shares of Common Stock in excess of the Beneficial Ownership Limitation. Delivery of a Notice of Conversion by a Holder in respect of the conversion of Series B-2 Preferred Stock shall constitute a representation by such Holder that the issuance of shares of Common Stock in accordance with such Notice of Conversion will not cause such Holder (together with such Holder's Affiliates, and any other Person whose beneficial ownership of Common Stock would be aggregated with such Holder's for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the Commission) to beneficially own a number of shares of Common Stock in excess of the Beneficial Ownership Limitation, as determined in accordance with this Certificate of Designation. For purposes of this Section 6(a), the number of shares of Common Stock beneficially owned by such Holder and its Affiliates shall include the number of shares of Common Stock issuable upon conversion of the Series B-2 Preferred Stock subject to the Notice of Conversion with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (A) conversion of the remaining, unconverted Series B-2 Preferred Stock beneficially owned by such Holder or any of its Affiliates, and (B) exercise, exchange or conversion of the unexercised, unexchanged or unconverted portion of any other securities of the Corporation subject to a limitation on conversion, exchange or exercise analogous to the limitation contained herein (including any other class or series of preferred stock and warrants) beneficially owned by such Holder or any of its Affiliates. Except as set forth in the preceding sentence, for purposes of this Section 6(c), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. In addition, a determination as to any "group" status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(c), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the Corporation's most recent quarterly or annual report filed with the Commission, or any current report filed by the Corporation with the Commission subsequent thereto. Upon the written request of a Holder (which may be via electronic mail), the Corporation shall within two (2) Trading Days following such request, confirm in writing via electronic mail to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common

Stock shall be determined after giving effect to any actual conversion, exchange or exercise of securities of the Corporation, including Series B-2 Preferred Stock, by such Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was last publicly reported. The "**Beneficial Ownership Limitation**" shall be 4.985% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon the conversion of Series B-2 Preferred Stock held by the applicable Holder.

d) Mechanics of Conversion

i. Delivery of Certificate or Electronic Issuance Upon Conversion. Not later than the earlier of two (2) Trading Days and the number of Trading Days constituting the Standard Settlement Period after the applicable Conversion Date (such earlier date, the "**Share Delivery Date**"), the Corporation shall (a) deliver, or cause to be delivered, to the converting Holder a certificate or certificates representing the number of Conversion Shares being acquired upon the conversion of shares of Series B-2 Preferred Stock or (b) in the case of a DWAC Delivery, electronically deliver such Conversion Shares by crediting the account of the Holder's prime broker with DTC through its DWAC system. If in the case of any Notice of Conversion such certificate or certificates are not delivered to or as directed by or, in the case of a DWAC Delivery, such shares are not electronically delivered to or as directed by, the applicable Holder by the Share Delivery Date, the applicable Holder shall be entitled to elect to rescind such Notice of Conversion by written notice to the Corporation at any time on or before its receipt of such certificate or certificates for Conversion Shares or electronic receipt of such shares, as applicable, in which event the Corporation shall promptly return to such Holder any original Series B-2 Preferred Stock certificate delivered to the Corporation and such Holder shall promptly return to the Corporation any Common Stock certificates or otherwise direct the return of any shares of Common Stock delivered to the Holder through the DWAC system, representing the shares of Series B-2 Preferred Stock unsuccessfully tendered for conversion to the Corporation; provided that the liquidated damages described in Section 6(d)(ii) shall be payable through the date such notice of rescission is given to the Corporation.

ii. Obligation Absolute; Partial Liquidated Damages. Subject to Section 6(c) hereof and subject to Holder's right to rescind a Notice of Conversion pursuant to Section 6(d)(i) above, the Corporation's obligation to issue and deliver the Conversion Shares upon conversion of Series B-2 Preferred Stock in accordance with the terms hereof is absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares. Subject to Section 6(c) hereof and subject to Holder's right to rescind a Notice of Conversion pursuant to Section

6(d)(i) above, in the event a Holder shall elect to convert any or all of its Series B-2 Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or anyone associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Series B-2 Preferred Stock of such Holder shall have been sought and obtained, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 150% of the value of the Conversion Shares into which would be converted the Series B-2 Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall, subject to Section 6(c) hereof and subject to Holder's right to rescind a Notice of Conversion pursuant to Section 6(d)(i) above, issue Conversion Shares upon a properly noticed conversion. If the Corporation fails to deliver to a Holder such certificate or certificates, or electronically deliver such shares in the case of a DWAC Delivery, pursuant to Section 6(d)(i) on or prior to the Share Delivery Date applicable to such conversion, the Corporation shall pay to such Holder, in cash, as partial liquidated damages and not as a penalty, an amount equal to the product of (x) the number of Conversion Shares issuable by the Corporation on such Share Delivery Date, (y) an amount equal to the Daily Failure Amount and (z) the number of Trading Days after the Share Delivery Date that such certificates have not been delivered, or, in the case of a DWAC Delivery, such shares have not been electronically delivered; provided that the Holder shall have no right to any such liquidated damages hereunder if the failure of the Corporation to deliver such Conversion Shares is a failure caused by incorrect or incomplete information provided by Holder to the Corporation; provided, further, that the Corporation shall notify a Holder as promptly as possible after the Corporation becomes aware of the fact that information provided by such Holder to the Corporation is incorrect or incomplete. Any such amount shall be paid on or before the fifth (5th) Trading Day of each month following a month in which such amount accrued. Nothing herein shall limit a Holder's right to pursue actual damages for the Corporation's failure to deliver Conversion Shares within the period specified herein, and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

iii. Compensation for Buy-In on Failure to Timely Deliver Certificates Upon Conversion. If the Corporation fails to deliver to a Holder a certificate or certificates representing Conversion Shares or to effect a DWAC Delivery, as applicable, by the Share Delivery Date pursuant to Section 6(d)(i), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "**Buy-In**"), then the Corporation shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount by which (x)

such Holder's total purchase price (including any brokerage commissions) for the shares of Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions), and (B) at the option of such Holder, either reissue (if surrendered) the shares of Series B-2 Preferred Stock equal to the number of shares of Series B-2 Preferred Stock submitted for conversion or deliver to such Holder the number of shares of Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under Section 6(d)(i); provided that the Holder shall have no right to any such payment under clause (A) hereof if the failure of the Corporation to deliver such Conversion Shares is a failure caused by incorrect or incomplete information provided by Holder to the Corporation; provided, further, that the Corporation shall notify a Holder as promptly as possible after the Corporation becomes aware of the fact that information provided by such Holder to the Corporation is incorrect or incomplete. For example, if a Holder purchases shares of Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted conversion of shares of Series B-2 Preferred Stock with respect to which the actual sale price (including any brokerage commissions) giving rise to such purchase obligation was a total of $10,000 under clause (A) of the immediately preceding sentence, the Corporation shall be required to pay such Holder $1,000. The Holder shall provide the Corporation written notice within five (5) Trading Days after the occurrence of a Buy-In indicating the amounts payable to such Holder in respect of the Buy-In together with applicable confirmations and any other evidence reasonably requested by the Corporation related thereto. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver certificates representing shares of Common Stock upon conversion of the shares of Series B-2 Preferred Stock as required pursuant to the terms hereof.

iv. Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Series B-2 Preferred Stock and payment of dividends on the Series B-2 Preferred Stock, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holders of the Series B-2 Preferred Stock, not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments of Section 7 and without regard to the Beneficial Ownership Limitation) upon the conversion of all outstanding shares of Series B-2 Preferred Stock. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

v. Fractional Shares. No fractional shares or scrip representing fractional shares of Common Stock shall be issued upon the conversion of the Series B-2 Preferred Stock. As to any fraction of a share which a Holder would otherwise be entitled to receive upon such conversion, the Corporation shall round up to the next whole share.

vi. Taxes. The Corporation shall be responsible for paying, and the issuance of certificates for shares of the Common Stock upon conversion of the Series B-2 Preferred Stock shall be made without charge to any Holder for, any stamp, court or documentary, intangible, filing or similar taxes that may be payable in respect of the issuance or delivery thereof; provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the registered Holder(s) of such shares of Series B-2 Preferred Stock and the Corporation shall not be required to issue or deliver such certificates in a name other than that of the registered Holder(s) unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of the applicable transfer tax (if any) or shall have established to the satisfaction of the Corporation that the applicable transfer tax (if any) has been paid**.**

vii. Status as Preferred Stockholder. Effective as of the delivery by the Holder of the Notice of Conversion by the Holder by facsimile or electronic mail, as provided herein, subject to Section 6(c) hereof, (A) the shares of Series B-2 Preferred Stock being converted shall be deemed converted into shares of Common Stock, (B) the Holder shall be deemed the Holder or record of such applicable Conversion Shares, and (C) subject to a Holder's right to rescind a Notice of Conversion pursuant to Section 6(d)(i), the Holder's rights as a Holder of such converted shares of Series B-2 Preferred Stock shall cease and terminate, excepting only the right to receive certificates evidencing such shares of Common Stock, or electronic delivery of such shares in the case of DWAC Delivery, and to any remedies provided herein or otherwise available at law or in equity to such Holder because of a failure by the Corporation to comply with the terms of this Certificate of Designation. In all cases, the Holder shall retain all of its rights and remedies for the Corporation's failure to convert Series B-2 Preferred Stock.

Section 7. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Series B-2 Preferred Stock is outstanding: (A) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of this Series B-2 Preferred Stock); (B) subdivides outstanding shares of Common Stock into a larger number of shares; (C) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares; or (D) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock (or in the event that clause (D) of this Section 7(a) shall apply, shares of reclassified capital stock), outstanding immediately after such event (excluding any treasury shares of the Corporation). Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Fundamental Transaction. If, at any time while this Series B-2 Preferred Stock is outstanding, (i) the Corporation, directly or indirectly in one or more related transactions, effects any merger or consolidation of the Corporation with or into another Person (other than a merger in which the Corporation is the surviving or continuing entity and its capital stock outstanding immediately prior to the merger or consolidation is not exchanged for or converted into other securities, cash or other property), (ii) the Corporation, directly or indirectly in one or more related transactions, effects any sale of all or substantially all of its assets in one transaction or a series of related transactions and distributes the proceeds thereof to its stockholders, (iii) any tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (iv) the Corporation, directly or indirectly in one or more related transactions, effects any reclassification of the Common Stock or any compulsory share exchange pursuant (other than as a result of a dividend, subdivision or combination covered by Section 7(a) above) to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a "**Fundamental Transaction**"), then, upon the effectiveness of such Fundamental Transaction, each Holder of Series B-2 Preferred Stock shall receive for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to the Beneficial Ownership Limitation), the same kind and amount of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of one share of Common Stock (the "**Alternate Consideration**"). For purposes of any such conversion, the determination of the Conversion Ratio shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall adjust the Conversion Ratio in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holders shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Series B-2 Preferred Stock in connection with such Fundamental Transaction on the same terms and conditions as given to the holders of Common Stock. To the extent necessary to effectuate the foregoing provisions, the Corporation shall cause any successor to the Corporation or surviving entity in such Fundamental Transaction (or any direct or indirect parent entity thereof) to assume in writing all of the obligations of the Corporation under this Certificate in accordance with the provisions of this Section 7(b) pursuant to written agreements in form and substance approved by the holders of a majority of the then outstanding shares of Series B-2 Preferred Stock prior to such Fundamental Transaction. The Corporation shall not have the power to enter into any agreement to which the Corporation or any of its Affiliates is a party and pursuant to which a Fundamental Transaction is effected unless such agreement shall include terms in compliance with the provisions of this Section 7(b).

c) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

d) Notice to the Holders.

i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation or any Fundamental Transaction, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of this Series B-2 Preferred Stock, and shall cause to be delivered to each Holder at its last address as it shall appear upon the stock books of the Corporation, at the same time any notice related to any such transaction is delivered to the holders of Common Stock, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants or Fundamental Transaction, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange or Fundamental Transaction is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice.

Section 8. Miscellaneous.

a) Notice. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including any Notice of Conversion, shall be in writing and delivered personally, by electronic mail (lclifton@kempharm.com), or sent by a nationally recognized overnight courier service, addressed to the Corporation, at its principal place of business, to the attention of the Chief Financial Officer of the Corporation, or such other electronic mail address or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 8. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by confirmed electronic mail or facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the electronic mail address, facsimile number or address of such Holder appearing on the books of the Corporation, or if no such facsimile number or address appears on the books of the Corporation, at the principal place of business of such Holder. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the time and date of transmission, if such notice or communication is delivered via electronic mail to the e-mail address specified in this Section 8, (ii) the second Business Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iii) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designation shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay liquidated damages on the shares of Series B-2 Preferred Stock at the time, place and rate, and in the coin or currency, herein prescribed.

c) Lost or Mutilated Series B-2 Preferred Stock Certificate. If a Holder's Series B-2 Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Series B-2 Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership thereof reasonably satisfactory to the Corporation and, in each case, customary and reasonable indemnity, if requested.

d) Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation. Any waiver by the Corporation or a Holder must be in writing. Notwithstanding any provision in this Certificate of Designation to the contrary, any provision contained herein (other than Section 6(c) which cannot be waived by the Holders) and any right of the Holders of Series B-2 Preferred Stock granted hereunder may be waived as to all shares of Series B-2 Preferred Stock (and the Holders thereof) upon the affirmative vote or written consent of the Holders of not less than a majority of the then outstanding shares of Series B-2 Preferred Stock, unless a higher percentage is required by the DGCL, in which case the affirmative consent or written consent of the Holders of not less than such higher percentage shall be required.

e) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

f) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

g) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

h) Status of Converted Series B-2 Preferred Stock. If any shares of Series B-2 Preferred Stock shall have been converted into shares of Common Stock or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series B-2 Preferred Stock.

i) Determinations Made by Accountants. In the case of an inability of the Corporation and the holders of a majority of outstanding shares of Series B-2 Preferred Stock to reach a mutual agreement as to any arithmetic calculation hereunder, the Corporation or the Holders of a majority of the then outstanding Series B-2 Preferred Stock shall submit to the other their arithmetic calculations via electronic transmission within two (2) Trading Days of receipt, or deemed receipt, of any notice or other event giving rise to such dispute, as the case may be. If such Holder(s) and the Corporation are unable to agree upon such calculation within two (2) Trading Days after the submission of such disputed calculation, then the Corporation shall, within two (2) Trading Days thereafter, submit via electronic transmission the disputed arithmetic calculation, to an independent, reputable registered public accounting firm selected by the Corporation and approved by such Holder(s), which approval shall not be unreasonably withheld. The accountants shall perform the determinations or calculations and notify the Corporation and such Holder(s) of the results no later than five (5) Trading Days from the time it receives from the Corporation and such Holder(s) their respective calculations. Such accountants' determination or calculation, as the case may be, shall be binding upon all parties absent verifiable error. Notwithstanding the foregoing, in the event of an inability of the Corporation and the holders of a majority of the outstanding shares of Series B-2 Preferred Stock to reach a mutual determination as to the Conversion Price as contemplated by a Notice of Conversion, if requested by a Holder submitting such Notice of Conversion, the Corporation shall issue to such Holder the Conversion Shares, if any, that are not in dispute in accordance with the terms hereof. For the avoidance of doubt, any determinations made by the accountants, as the case may be, pursuant to this Section 8(i) shall be deemed to be "facts ascertainable" outside of this Certificate of Designation within the meaning of Sections 102(d) and 151(a) of the DGCL, and shall not be deemed to be a determination in or relating to arbitration or made by an arbitrator.

j) Benefit of Holders. The provisions of this Certificate of Designation are intended to be for the benefit of all Holders from time to time and shall be enforceable by any such Holder.

k) Interpretative Matters. Unless otherwise indicated or the context otherwise requires, (i) all references to Sections are to Sections contained in this Certificate of Designation, (b) words in the singular or plural include the singular and plural and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter, (c) the words “hereof,” “herein” and words of similar effect shall reference this Certificate of Designation in its entirety, and (d) the use of the word “including” in this Certificate of Designation shall be by way of example rather than limitation.

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RESOLVED, FURTHER, that the chief executive officer, the president, the chief financial officer or any vice-president, and the secretary or any assistant secretary, of the Corporation be and they hereby are authorized and directed to prepare and file this Certificate of Designation in accordance with the foregoing resolution and the provisions of Delaware law.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Designation this day of September 3, 2019.

/s/ R. LaDuane Clifton

Name: R. LaDuane Clifton
Title: Chief Financial Officer

ANNEX A
CONVERSION NOTICE

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES
OF SERIES B-2 PREFERRED STOCK)

Reference is made to the Certificate of Designation of Preferences, Rights and Limitations of Series B-2 Convertible Preferred Stock (the "**Certificate of Designation**"). In accordance with and pursuant to the Certificate of Designation, the undersigned hereby elects to convert the number of shares of Series B-2 Convertible Preferred Stock, par value $0.0001 per share and with a stated value of $1,000 per share (the "**Series B-2 Preferred Stock**"), of KemPharm, Inc., a Delaware corporation (the "**Corporation**"), indicated below into shares of common stock, par value $0.0001 per share (the "**Common Stock**"), of the Corporation, by tendering the stock certificate(s), if applicable, representing the shares of Series B-2 Preferred Stock specified below as of the date specified below.

Date of Conversion:_____

Number of shares of Series B-2 Preferred Stock to be converted: _____

This Conversion is conditioned upon the consummation of the following transaction: _____ [1]

Please confirm the following information:

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the shares of Common Stock in accordance with the terms of the Certificate of Designation as follows:

☐ Deposit/Withdrawal At Custodian ("**DWAC**") system; or

☐ Physical Certificate

Issue to:_____

Address (for delivery of physical certificate): _____

E-mail: _____

DTC Participant Number and Name (if through DWAC): _____

Account Number (if through DWAC): _____

1 No such condition applies if left blank.

Unless otherwise indicated below, by delivering this Conversion Notice, the undersigned represents that (i) it is not as of the date hereof (the "**Conversion Date**"), and for a period of three (3) months prior to the Conversion Date has not been, an "affiliate" (as such term is used in Rule 144 under the Securities Act of 1933, as amended) of the Corporation, and (ii) the shares of Series B-2 Preferred Stock being converted hereby have not been held by such an affiliate within the six (6)-month period immediately preceding the Conversion Date.

[HOLDER]

Exhibit 10.1

Execution Version

SEPTEMBER 2019 EXCHANGE AGREEMENT AND

AMENDMENT TO FACILITY AGREEMENT

This **SEPTEMBER 2019 EXCHANGE AGREEMENT AND AMENDMENT TO FACILITY AGREEMENT** (including the schedules, annexes and exhibits hereto, this "**Agreement**"), dated as of September 3, 2019, is by and among KemPharm, Inc., a Delaware corporation (the "**Borrower**"), Deerfield Private Design Fund III, L.P. ("**DPDF**") and Deerfield Special Situations Fund, L.P. ("**DSS**" and, together with DPDF, the "**Lenders**"). Capitalized terms used but not otherwise defined in this Agreement (including in Annex I hereto) shall have the meanings given to them in the Indenture (as defined below).

RECITALS:

A. The Lenders own an aggregate of $65,423,000 principal amount of the Borrower's 5.50% Senior Convertible Notes due 2021 (the "**Indenture Notes**") issued pursuant to the Indenture, dated as of February 9, 2016 (the "**Indenture**"), between the Borrower and U.S. Bank National Association, as trustee under the Indenture (together with any successor thereto, the "**Trustee**").

B. The Borrower and DPDF have entered into that certain Facility Agreement, dated as of June 2, 2014 (as the same previously has been and in the future may be amended, modified, restated or otherwise supplemented from time to time, the "**Facility Agreement**"). Upon the execution and delivery of the Facility Agreement, DPDF disbursed the First Disbursement (as defined in the Facility Agreement), which (i) included (among other loans) a term loan of $10,000,000, which is evidenced by the Senior Secured Convertible Note (as defined in the Facility Agreement) (the "**FA Note**" and, together with the Indenture Notes, the "**Notes**"); and (ii) obligated the Borrower to issue the Warrant (as defined in the Facility Agreement).

C. Prior to the date hereof, the Borrower has satisfied a portion of the principal amounts under the FA Note, leaving $6,666,666.67 in principal amount of the FA Note outstanding.

D. The Facility Agreement obligated the Borrower to pay to the Lender $3,333,333.33 of the outstanding principal amount of the FA Note, together with accrued and unpaid interest on the entire Principal amount of the FA Note, on June 3, 2019 (the "**June 2019 Payment**"). The Borrower and DPDF have entered into letter agreements (the "**Extension Letters**"), which have extended the due date for the June 2019 Payment to September 4, 2019.

E. The Board of Directors of the Borrower has authorized the creation of (i) a new series of Preferred Stock denominated as Series B-1 Convertible Preferred Stock (the "**Series B-1 Preferred Stock**") with the preferences, rights and limitations described in the Certificate of Designation of Preferences, Rights and Limitations of the Series B-1 Preferred Stock, in the form attached hereto as Exhibit A (the "**Series B-1 Certificate of Designation**"); and (ii) a new series of Preferred Stock denominated as Series B-2 Convertible Preferred Stock (the "**Series B-2 Preferred Stock**") with the preferences, rights and limitations described in the Certificate of Designation of Preferences, Rights and Limitations of the Series B-2 Preferred Stock, in the form attached hereto as Exhibit B (the "**Series B-2 Certificate of Designation**" and, together with the Series B-1 Certificate of Designation, the "**Certificates of Designation**").

F. Pursuant to this Agreement (and subject to the terms and conditions hereof), the Lenders will exchange an aggregate of $3,000,000 principal amount of the Indenture Notes (the "**Exchanged Indenture Notes**") for (i) the number of shares of Common Stock, par value $0.0001 per share ("**Common Stock**"), of the Borrower set forth on Schedule 1 hereto (the "**Common Exchange Shares**") and (ii) the number of shares of Series B-1 Preferred Stock set forth on Schedule 1 hereto (the "**Preferred Exchange Shares**" and, together with the Common Exchange Shares, the "**Initial Exchange Shares**" and, together with the Option Exchange Shares (as defined in Annex I), the "**Exchange Shares**"), which Preferred Exchange Shares shall be convertible from time to time by the holder thereof into shares of Common Stock (the "**Series B-1 Conversion Shares**").

G. Pursuant to this Agreement, the Lenders will have the right and option to exchange up to an additional $27,000,000 principal amount of the Indenture Notes for shares of Common Stock or shares of Series B-2 Preferred Stock, which shares of Series B-2 Preferred Stock shall be convertible from time to time by the holder thereof into shares of Common Stock (the "**Series B-2 Conversion Shares**" and, together with the Series B-1 Conversion Shares, the "**Conversion Shares**").

H. Pursuant to this Agreement, DPDF and the Borrower desire (i) to reduce the interest rate applicable under the Facility Agreement, (ii) to provide for "payment in kind" of interest on the Loans (as defined in the Facility Agreement), and (iii) to defer the June 2019 Payment until June 1, 2020 upon the terms and subject to the conditions set forth herein.

I. The parties intend that the foregoing amendments and exchange of a portion of the Indenture Notes for Exchange Shares are part of, and pursuant to, a Plan of Recapitalization and Reorganization of the Borrower described in Section 368(a)(1)(E) of the Internal Revenue Code of 1986, as amended (the "**Code**").

J. Contemporaneously with the execution and delivery of this Agreement, the Borrower and Boston Pharmaceuticals SA, an affiliate of Gurnet Point Capital Limited, are entering into a Collaboration and License Agreement in respect of specified product candidates of the Borrower, in substantially the last form furnished to the Lenders prior to the date hereof (in such form, without amendment or modification, the "**GPC License Agreement**").

K. In connection with entering into the GPC License Agreement, at the request of the Borrower, DPDF is willing to provide a limited waiver of certain provisions of the Facility Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I.
INITIAL EXCHANGE AND OPTIONAL EXCHANGE

Section 1.01. Initial Exchange. Subject to the terms and conditions hereof, each Lender hereby agrees to exchange the Exchanged Indenture Notes held by it for the issuance by the Borrower to such Lender of Common Exchange Shares and Preferred Exchange Shares (the "**Initial Exchange**"), in each case as set forth on Schedule 1 hereto.

Section 1.02. Optional Exchange. At any time and from time to time on or after the Effective Date, the Lenders shall have the right and option, but not the obligation, to exchange up to an additional $27,000,000 aggregate principal amount of the Indenture Notes for shares of Common Stock or Series B-2 Preferred Stock in accordance with Annex I hereto (any such exchange, an "**Optional Exchange**"). For the avoidance of doubt, Annex I is incorporated herein with the same force and effect as if fully set forth in the body of this Agreement.

Section 1.03. Initial Exchange Settlement. As soon as practicable following the effectiveness of the Initial Exchange, which shall be deemed to occur at 8:45 a.m. (New York time) on September 4, 2019 (such time on such date, the "**Effective Time**"), (subject to satisfaction (or waiver by the Lenders) of the conditions set forth in Article VI hereto), but in any event prior to 4:00 p.m. (New York time) on September 4, 2019 (such date, the "**Effective Date**"), (i) each Lender shall assign and transfer all right, title and interest in and to its Exchanged Indenture Notes to the Borrower, and deliver or cause to be delivered the Exchanged Indenture Notes held by such Lender to the Trustee, by book-entry transfer through the facilities of The Depositary Trust Company ("**DTC**") from the account(s) of such Lender, free and clear of any mortgage, lien, pledge, charge, security interest, encumbrance, title retention agreement, option, equity or other adverse claim thereto (collectively, "**Liens**"), together with any customary documents of conveyance or transfer that the Borrower or Trustee may reasonably deem necessary or desirable to transfer such Exchanged Indenture Notes to the Borrower; (ii) the Borrower shall credit to the account of each Lender's prime broker with DTC through its Deposit/Withdrawal at Custodian (DWAC**)** system the number of Common Exchange Shares set forth across from such Lender's name on Schedule 1 hereto in the column captioned "Common Exchange Shares"; (iii) the Borrower shall deliver to each Lender a certificate, duly executed on behalf of the Borrower and not bearing any restrictive legend, representing the number of Preferred Exchange Shares set forth across from such Lender's name on Schedule 1 hereto in the column captioned "Preferred Exchange Shares"; and (iv) the Borrower shall pay, in cash, by wire transfer of immediately available funds to an account designated by each Lender, all accrued and unpaid interest on such Lender's Exchanged Indenture Notes through the Effective Date. The Borrower and the Lenders acknowledge and agree that the aggregate amount of accrued and unpaid interest on the Exchanged Indenture Notes through the Effective Date is $16,041.67.

(a) Upon the Effective Time, (i) each Lender shall be deemed for all corporate purposes to have become the legal, beneficial and record holder of the Initial Exchange Shares and (ii) the aggregate principal amount of the Exchanged Indenture Notes shall be deemed cancelled.

(b) For the avoidance of doubt, this Agreement does not affect any Indenture Notes not exchanged pursuant to this Agreement (or the rights of any Lender in respect of any such Indenture Notes).

ARTICLE II.
AMENDMENT OF FACILITY AGREEMENT AND WAIVER

Section 2.01. Amendments to Facility Agreement. Upon the terms and subject to the conditions set forth in this Agreement, effective as of the Effective Date, the Facility Agreement shall hereby be amended as follows:

(a) Interest Rate. Solely with respect to periods from and after the Effective Date, the definition of "Interest Rate" in Section 1.1 of the Facility Agreement shall hereby be amended and restated in its entirety to read as follows:

> ""Interest Rate" means 6.75% interest per annum."

(b) Principal Payments. Notwithstanding anything to the contrary contained in the Facility Agreement (including Section 2.3 thereof), the June 2019 Payment due and payable on September 4, 2019 (by virtue of the Extension Letters) shall be deferred to, and be due and payable on, June 1, 2020 (which shall have the effect of deferring the maturity date of the Loans (as defined in the Facility Agreement) from February 14, 2020 to June 1, 2020). To effectuate the foregoing, the first sentence of Section 2.3(a) of the Facility Agreement shall hereby be amended and restated in its entirety to read as follows:

> "The Borrower shall pay to the Lenders an amount of the outstanding principal amount of the Notes equal to the sum of $3,333,333.33 plus the PIK Increase Amount (as defined below), on February 14, 2020, and shall pay to the Lenders the balance of the outstanding principal amount of the Notes, together with all accrued and unpaid interest on the Notes, on June 1, 2020. "PIK Increase Amount" means the aggregate amount by which the principal of the Notes shall have been increased as a result of PIK Interest Payments (as defined in the September 2019 Exchange Agreement and Amendment to Facility Agreement, dated as of September 3, 2019, among the Borrower, the Lender and Deerfield Special Situations Fund, L.P.) through and including February 14, 2020."

(c) PIK Interest. Notwithstanding anything to the contrary contained in the Facility Agreement, interest on the FA Note (or any Senior Secured Convertible Promissory Note issued in substitution therefor) that accrues and is otherwise payable on an Interest Payment Date (as defined in the Facility Agreement) occurring after the Effective Date shall be paid in kind by adding the amount of such interest to the then outstanding principal amount of the Loans (each such payment in kind being referred to as a "**PIK Interest Payment**"). Following an increase in the principal amount of the FA Note (or any Senior Secured Convertible Promissory Note issued in substitution therefor) as a result of a PIK Interest Payment, such increased principal shall bear interest at the rate applicable to the FA Note, and such interest shall be paid in kind (and such payment in kind shall also be deemed a "PIK Interest Payment" hereunder). Notwithstanding the foregoing, and for the avoidance of doubt, any accrued and unpaid interest that is payable upon maturity or upon any other payment or prepayment (in connection with the acceleration of the Loans, an amortization payment or otherwise) of the FA Note shall be paid in cash, and all payments and prepayments (in connection with the acceleration of the Loans, an amortization payment or otherwise) shall be applied to the Loans in accordance with Section 2.3(c) of the Facility Agreement.

(d) Covenants; GPC License Agreement. Section 5.2 of the Facility Agreement shall hereby be amended by adding the following as subparagraphs (j), (k) and (l) thereof to follow subparagraph (i):

"(j) The Borrower shall not transfer, assign or otherwise dispose of that certain License and Collaboration Agreement, by and between the Borrower and Boston Pharmaceutical Holdings SA, an affiliate of Gurnet Point Capital Limited, dated as of September 3, 2019 (as amended or restated, the "**GPC License Agreement**"), or any of the Borrower's material rights thereunder, in whole or in part.

(k) The Borrower shall not consent to, authorize or permit any other party to the GPC License Agreement to transfer, assign or otherwise dispose of its rights or obligations under the GPC License Agreement, in whole or in part, except to the extent that the Borrower's consent thereto is not required by the terms of the GPC License Agreement; provided, that nothing in this Section 5.2(k) shall limit the Borrower's right to terminate the GPC License Agreement in accordance with the terms Section 13.3, 13.4, 13.5 or 15.2 thereof.

(l) The Borrower shall enforce, and shall not enter into, consent to, authorize or permit any material amendment or modification of, or waive in any material respect the provisions of, the GPC License Agreement; provided, that nothing in this Section 5.2(l) shall limit Borrower's right to amend, modify or waive any portion of the Product Development Plan (as defined in the GPC License Agreement) or the Commercialization Plan (as defined in the GPC License Agreement)."

Section 2.02. Limited Waivers and Consent. Effective as of the Effective Date, DPDF hereby consents to, and waives any breach of the Facility Agreement or any Transaction Document (as defined in the Facility Agreement) that would be deemed to occur by, the Borrower's entry into the GPC License Agreement (without giving effect to any amendment or modification thereof or adjustment or waiver thereunder).

ARTICLE III.
REPRESENTATIONS AND WARRANTIES

Section 3.01. Representations and Warranties of the Lenders. Each Lender hereby represents and warrants to the Borrower as of the date of this Agreement and as of the Effective Time as follows:

(a) Organization and Good Standing. Such Lender is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted.

(b) Authority. Such Lender has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder. The execution and delivery of this Agreement by such Lender and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action on the part of such Lender and no further action is required in connection herewith or therewith.

(c) Valid and Binding Agreement. This Agreement has been duly executed and delivered by such Lender and constitutes the valid and binding obligation of such Lender, enforceable against such Lender in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(d) Non-Contravention. The execution and delivery of this Agreement by such Lender and the performance by such Lender of its obligations hereunder, does not and will not (i) violate any provision of such Lender's organizational documents, or (ii) conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which such Lender is subject, or by which any of such Lender's Notes is bound or affected except, in each instance of clauses (i) and (ii) hereof, where such violation or conflict would not reasonably be expected, individually or in the aggregate, to result in a material adverse effect on the ability of such Lender to timely perform its obligations under this Agreement.

(e) Exemption. Such Lender has held such Lender's Indenture Notes of record and beneficially for a period of at least one (1) year for purposes of Rule 144 under the Securities Act and is not, and during the three-month period prior to the date hereof has not been, an "affiliate" (as such term is used in Rule 144 under the Securities Act) of the Borrower. Such Lender understands that the Exchange Shares and the Conversion Shares are being offered, sold, issued and delivered to it in reliance upon specific exemptions from registration or qualification under federal and applicable state securities laws.

(f) Ownership of the Notes. Such Lender is the record and beneficial owner of, and has good and valid title to, such Lender's Indenture Notes, free and clear of all Liens, and has full power to dispose thereof and to exercise all rights thereunder (other than as restricted by this Agreement or the Indenture (as defined below) and other than pledges or security interests that such Lender may have created in favor of a prime broker under and in accordance with its prime brokerage account with such broker), without the consent or approval of, or any other action on the part of, any other Person. Other than the transactions contemplated by this Agreement, there is no outstanding contract, vote, plan, pending proposal or other right of any Person to acquire such Lender's Indenture Notes or any portion thereof. Such Lender has not, in whole or in part, (a) assigned, transferred, hypothecated, pledged, exchanged or otherwise disposed of any of its Indenture Notes or its rights in its Indenture Notes, or (b) except, as would not materially and adversely affect the ability of such Lender to consummate the transactions contemplated hereby, given any person or entity any transfer order, power of attorney or other authority of any nature whatsoever with respect to its Indenture Notes. Upon such Lender's delivery of its Exchanged Indenture Notes to the Borrower pursuant to the Initial Exchange, such Exchanged Indenture Notes shall be free and clear of all Liens created by such Lender.

(g) Accredited Investor/Qualified Institutional Buyer. Such Lender is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D under the Securities Act. Such Lender is a "qualified institutional buyer" as that term is defined in Rule 144A under the Securities Act. Such Lender understands the economic risk of its investment in the Exchange Shares, and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of an investment in the Exchange Shares.

(h) Information. Such Lender acknowledges and agrees that (i) such Lender has had the opportunity to review the Borrower's SEC Reports (as defined below) and this Agreement (including the exhibits hereto), (ii) such Lender has had an opportunity to submit questions to the Borrower concerning the Borrower, its business, operations, financial performance, financial condition and prospects, and the terms and conditions of the Initial Exchange and the potential Optional Exchanges (collectively, the "**Transactions**"), and has all information that it considers necessary in making an informed investment decision, (iii) such Lender has had the opportunity to consult with its accounting, tax, financial and legal advisors to be able to evaluate the risks involved in the Transactions and to make an informed investment decision with respect to such Transactions. Notwithstanding anything to the contrary contained herein, the rights and remedies available to such Lender, neither any such review nor any due diligence investigation conducted by such Lender or its advisors, if any, or its representatives shall modify, amend or otherwise affect such Lender's right to rely on the representations and warranties of the Borrower contained in this Agreement.

(i) No Illegal Transactions. Such Lender has not, directly or indirectly, and no person acting on behalf of or pursuant to any understanding with it has, engaged in any purchase or sale of the securities of the Borrower (including, without limitation, any Short Sales (as defined below) involving any of the Borrower's securities) from May 23, 2019 through the date of this Agreement, "**Short Sales**" include, without limitation, all "short sales" as defined in Rule 200 of Regulation SHO promulgated under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and all types of direct and indirect forward sale contracts, options, puts, calls, short sales, swaps, derivatives and similar arrangements (including on a total return basis), and sales and other transactions through non-U.S. broker-dealers or foreign regulated brokers. Solely for purposes of this Section 3.01(i), subject to such Lender's compliance with their respective obligations under the U.S. federal securities laws and such Lender's internal policies, (a) such "Lender" shall not be deemed to include any employees, subsidiaries or affiliates of such Lender that are effectively walled off by appropriate information barriers approved by such Lender's respective legal or compliance department (and thus have not been privy to any information concerning the Transactions), and (b) the foregoing representations and covenants of this Section 3.01(i) shall not apply to any transaction by or on behalf of an account of such Lender that was effected without the advice or participation of, or such account's receipt of information regarding the Transactions provided by, such Lender.

(j) Beneficial Ownership. The issuance of the Common Exchange Shares to each Lender at the Initial Exchange shall not cause the number of shares of Common Stock then beneficially owned by such Lender and its Affiliates and any other Persons or entities whose beneficial ownership of the Common Stock would be aggregated with such Lender for the purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which such Lender is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth in Section 2(e)(i) of Annex I) to exceed 4.985% of the total number of the shares of the Common Stock then issued and outstanding. For purposes hereof, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. In addition, a determination as to any "group" status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 3.01(j), in determining the number of outstanding shares of Common Stock, a Lender may rely on the Borrower's representations in Section 3.02(f).

Section 3.02. Representations and Warranties of the Borrower. The Borrower hereby represents and warrants to the Lenders as of the date of this Agreement and as of the Effective Date as follows:

(a) Organization and Good Standing. The Borrower is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted.

(b) Authority. The Borrower has the requisite corporate power and authority, as applicable, to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder. The execution and delivery of this Agreement by the Borrower and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action on the part of the Borrower, and no further action of the Borrower, its board of directors, managers, members or stockholders, as applicable, is required in connection herewith or therewith.

(c) Consents. The Borrower is not required to obtain any consent from, authorization or order of, or make any filing or registration with any governmental authority or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by this Agreement, in accordance with the terms hereof or thereof, other than filing the Certificates of Designation with the Secretary of State of the State of Delaware and filing the Announcing 8-K Filing (as defined below) with the U.S. Securities and Exchange Commission (the "**Commission**").

(d) Valid and Binding Agreement. This Agreement has been duly executed and delivered by the Borrower, and constitutes, and upon the filing thereof, the Certificates of Designation, the Preferred Exchange Shares and any Option Exchange Shares (as defined in Annex I) comprised of shares of Series B-2 Preferred Stock will constitute, the valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with their terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(e) Non-Contravention. The execution and delivery of this Agreement by the Borrower and the performance by the Borrower of its obligations hereunder and under the Certificates of Designation do not and will not (i) violate any provision of the Borrower's organizational documents, (ii) conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Borrower is subject, or by which any property or asset of the Borrower is bound or affected, (iii) require any permit, authorization, consent, approval, exemption or other action by, notice to or filing with, any court or other federal, state, local or other governmental authority or other Person, other than filing the Certificates of Designation with the Secretary of State of the State of Delaware and filing the Announcing 8-K Filing with the Commission, (iv) violate, conflict with, result in a material breach of, or constitute (with or without notice or lapse of time or both) a material default under, or an event which would give rise to any right of notice, modification, acceleration, payment, cancellation or termination under, or in any manner release any party thereto from any obligation under, any permit or contract to which the Borrower is a party or by which any of its properties or assets are bound, (v) violate, conflict with, result in a material breach of, or constitute (with or without notice or lapse of time or both) a material default under, or an event which would give rise to any right of notice, modification, acceleration, payment, cancellation or termination under, or in any manner release any party thereto from any obligation under, the Indenture, or (vi) result in the creation or imposition of any Lien on any part of the properties or assets of the Borrower, except, in each instance of clauses (ii), (iii), (iv) and (vi) hereof, where such violation, conflict, breach, default or Lien would not reasonably be expected, individually or in the aggregate, to result in a material adverse effect on (a) the business, operations, results of operations, condition (financial or otherwise) or properties of the Borrower and its Subsidiaries, taken as a whole, (b) the legality, validity or enforceability of any provision of this Agreement or either of the Certificates of Designation, (c) the ability of the Borrower to timely perform its obligations under this Agreement or either of the Certificates of Designation, or (d) the rights and remedies of the Lenders under this Agreement or either of the Certificates of Designation. As of the date hereof, no Event of Default (as defined in the Indenture) under the Indenture exists and no Event of Default (as defined in the Facility Agreement) under the Facility Agreement exists, and, to the knowledge of the Borrower, no event has occurred, and no fact or circumstance exists, that, with or without notice, lapse of time or both would reasonably be expected to result in an Event of Default under either the Indenture or the Facility Agreement.

(f) Issuance of Exchange Shares. The Exchange Shares are duly authorized and, when issued in accordance with this Agreement, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Borrower, and will not be issued in violation of, or subject to, any preemptive or similar rights of any person. The Conversion Shares issuable upon conversion of the Preferred Exchange Shares and the Option Exchange Shares (to the extent consisting of Series B-2 Preferred Stock) are duly authorized and, when issued in accordance with the applicable Certificate of Designation, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Borrower, and will not be issued in violation of, or subject to, any preemptive or similar rights of any person. The Borrower has reserved from its duly authorized capital stock 28,439,015 shares of Common Stock for issuance hereafter upon conversion of the Preferred Exchange Shares and the Option Exchange Shares (to the extent consisting of Series B-2 Preferred Stock) and upon exchange of Indenture Notes in accordance with Annex I, in each case, free and clear of preemptive or similar rights. As of the date of this Agreement, there are 30,058,543 shares of Common Stock issued and outstanding.

(g) SEC Reports; Nasdaq. The Borrower has filed all reports, schedules, forms, statements and other documents required to be filed by it under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "**SEC Reports**"). None of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Except as set forth in the Borrower's Current Report on Form 8-K filed with the Commission on May 23, 2019, the Borrower is not in violation of the requirements of the Nasdaq Global Market ("**Nasdaq GM**") and has no knowledge of any facts or circumstances which could reasonably lead to delisting or suspension of trading of the Common Stock in the foreseeable future.

(h) Certain Fees. No brokerage or finder's fees or commissions are or will be payable by the Borrower or any of its affiliates or representatives to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by this Agreement. The Lenders shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 3.02(h) that may be due in connection with the transactions contemplated hereby.

(i) Exemption from Registration. No registration under the Securities Act or any state securities laws is or will be required for the offer and issuance of the Initial Exchange Shares or the Option Exchange Shares by the Borrower to the Lenders as contemplated hereby or for the offer and issuance of the Conversion Shares by the Borrower to the Lenders as contemplated hereby and by the Certificates of Designation. The amendments and transactions contemplated hereby, including the issuance and sale of the Initial Exchange Shares and the Option Exchange Shares hereunder and the issuance and sale of the Conversion Shares pursuant to the terms of the Certificates of Designation do not and will not contravene, or require stockholder approval pursuant to, the rules and regulations of The Nasdaq Stock Market LLC, as currently in effect. Assuming the Lender to which Initial Exchange Shares, Option Exchange Shares or Conversion Shares are to be issued is not as of the date of issuance, and for a period of three (3) months prior to the date of issuance has not been, an "affiliate" (as such term is used in Rule 144 under the Securities Act) of the Borrower (which the Borrower shall assume (and the applicable Lender shall be deemed to represent) unless such Lender has otherwise advised the Borrower in writing) and in reliance on such Lender's representations contained in Section 3.01(e) hereof, the Conversion Shares, the Initial Exchange Shares and the Option Exchange Shares will be freely tradeable by such Lender without restriction or limitation (including volume limitation), pursuant to Rule 144 under the Securities Act, and will not contain or be subject to any legend or stop transfer instructions restricting the sale or transferability thereof. The Borrower has not paid or given (and will not pay or give), directly or indirectly, any commission or other remuneration for soliciting the exchange to be effected pursuant to this Agreement or otherwise in connection with the issuance and sale of the Initial Exchange Shares, any Option Exchange Shares or any Conversion Shares pursuant to this Agreement or the applicable Certificate of Designation.

(j) No Integrated Offering. Neither the Borrower, nor any of its affiliates, nor any person acting on its or their behalf has, directly or indirectly, made, or will make, any offers or sales of any security or solicited, or will solicit, any offers to buy any security, under circumstances that would cause this offering and issuance of the Initial Exchange Shares, the offering and issuance of the Option Exchange Shares or the offering and issuance of any of the Conversion Shares to be integrated with prior offerings by the Borrower (i) for purposes of the Securities Act and which would require the registration of any such securities under the Securities Act, or (ii) for purposes of any applicable stockholder approval provisions of the Nasdaq GM and which would require stockholder approval for the issuance of any Initial Exchange Shares, Option Exchange Shares or Conversion Shares.

(k) No Unlawful Payments. Neither the Borrower, to the knowledge of the Borrower, nor any of its directors or officers or any employee, agent, affiliate, representative of or other person associated with or acting on behalf of the Borrower, has (a) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (b) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds, (c) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, or (d) made any bribe, unlawful rebate, payoff, influence payment, kickback or other unlawful payment.

(l) Compliance with Money Laundering Laws. The operations of the Borrower are and have been conducted at all times in compliance with all financial recordkeeping and reporting requirements applicable to the Borrower, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, and the money laundering and any related or similar laws of all jurisdictions in which the Borrower conducts business (collectively, the "**Money Laundering Laws**"), and no action, suit or proceeding by or before any governmental authority involving the Borrower with respect to the Money Laundering Laws is pending or, to the knowledge of the Borrower, threatened.

(m) OFAC. The Borrower is not (a) a country, the government of a country, or an agency of the government of a country, (b) an organization directly or indirectly controlled by a country or its government, or (c) a person resident in or determined to be resident in a country, in each case, that is subject to a comprehensive country sanctions program administered and enforced by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**"), and the Borrower is not a person named on the list of Specially Designated Nationals maintained by OFAC.

(n) Application of Takeover Protections. The Borrower and its board of directors have taken all necessary action, if any, in order to render inapplicable the Borrower's issuance of the Initial Exchange Shares, Option Exchange Shares and Conversion Shares and the Lenders' ownership of such securities from the provisions of any control share acquisition, interested stockholder, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the organizational documents of the Borrower or the laws of the state of its incorporation which is applicable to the Lenders as a result of the transactions contemplated by this Agreement, including the Borrower's issuance of the Initial Exchange Shares, Option Exchange Shares and Conversion Shares and the Lenders' ownership of such securities.

ARTICLE IV.
COVENANTS

Section 4.01. Reservation of Shares. On and after the date hereof, the Borrower shall at all times reserve and keep available, free of preemptive or similar rights, a sufficient number of shares of Common Stock for the purpose of enabling the Borrower to issue all of the Conversion Shares pursuant to the Certificates of Designation (without regard to the Beneficial Ownership Limitation or the Option Beneficial Ownership Cap (as defined in Annex I)) and shares of Common Stock in accordance with Annex I (without regard to the Option Beneficial Ownership Cap).

Section 4.02. Blue Sky Filings. The Borrower shall take such action as is necessary in order to obtain an exemption for, or to qualify the Initial Exchange Shares, the Option Exchange Shares and the Conversion Shares for, issuance and sale to the Lenders under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of such actions promptly upon request of any of the Lenders.

Section 4.03. Listing. The Borrower has submitted an application for the listing of the Conversion Shares and the shares of Common Stock issuable in accordance with Annex I on Nasdaq GM and will use its commercially reasonable efforts to secure such listing. For so long as any Notes remain outstanding, the Borrower shall use commercially reasonable efforts to maintain the Common Stock's listing on Nasdaq GM. The Borrower shall not take any action which would be reasonably expected to result in the delisting or suspension of trading the Common Stock on Nasdaq GM. If the Common Stock is, or is reasonably expected to be, delisted from Nasdaq GM, the Borrower shall use its best efforts to cause the Common Stock to be listed on the Nasdaq Capital Market contemporaneously with such delisting and, thereafter, (i) shall use commercially reasonable efforts to maintain the Common Stock's listing on the Nasdaq Capital Market and (ii) shall not take any action which would be reasonably expected to result in the delisting or suspension of trading the Common Stock on the Nasdaq Capital Market. The Borrower shall pay all fees and expenses in connection with satisfying its obligations under this Section 4.03.

Section 4.04. Disclosure; Confidentiality. On or before 8:00 a.m., New York time, on the first Business Day following the date of this Agreement, the Borrower shall file with the Commission a Current Report on Form 8-K describing all the material terms of the transactions contemplated by this Agreement and the GPC License Agreement, disclosing the effectiveness of each of such agreement, attaching this Agreement and the GPC License Agreement and disclosing any other presently material non-public information (if any) provided or made available to any Lender (or any Lender's agents or representatives) on or prior to the date hereof (the "**Announcing 8-K Filing**"). The Borrower represents and warrants that, from and after the filing of the Announcing 8-K Filing, it shall have publicly disclosed all material, non-public information (if any) provided or made available to any Lender (or any Lender's agents or representatives) by Borrower or any of its officers, directors, employees, Affiliates or agents in connection with the transactions contemplated by this Agreement or otherwise (including with respect to the GPC License Agreement) on or prior to the date hereof. The Borrower also represents and warrants, for the avoidance of doubt and without limiting the foregoing, that by making any redactions to the GPC License Agreement, as filed with the Commission as an exhibit as part of the Announcing 8-K Filing, the Borrower shall not (i) have failed to disclose any material information in respect of

the GPC License Agreement or (ii) cause any Lender or any affiliate or representative of any Lender to be in possession of any material non-public information relating to the to the terms of the GPC License Agreement at any time after the filing of the Announcing 8-K Filing. Notwithstanding anything contained in this Agreement to the contrary, and without implication that the contrary would otherwise be true, the Borrower expressly acknowledges and agrees that, from and after the Announcing 8-K Filing, no Lender nor any affiliate of any Lender shall have (unless expressly agreed to by such particular Lender after the date hereof in a written definitive and binding agreement executed by the Borrower and such particular Lender or customary oral (confirmed by e-mail) "wall cross" agreement (it being understood and agreed that no Lender may bind any other Lender with respect thereto)), any duty of trust or confidence with respect to, or a duty not to trade in any securities while aware of, any information regarding the Borrower. The Borrower acknowledges and agrees that Section 6.14 of the Facility Agreement, as deemed amended by Sections 3.04(e) and (f) of the Exchange Agreement, dated as of October 5, 2018, among the Borrower and the Lenders, remains in full force and effect.

Section 4.05. Taxes. The Borrower shall be responsible for paying all present or future stamp, court or documentary, intangible, recording, filing or similar taxes that arise from any payment or issuance made under, from the execution, delivery, performance or enforcement of, or otherwise with respect to, this Agreement.

Section 4.06. Tax Treatment. The parties intend and agree that the exchanges of a portion of the Indenture Notes for Initial Exchange Shares described herein are part of and pursuant to a Plan of Recapitalization and Reorganization of the Borrower described in Section 368(a)(1)(E) of the Code, and shall report the transactions for federal, state and local income tax purposes in accordance therewith unless otherwise required by applicable law.

Section 4.07. Fees and Expenses. The Borrower shall promptly reimburse the Lenders for all of their reasonable out-of-pocket, costs, fees and expenses, including legal fees and expenses, incurred in connection with the negotiation and drafting of this Agreement and the consummation of the transactions contemplated hereby, up to a maximum of $150,000 for all such expenses.

ARTICLE V.
ACKNOWLEDMENT OF THE BORROWER

Section 5.01. The Borrower irrevocably and unconditionally acknowledges, affirms and covenants to each Lender that:

(a) such Lender is not in default under the Indenture or the Facility Agreement and has not otherwise breached any obligations to the Borrower; and

(b) there are no offsets, counterclaims or defenses to the obligations under the Indenture as of the date hereof, including the liabilities and obligations of the Borrower under the Notes or the rights, remedies or powers of such Lender in respect of any of the obligations under the Indenture, and the Borrower agrees not to interpose (and each does hereby waive and release) any such defense, set off or counterclaim in any action brought by such Lender with respect thereto.

ARTICLE VI.
CONDITIONS PRECEDENT.

Section 6.01. Conditions. The effectiveness of the amendments contemplated by Article II and the consummation of the Initial Exchange are subject to the following conditions on or prior to the Effective Time:

(a) Delivery of Documents. The Borrower and the Lenders shall each have executed and delivered this Agreement.

(b) Performance: No Default. The representations and warranties of the Borrower and Lenders contained herein shall be true and correct, and the Borrower and Lenders shall have performed and complied with all agreements and conditions contained in this Agreement to be performed by or complied with by the Borrower or Lenders, as applicable, prior to the Effective Time in all respects, and the Lenders shall have received a certification from the chief executive officer or chief financial officer of the Borrower to the foregoing effect.

(c) Certificates of Designation. The Lenders shall have received evidence satisfactory to the Lenders that each Certificate of Designation has been filed with the Secretary of State of the State of Delaware and has become effective.

(d) Legal Opinion. The Lenders (or their counsel) shall have received customary legal opinions from Cooley LLP, as counsel to the Borrower, in form and substance reasonably satisfactory to the Lenders.

(e) GPC Transactions. (i) The Borrower and Boston Pharmaceuticals Holdings SA shall have entered into the GPC License Agreement, which shall include a collateral assignment in favor of DPDF of all of the Borrower's rights thereunder, and shall otherwise be in form and substance reasonably satisfactory to the Lenders, and (ii) the GPC License Agreement shall have become effective.

ARTICLE VII.
MISCELLANEOUS

Section 7.01. Entire Agreement. This Agreement constitutes the entire agreement, and supersedes all other prior and contemporaneous agreements and understandings, both oral and written, among the Lenders and the Borrower with respect to the subject matter hereof.

Section 7.02. Amendments and Waivers. No provision of this Agreement may be waived or amended except in a written instrument signed by the Borrower and (i) prior to the effectiveness of the Initial Exchange, each of the Lenders and (ii) following the effectiveness of the Initial Exchange, the Lenders holding a majority of the Exchange Shares issued hereunder, except that (A) any amendment or waiver with respect to a provision of Annex I shall require the signature of Lenders whose aggregate Pro Rata Exchange Limits (as defined in Annex I) exceed 50% of the aggregate Pro Rata Exchange Limits of all Lenders, and (B) any amendment or waiver with respect to a provision of Article II shall require the signature of the Required Lenders (as defined in the Facility Agreement). No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

Section 7.03. Successors and Assigns. All of the covenants and provisions of this Agreement by or for the benefit of the Lenders or the Borrower shall bind and inure to the benefit of their respective successors and permitted assigns. No party hereunder may assign its rights or obligations hereunder without the prior written consent of the other parties hereto, except that a Lender may assign its rights hereunder to an Affiliate (as defined in Annex I) of such Lender to which it transfers Exchange Shares, Conversion Shares or Indenture Notes, provided that (a) such Lender agrees in writing with the transferee or assignee to assign such rights, and such assignee or transferee agrees in writing to accept such rights subject to, and to be bound by, the terms of this Agreement, and a copy of such agreement is furnished to the Borrower after such transfer or assignment; and (b) the Borrower is, after such transfer or assignment, furnished with written notice of (i) the name and address of such transferee or assignee and (ii) the portion of such Exchange Shares, Conversion Shares or Indenture Notes with respect to which such rights are being transferred or assigned; provided, further, that an assignment of rights under Annex I shall be subject to the provisions of Section 3 thereof.

Section 7.04. Notices. Any notice, request or other communication to be given or made under this Agreement shall be in writing. Such notice, request or other communication shall be deemed to have been duly given or made when it shall be delivered by hand, overnight mail, international courier (confirmed by facsimile), electronic mail or facsimile to the party to which it is required or permitted to be given or made at such party's address specified below or at such other address as such party shall have designated by notice to the other parties.

If to the Borrower: KemPharm, Inc.

1180 Celebration Blvd.
Suite 103
Celebration, FL 34747
Fax: (321) 250-3698
E-mail: lclifton@kempharm.com
Attention: R. LaDuane Clifton, Chief Financial Officer

With a copy to (which shall not constitute notice hereunder):

Cooley LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
Fax: (703) 456-8100
Email: bsiler@cooley.com
Attention: Brent Siler

If to DPDF or DSS:

Deerfield Management Company, L.P.
780 Third Avenue, 37th Floor
New York, NY 10017 Fax: (212) 599-3075
Email: dclark@deerfield.com
Attn: David J. Clark

With a copy to:

Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, Illinois 60661-3693
Fax: (212) 940-8776
Email: mark.wood@kattenlaw.com
Attn: Mark Wood

Section 7.05. Applicable Law; Consent to Jurisdiction.

(a) As part of the consideration and mutual promises being exchanged and given in connection with this Agreement, the parties hereto agree that all claims, controversies and disputes of any kind or nature arising under or relating in any way to the enforcement or interpretation of this Agreement or to the parties' dealings, rights or obligations in connection herewith, including disputes relating to the negotiations for, inducements to enter into, or execution of, this Agreement, and disputes concerning the interpretation, enforceability, performance, breach, termination or validity of all or any portion of this Agreement shall be governed by the laws of the State of New York without giving effect to any laws, rules or provisions that would cause the application of the laws of any jurisdiction other than the State of New York.

(b) The parties hereto agree that all claims, controversies and disputes of any kind or nature relating in any way to the enforcement or interpretation of this Agreement or to the parties' dealings, rights or obligations in connection herewith, shall be brought exclusively in the state and federal courts sitting in The City of New York, borough of Manhattan. With respect to any such claims, controversies or disputes, each of the Parties hereby irrevocably:

(i) submits itself and its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action in any court or tribunal other than the aforesaid courts;

(ii) waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding (A) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve process in accordance with this Section 7.05, (B) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (C) to the fullest extent permitted by the applicable law, any claim that (1) the suit, action or proceeding in such court is brought in an inconvenient forum, (2) the venue of such suit, action or proceeding is improper or (3) this Agreement, or the subject matter hereof, may not be enforced in or by such courts; and

(iii) WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.05.

Notwithstanding the foregoing in this Section 7.05, a party may commence any action or proceeding in a court other than the above-named courts solely for the purpose of enforcing an order or judgment issued by one of the above-named courts.

Section 7.06. Counterparts; Effectiveness. This Agreement and any amendment hereto may be executed and delivered in any number of counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. In the event that any signature to this Agreement or any amendment hereto is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof. No party hereto shall raise the use of a facsimile machine or e-mail delivery of a ".pdf" format data file to deliver a signature to this Agreement or any amendment hereto or the fact that such signature was transmitted or communicated through the use of a facsimile machine or e-mail delivery of a ".pdf" format data file as a defense to the formation or enforceability of a contract, and each party hereto forever waives any such defense.

Section 7.07. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person (other than the parties to this Agreement) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 7.08. Remedies; Specific Performance. The rights and remedies provided in this Agreement shall be cumulative and in addition to all other remedies available under the Facility Agreement, the FA Note, the Indenture Notes, the Indenture and/or at law or in equity. No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy, and nothing herein shall limit any Lender's right to pursue actual damages for any failure by the Borrower to comply with the terms of the Agreement, the Facility Agreement, the FA Note, the Indenture Notes and the Indenture. The parties to this Agreement agree that irreparable damage would occur and that the parties to this Agreement would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their

specific terms or were otherwise breached. It is accordingly agreed that each of the parties to this Agreement shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, in each case without the necessity of posting bond or other security or showing actual damages, and this being in addition to any other remedy to which such party is entitled at law or in equity.

Section 7.09. Effect of Headings. The section and subsection headings herein are for convenience only and not part of this Agreement and shall not affect the interpretation thereof.

Section 7.10. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

Section 7.11. Reservation of Rights. None of the Lenders has hereby waived any of such Lender's rights or remedies arising from any such breach or default or any right otherwise available under the Indenture, the Facility Agreement or at law or in equity as to any of such Lender's Notes that remain outstanding following the effectiveness of the Initial Exchange. Each of the Lenders expressly reserves all such rights and remedies. Notwithstanding anything else to the contrary herein, each Lender hereby agrees that the issuance of the Initial Exchange Shares to such Lender and the payment in full of accrued and unpaid interest on its Exchanged Indenture Notes, satisfies in full any and all obligations of the Borrower under the Indenture as to the Exchanged Indenture Notes and such Lender's remedies with regard to such Exchanged Indenture Notes shall be solely as described in this Agreement.

Section 7.12. Further Assurances. The parties hereby agree, from time to time, as and when reasonably requested by any other party hereto, to execute and deliver or cause to be executed and delivered, all such documents, instruments and agreements, including secretary's certificates, stock powers and irrevocable transfer agent instructions, and to take or cause to be taken such further or other action, as any party may reasonably deem necessary or desirable in order to carry out the intent and purposes of this Agreement. Without limiting the foregoing, the Borrower shall take such action, and deliver such notices, documents, instruments and agreements as the Trustee may reasonably require to effectuate the exchange and surrender of Indenture Notes in accordance with Annex I.

Section 7.13. No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

Section 7.14. Interpretative Matters. Unless otherwise indicated or the context otherwise requires, (i) all references to Sections, Schedules, Appendices or Exhibits are to Sections, Schedules, Appendices or Exhibits contained in or attached to this Agreement, (b) words in the singular or plural include the singular and plural and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter, (c) the words "hereof," "herein" and words of similar effect shall reference this Agreement in its entirety, and (d) the use of the word "including" in this Agreement shall be by way of example rather than limitation.

Section 7.15. Reaffirmation. Other than as expressly provided in this Agreement, the execution and delivery of this Agreement shall not operate as a waiver of any right, power or remedy of the Lenders, constitute a waiver of any provision of the Indenture, the Facility Agreement, the Indenture Notes or the FA Note or any other document executed in connection therewith or serve to effect a novation of the obligations thereunder. The Borrower, as issuer, debtor, grantor, pledger, mortgagor, guarantor or assignor, or in other any other similar capacity in which it grants liens or security interests in its property hereby (i) acknowledges and agrees that it has reviewed this Agreement, (ii) ratifies and reaffirms all of its obligations, contingent or otherwise, under each of the Transaction Documents (as defined in the Facility Agreement), each as amended as of the date hereof (including as provided in this Agreement), and (iii) to the extent the Borrower granted Liens on or security interests in any of its property pursuant to any such Transaction Document as security for the Obligations (as defined in the Facility Agreement) under or with respect to the Transaction Documents, ratifies and reaffirms such grant of security interests and Liens as provided in the Transaction Documents and confirms and agrees that such security interests and Liens continue to secure all of the currently outstanding or future Obligations (as amended hereby) on the terms and conditions of the Transactions Documents (as amended as of the date of this Agreement (including as provided in this Agreement)). The Borrower hereby consents to this Agreement and acknowledges that this Agreement is a Transaction Document and each of the other Transaction Documents, each as amended as of the date hereof (including as provided in this Agreement), remains in full force and effect and is hereby ratified and reaffirmed; provided that, nothing in this Section 7.15 shall obligate the Borrower to restate, or be considered to be a restatement of, the representations of the Borrower contained in Article 3 of the Facility Agreement as of the date hereof. Any reference in the Transaction Documents to "hereunder," hereof," "herein," or words of like import referring to such agreement shall refer to such Transaction Document as amended as of the date hereof (including as provided in this Agreement).

Section 7.16. Payment Set Aside. Notwithstanding anything to the contrary contained herein, if any payment or transfer (or any portion thereof) to either of the Lenders shall be subsequently invalidated, declared to be fraudulent or a fraudulent conveyance or preferential, avoided, rescinded, set aside or otherwise required to be return or repaid, whether in bankruptcy, reorganization, insolvency or similar proceedings involving the Borrower or otherwise, then the Obligations (as defined in the Facility Agreement) purportedly satisfied with such payment or transfer, to the extent that such payment is or must be invalidated, declared to be fraudulent or a fraudulent conveyance or preferential, avoided, rescinded, set aside or otherwise required to be return or repaid, shall immediately be reinstated, without need for any action by any Person, and shall be enforceable against the Borrower, any guarantor and their successors and permitted assigns as if such payment had never been made (in which case this Agreement shall in no way impair the claims of Lenders with respect to such payment or transfer). The provisions of this Section 7.16 shall survive the satisfaction in full of the Obligations and the termination of the Facility Agreement.

Section 7.17. Termination. Except to the extent otherwise agreed in writing by the Lenders prior to the Effective Time, this Agreement shall terminate and be of no further force or effect if any of the conditions set forth in Article VI are not satisfied or waived by the Lenders as of the Effective Time; provided, however, that the Borrower's obligations under Section 4.07 hereof shall survive such termination until performed by the Borrower in full.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed as of the date first written above.

THE BORROWER:

KEMPHARM, INC.

By: /s/ R. LaDuane Clifton
Name: R. LaDuane Clifton
Title: Chief Financial Officer

[Signature Page to September 2019 Exchange Agreement and Amendment to Facility Agreement]

LENDERS:

DEERFIELD PRIVATE DESIGN FUND III, L.P.

By: Deerfield Mgmt III, L.P., its General Partner
By: J.E. Flynn Capital III , LLC, its General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

DEERFIELD SPECIAL SITUATIONS FUND, L.P.

By: Deerfield Mgmt, L.P., its General Partner
By: J.E. Flynn Capital, LLC, its General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

Schedule 1

LENDER	Exchanged Indenture Notes (principal amount)	Common Exchange Shares	Preferred Exchange Shares
Deerfield Private Design Fund III, L.P.	$ 2,500,000.00	1,249,913	1,313
Deerfield Special Situations Fund, L.P.	$ 500,000.00	249,981	263
Total:	$ 3,000,000.00	1,499,894	1,576

Annex I

*This is Annex I to the September 2019 Exchange Agreement and Amendment to Facility Agreement, dated as of September 3, 2019, by and among KemPharm, Inc., a Delaware corporation (the "**Borrower**"), Deerfield Private Design Fund III, L.P. ("**DPDF**") and Deerfield Special Situations Fund, L.P. ("**DSS**" and, together with DPDF, the "**Lenders**") (the "**Exchange Agreement**"). Capitalized terms used but not defined in this Annex I have the meanings given to them in the Exchange Agreement.*

If either Lender elects to exchange all or any portion, not to exceed $27,000,000 in the aggregate principal amount, of the Indenture Notes pursuant to an Optional Exchange, the following terms shall apply.

1. Definitions. For purposes of this Annex I, the following terms shall have the following meanings:

(a) "**Affiliate**" means any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act ("**Rule 144**"). With respect to a Lender, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Lender will be deemed to be an Affiliate of such Lender.

(b) "**Agreement Date**" means September 3, 2019.

(c) "**Bloomberg**" means Bloomberg Financial Markets or an equivalent, reliable reporting service mutually acceptable to and designated by the Borrower and the Lenders.

(d) "**Common Stock**" means the common stock, par value $0.0001 per share, of the Borrower.

(e) "**Common Stock Exchange Price**" means, as of any Exchange Date or other date of determination, the greater of (A) the arithmetic average of the Volume Weighted Average Price of the Common Stock on each of the fifteen (15) Trading Days immediately preceding the Exchange Date (the "**Measurement Period**"); provided, that in the event that a stock split, stock combination, reclassification, payment of stock dividend, recapitalization or other similar transaction of such character that the outstanding shares of Common Stock shall be changed into or become exchangeable for a larger or small number of shares (a "**Stock Event**") is consummated during the Measurement Period, the Volume Weighted Average Price for all Trading Days during the Measurement Period prior to the effectiveness of the Stock Event shall be appropriately adjusted to reflect such Stock Event and (B) $0.9494, subject to appropriate adjustment for any Stock Event that occurs on or after the Agreement Date.

(f) "**Dollars**" or "**$**" means United States Dollars.

(g) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

(h) "**Exchange Amount**" means, in respect of any exchange of Indenture Notes in accordance with this Annex I, the aggregate principal amount of the Indenture Notes to be exchanged.

(i) "**Exchange Date**" means the date of delivery via facsimile or electronic mail of an Exchange Notice.

(j) "**Exchange Option Period**" means each period set forth on Schedule A-1 to this Annex I.

(k) "**Exchange Price**" means, as of any Exchange Date or other date of determination, (A) in respect of any Exchange of the Indenture Notes (or portion thereof) for shares of Common Stock, the Common Stock Exchange Price, and (B) in respect of any Exchange (as defined below) of the Indenture Notes (or portion thereof) for Series B-2 Preferred Shares, the Series B-2 Exchange Price.

(l) "**Exchange Trigger Period**" means the period commencing on and including the Effective Date and ending on the first date on which none of the Indenture Notes remain outstanding.

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

(n) "**Principal Market**" means the Nasdaq Global Market (or any successor thereto) or if the Common Stock ceases to be listed on the Nasdaq Global Market (or any successor thereto), then Principal Market shall mean the principal securities exchange or trading market for the Common Stock.

(o) "**Pro Rata Exchange Limit**" means, as of any date of determination during any Exchange Option Period, with respect to each Lender, the aggregate principal amount of Indenture Notes set forth on Schedule A-1 under such Lender's name with respect to such Exchange Option Period, *less* (B) the aggregate principal amount of Indenture Notes exchanged by such Lender pursuant to this Annex I after the Effective Time and prior to such date of determination (including, for the avoidance of doubt, the principal amount of any Indenture Notes exchanged by such Lender during any prior Exchange Option Period).

(p) "**Securities Act**" means the Securities Act of 1933, as amended.

(q) "**Series B-2 Exchange Price**" means the Stated Value (as defined in the Series B-2 Certificate of Designation).

(r) "**Series B-2 Preferred Shares**" means shares of the Series B-2 Preferred Stock.

(s) "**Shares**" means Series B-2 Preferred Shares or shares of Common Stock.

(t) "**Standard Settlement Period**" means the standard settlement period for equity trades effected by U.S. broker-dealers, expressed in a number of Trading Days, as in effect on the date the applicable Exchange Notice (as defined below) is received or deemed received by the Borrower.

(u) "**Trading Day**" means any day on which trading occurs on the Principal Market or other securities markets in the United States.

(v) "**Volume Weighted Average Price**" means, for the Common Stock as of any Trading Day, the volume weighted average sale price of the Common Stock on the Principal Market as reported by Bloomberg.

2. Exchange Rights. The Indenture Notes may be exchanged for shares of Common Stock or Series B-2 Preferred Shares on the terms and conditions set forth in this Section 2.

(a) Exchange at Option of each Lender. Subject to Section 2(e) of this Annex I, at any time and from time to time during the Exchange Trigger Period, each Lender shall be entitled to exchange (an "**Exchange**") the Indenture Notes (the "**Exchanged Notes**") held by such Lender for fully paid and non-assessable shares of Common Stock or, at the election of such Lender, fully paid and non-assessable Series B-2 Preferred Shares (collectively, the "**Option Exchange Shares**") at the Exchange Rate (as defined in Section 2(b) of this Annex I) (an "**Exchange**"). The Borrower shall not issue any fraction of a share of Common Stock upon any Exchange (but may issue fractional Series B-2 Preferred Shares). If the issuance would result in the issuance of a fraction of a share of Common Stock, then the Borrower shall round such fraction of a share up or down to the nearest whole share (with 0.5 rounded up).

(b) Exchange Rate. The number of Option Exchange Shares issuable upon an Exchange of any Indenture Notes pursuant to Section 2 of this Annex I shall be determined according to the following formula (the "**Exchange Rate**"):

$$\frac{\text{Exchange Amount}}{\text{Exchange Price}}$$

(c) Mechanics of Exchange. The Exchange of the Indenture Notes shall be conducted in the following manner:

(i) Lender's Delivery Requirements. To exchange Indenture Notes for Option Exchange Shares on any date, the applicable Lender shall (A) transmit by facsimile or electronic mail (or otherwise deliver), for receipt on or prior to 5:00 p.m. New York City time on such date, a copy of an executed exchange notice in the form attached hereto as Exhibit A (the "**Exchange Notice**") to the offices of the Borrower, at 1180 Celebration Blvd., Suite 103, Celebration, FL 34747, Attention: R. LaDuane Clifton, Chief Financial Officer, Fax: (321) 250-3698, E-mail: lclifton@kempharm.com, or such other address, facsimile number or email address as the Borrower may designate in writing, and (B) as soon as practicable thereafter, assign and transfer to the Borrower the Exchanged Notes by book-entry transfer through the facilities of The Depositary Trust Company from the account(s) of such Lender, free and clear of any Liens. For the avoidance of doubt, each Lender shall have the right to deliver an Exchange Notice that provides for the issuance of both shares of Common Stock and shares of Series B-2 Preferred Stock.

(ii) Borrower's Response. Upon receipt or deemed receipt by the Borrower of a copy of an Exchange Notice from a Lender, the Borrower (I) shall as soon as practicable send, via electronic mail, a confirmation of receipt of such Exchange Notice to such Lender and the Borrower's designated transfer agent (the "**Transfer Agent**"), if applicable, which confirmation shall constitute an instruction to any such Transfer Agent to process such Exchange Notice in accordance with

the terms herein and (II) within the Standard Settlement Period following the date of receipt or deemed receipt by the Borrower of such Exchange Notice (the "**Share Delivery Date**"), (A) in respect of the number Option Exchange Shares (if any) comprised of shares of Common Stock, credit such aggregate number of shares of Common Stock to which such Lender shall be entitled in connection with such Exchange Notice, to the account of the Lender's prime broker with DTC through its Deposit/Withdrawal at Custodian (DWAC) system, or (B) in respect of the number of Option Exchange Shares comprised of Series B-2 Preferred Shares (if any), issue and deliver to the address specified in the Exchange Notice, a stock certificate, registered in the name of the Lender (or its nominee) or such other persons as designated by the Lender, for the number of Series B-2 Preferred Shares to which the Lender shall be entitled in connection with such Exchange Notice. Provided that the Lender to which Option Exchange Shares are to be issued represents that (x) as of the date of delivery of the applicable Exchange Notice it is not, and for a period of three (3) months prior to such date has not been, an "affiliate" (as such term is used in Rule 144 under the Securities Act) of the Borrower, and (y) the Indenture Notes being converted have not been held by such an affiliate within the six (6)-month period immediately preceding the date of such Exchange Notice, the Option Exchange Shares shall not be subject to restrictions on transfer, and shall not bear any legend or be subject to any stop transfer or similar instruction. For the avoidance of doubt, by delivering an Exchange Notice, a Lender shall be deemed to have made the representations contemplated by the immediately preceding sentence, unless the applicable Lender otherwise indicates in such Exchange Notice. All interest in respect of the Exchanged Notes to which an Exchange Notice relates that accrues from the Interest Payment Date immediately preceding the applicable Exchange Date through (and including) the date the applicable Option Exchange Shares are delivered hereunder shall be paid by the Borrower, in cash, by wire transfer of immediately available funds to an account designated by such Lender by no later than the last day of the Standard Settlement Period following such Exchange Date.

(iii) Dispute Resolution. In the case of a dispute between the Borrower and a Lender as to the determination of the Exchange Price or the arithmetic calculation of the Exchange Rate, the Borrower shall issue, or instruct the Transfer Agent to issue, as applicable, to such Lender the number of Option Exchange Shares that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to such Lender via facsimile and email within two (2) Business Days of receipt or deemed receipt of such Lender's Exchange Notice or other date of determination. If such Lender and the Borrower are unable to agree upon the determination of the Exchange Price or arithmetic calculation of the Exchange Rate within one (1) Business Day of such disputed determination or arithmetic calculation being transmitted to such Lender, then the Borrower shall promptly (and in any event within two (2) Business Days) submit via facsimile or email (A) the disputed determination of the Exchange Price to an independent, reputable investment banking firm agreed to by the Borrower and the Lender to which such dispute relates, or (B) the disputed arithmetic calculation of the Exchange Rate to the Borrower's independent registered public accounting firm, as the case may be. The Borrower shall use commercially reasonable best efforts to direct the investment bank or the accounting firm, as the case may be, to perform the determinations or calculations and notify the Borrower and the Lender to which such dispute relates of the results no later than two (2) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accounting firm's determination or calculation, as the case may be, shall be binding upon all parties to such dispute absent manifest error. The fees and expenses of such investment bank or accounting firm shall be paid by the Borrower.

(iv) Record Holder. The person or persons entitled to receive the Option Exchange Shares issuable upon an Exchange of Indenture Notes hereunder shall be treated for all purposes as the legal and record holder or holders of such Option Exchange Shares upon delivery of the Exchange Notice in respect of such Exchange, or in the case of Option Exchange Shares the issuance of which is subject to a *bona fide* dispute that is subject to and being resolved pursuant to, and in compliance with the time periods and other provisions of, the dispute resolution provisions of Section 2(c)(iii) of this Annex I, the first Business Day after the resolution of such *bona fide* dispute; provided that the principal amount of the Indenture Notes subject to such dispute shall continue to bear interest until the date such Option Exchange Shares are actually issued to the applicable Lender.

(v) Borrower's Failure to Timely Exchange.

(A) Cash Damages. If, on or before the Share Delivery Date, the Borrower shall fail to issue and deliver to the applicable Lender in accordance with Section 2(c)(ii) of this Annex I the number of Option Exchange Shares (free of any restrictive legend or stop transfer instructions) to which such Lender is entitled upon its Exchange of any Exchange Amount, then in addition to all other available remedies that such Lender may pursue hereunder, then the Borrower shall pay as partial liquidated damages to such Lender for each 30-day period (prorated for any partial period) after the Share Delivery Date such Exchange is not timely effected an amount equal to one percent (1%) of the Exchange Amount. Notwithstanding anything to the contrary contained herein (and in addition to the remedies set forth herein), to the extent that the Borrower shall fail to issue and deliver Option Exchange Shares to the applicable Lender prior to the applicable Share Delivery Date, the principal amount of the Indenture Notes to which such failure relates shall continue to bear interest until the date such Option Exchange Shares are actually issued to the applicable Lender. If the Borrower fails to pay the additional damages set forth in this Section 2(c)(v)(A) of this Annex I or interest that accrues in accordance with the immediately preceding sentence or Section 2(c)(iv), in each case, within five (5) Business Days of the date incurred, then the Lender entitled to such payments shall have the right at any time, so long as the Borrower continues to fail to make such payments, to require the Borrower, upon written notice, to immediately issue, in lieu of such damages or interest payments described herein, the number of shares of Common Stock equal to the quotient of (X) the aggregate amount of the damages payments described in this Section 2(c)(v)(A) of this Annex I divided by (Y) the Common Stock Exchange Price in effect on such Exchange Date.

(B) Void Exchange Notice. If for any reason a Lender has not received all of the Option Exchange Shares prior to the tenth (10th) Business Day after the Share Delivery Date (a "**Exchange Failure**"), then such Lender, upon written notice to the Borrower (a "**Void Exchange Notice**") delivered prior to the receipt of such Option Exchange Shares, may void such applicable Exchange with respect to, and retain or have returned, as the case may be, any portion of the Indenture Notes that have not been exchanged pursuant to the applicable Exchange Notice; provided, that the voiding of such Exchange shall not affect the Borrower's obligations to make any payments that have accrued prior to the date of such notice pursuant to Section 2(c)(v)(A) of this Annex I or otherwise.

(d) Taxes. The Borrower shall pay any and all taxes (excluding income taxes, franchise taxes or other taxes levied on gross earnings, profits or the like of each Lender) that may be payable with respect to the issuance and delivery of Option Exchange Shares upon the Exchange of Indenture Notes (or any portion thereof) hereunder.

(e) Limitations on Exchange.

(i) Option Beneficial Ownership Cap. The Borrower shall not issue to a Lender, and a Lender may not acquire, a number of shares of Common Stock upon Exchange of such Lender's Indenture Notes pursuant to this Annex I to the extent that, upon such Exchange, the number of shares of Common Stock then beneficially owned by such Lender and its Affiliates and any other Persons or entities whose beneficial ownership of the Common Stock would be aggregated with such Lender for the purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which such Lender is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth in this Section 2(e)(i)) would exceed 4.985% of the total number of the shares of the Common Stock then issued and outstanding (the "**Option Beneficial Ownership Cap**"); provided, that the Option Beneficial Ownership Cap shall not apply to the extent that shares of Common Stock are not deemed to constitute "equity securities" pursuant to Rule 13d-1(i) under the Exchange Act. Each Lender hereby agrees that delivery by a Lender of an Exchange Notice that provides for the exchange of Indenture Notes for Common Stock shall constitute a representation by such Lender that the issuance of shares of Common Stock in accordance with such Exchange Notice will not cause such Lender (together with such Lender's Affiliates, and any other Person whose beneficial ownership of Common Stock would be aggregated with such Lender's for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the Commission) to beneficially own a number of shares of Common Stock in excess of the Option Beneficial Ownership Cap. For purposes of the foregoing representation, the number of shares of Common Stock beneficially owned by such Lender and its Affiliates shall include the number of shares of Common Stock issuable upon exchange of Indenture Notes subject to the Exchange Notice with respect to which such representation is being made, but shall exclude the number of shares of Common Stock which are issuable upon (A) exchange pursuant to this Annex I of the remaining, unexchanged Indenture Notes beneficially owned by such Lender and (B) exercise, conversion or exchange of the unexercised, unconverted or unexchanged portion of any shares of Series B-1 Preferred Stock or Series B-2 Preferred Stock or any other securities of the Borrower subject to a limitation on conversion, exercise or exchange analogous to the limitation contained herein (including any warrants) beneficially owned by such Lender or any of its Affiliates. Except as set forth in the preceding sentence, for purposes hereof, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. In addition, a determination as to any "group" status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes hereof, in determining the number of outstanding shares of Common Stock, a Lender may rely on the number of outstanding shares of Common Stock as stated in the Borrower's most recent quarterly or annual report filed with the Commission, or any current report filed by the Borrower with the Commission subsequent thereto. In addition, if in response to a request by a Lender (which may be via electronic mail), the Borrower confirms in writing via electronic mail to such Lender the number of shares of Common Stock then outstanding, each Lender shall be entitled to rely upon such confirmation. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to any actual conversion, exercise or exchange of securities of the Borrower, including shares of Series B-1 Preferred Stock or Series B-2 Preferred Stock, by such Lender or its Affiliates since the date as of which such number of outstanding shares of Common Stock was last publicly reported or reported to such Lender by the Borrower in accordance with the foregoing, whichever is later.

(ii) Pro Rata Exchange Limit. Notwithstanding anything to the contrary contained herein, the Indenture Notes shall not be exchangeable by a Lender pursuant to this Annex I, and the Borrower shall not issue Option Exchange Shares to such Lender upon any Exchange pursuant to this Annex I, to the extent that the aggregate principal amount of Indenture Notes sought to be exchanged by such Lender, would exceed such Lender's Pro Rata Exchange Limit (provided, for the avoidance of doubt, that the Borrower shall exchange the maximum amount of Indenture Notes set forth in the applicable Exchange Notice that may be exchanged into Option Exchange Shares without so exceeding such Lender's Pro Rata Exchange Limit, subject to the Option Beneficial Ownership Cap, as applicable).

3. Assignment. The rights of the Lenders under this Annex I shall not be assignable by any Lender without the prior written consent of the Borrower, except that a Lender may assign its rights under this Annex I, in whole or in part, without the consent of the Borrower to an Affiliate of such Lender to which it transfers or assigns all or any portion of such Lender's Indenture Notes, provided that (a) such Lender agrees in writing with the transferee or assignee to assign such rights, and such assignee or transferee agrees in writing to accept such rights subject to, and to be bound by, the terms of this Annex I, and a copy of such agreement is furnished to the Borrower after such transfer or assignment; and (b) the Borrower is, after such transfer or assignment, furnished with written notice of (i) the name and address of such transferee or assignee and (ii) the portion of such Lender's Pro Rata Exchange Limit with respect to which such rights are being transferred or assigned (which shall not exceed the aggregate principal amount of Indenture Notes transferred or assigned by such Lender to such transferee). Upon any such assignment or transfer, the definition of "Pro Rata Exchange Limit" shall be appropriately adjusted to reflect such assignment.

Schedule A-1

Exchange Option Period	Pro Rata Exchange Limit: Deerfield Private Design Fund III, L.P.	Pro Rata Exchange Limit: Deerfield Special Situations Fund, L.P.	Total
The period commencing on (and including) the first day of the Exchange Trigger Period and ending on (and including) the 59th day of the Exchange Trigger Period.	$ 4,167,000	$ 833,000	$ 5,000,000
The period commencing on (and including) the 60th day of the Exchange Trigger Period and ending on (and including) the 119th day of the Exchange Trigger Period	$ 5,833,000	$ 1,167,000	$ 7,000,000
The period commencing on (and including) the 120th day of the Exchange Trigger Period and ending on (and including) the 179th day of the Exchange Trigger Period	$ 10,833,000	$ 2,167,000	$13,000,000
The period commencing on (and including) the 180th day of the Exchange Trigger Period and ending on (and including) the 239th day of the Exchange Trigger Period	$ 15,833,000	$ 3,167,000	$19,000,000
The period commencing on (and including) the 240th day of the Exchange Trigger Period and ending on (and including) the last day of the Exchange Trigger Period.	$ 22,500,000	$ 4,500,000	$27,000,000

Exhibit A

EXCHANGE NOTICE

Reference is made to (i) the 5.50% Senior Convertible Notes due 2021 (the "**Notes**") of **KEMPHARM, INC.**, a Delaware corporation (the "**Company**"), and (ii) the September 2019 Exchange Agreement and Amendment to Facility Agreement (the "**Exchange Agreement**"), dated as of September 3, 2019, among the Company, Deerfield Private Design Fund III, L.P. and Deerfield Special Situations Fund, L.P. In accordance with and pursuant to the Exchange Agreement, the undersigned hereby elects to exchange the Exchange Amount (as defined in the Annex I to the Exchange Agreement) of Notes indicated below for shares of the Company, as of the date specified below.

Date of Exchange:_____

Aggregate Exchange Amount to be exchanged at the Exchange Price (as defined in the Exchange Agreement):_____

For shares of Common Stock:_____

For shares of Series B-2 Preferred Stock:_____

Please confirm the following information:

Exchange Price:

For the portion being exchanged for Common Stock:_____

For the portion being exchanged for Series B-2 Preferred Stock: $1,000

Number of shares of to be issued:

Common Stock: _____

Series B-2 Preferred Stock:_____

Please issue the shares of Common Stock and/or Series B-2 Preferred Stock for which the Notes are being exchanged in the following name and to the following address:

☐ Deposit/Withdrawal at Custodian ("**DWAC**") system; or

☐ Physical Certificate

Issue to:_____

DTC Participant Number and Name (if through DWAC):_____

Account Number (if through DWAC): _____

Unless otherwise indicated below, by delivering this Exchange Notice the undersigned represents that (i) it is not as of the date hereof (the "**Exchange Date**"), and for a period of three (3) months prior to the Exchange Date has not been, an "affiliate" (as such term is used in Rule 144 under the Securities Act of 1933, as amended) of the Company, and (ii) the Indenture Notes being exchanged hereby have not been held by such an affiliate within the six (6)-month period immediately preceding the Exchange Date.

_____

_____

[HOLDER]

Exhibit A
Series B-1 Certificate of Designation

[See Exhibit 3.1 filed with this
Current Report on Form 8-K, as
filed with the SEC on September 4, 2019]

Exhibit B
Series B-2 Certificate of Designation

[See Exhibit 3.2 filed with this
Current Report on Form 8-K, as
filed with the SEC on September 4, 2019]

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [*****], HAS BEEN OMITTED BECAUSE KEMPHARM, INC. HAS DETERMINED THE INFORMATION (I) IS NOT MATERIAL AND (II) WOULD LIKELY CAUSE COMPETITIVE HARM TO KEMPHARM, INC. IF PUBLICLY DISCLOSED.

COLLABORATION AND LICENSE AGREEMENT

This **COLLABORATION AND LICENSE AGREEMENT** (the "**Agreement**") is entered into as of September 3, 2019 (the "**Effective Date**") by and between **KEMPHARM, INC.**, a Delaware corporation, with its principal place of business at 1180 Celebration Blvd., Suite 103, Celebration, FL, 34747 ("**KemPharm**") and **BOSTON PHARMACEUTICALS HOLDINGS SA**, a limited company with its seat in Geneva, Switzerland, registered in the Registrar of Companies of Geneva, Switzerland ("**Company**"). KemPharm and Company are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, KemPharm is developing certain proprietary products, including products containing one or more of the compounds serdexmethylphenidate ("**SDX**"), d-methylphenidate ("**d-MPH**"), and/or one or more of KemPharm's proprietary prodrugs of amphetamine, each intended for the treatment of Attention Deficit Hyperactivity Disorder ("**ADHD**"); and

WHEREAS, Company desires to obtain from KemPharm an exclusive license to develop, manufacture and commercialize certain products currently under development by KemPharm containing one or more of the aforementioned compounds, as well as the right to obtain an exclusive license to certain product candidates under development or to be developed by KemPharm as further described herein, and KemPharm is willing to grant such license and rights to Company, all under the terms and conditions hereof.

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

ARTICLE 1
DEFINITIONS

1.1 "**Act**" means, as applicable, the United States Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§301 et seq., and/or the Public Health Service Act, 42 U.S.C. §§262 et seq., as such may be amended from time to time.

1.2 "**Additional Product**" means (a) KP879, (b) KP922, or (c) any other pharmaceutical product, in any dosage form, formulation, presentation or package configuration that is developed by or on behalf of KemPharm or any of its Affiliates and (i) contains or comprises, in part or in whole, any Compound or (ii) is designed for the treatment of ADHD or any other central nervous system disorder (e.g., SUD).

1.3 "**Affiliate**" means, with respect to a Person, another Person that controls, is controlled by or is under common control with such Person. For the purposes of this definition, the word "control" (including, with correlative meaning, the terms "controlled by" or "under common control with") means the actual power, either directly or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of such entity, whether by the ownership of fifty percent (50%) or more of the voting stock of such entity, or by contract or otherwise. For clarity, once a Person ceases to be an Affiliate of a Party, then, without any further action, such Person shall cease to have any rights, including license and sublicense rights, under this Agreement by reason of being an Affiliate of such Party.

1.4 "**Business Day**" means a day other than Saturday, Sunday or any day that banks in New York, New York, are required or permitted to be closed.

1.5 "**Calendar Year**" means the period beginning on January 1 and ending on December 31 of the same year; provided, however, that (a) the first Calendar Year of the Term shall commence on the Effective Date and end on December 31 of the same year and (b) the last Calendar Year of the Term shall commence on January 1 of the Calendar Year in which this Agreement terminates or expires and end on the date of termination or expiration of this Agreement.

1.6 "**Change of Control**" means with respect to either Party: (a) the sale of all or substantially all of such Party's assets or business relating to this Agreement; (b) a merger, reorganization or consolidation involving such Party in which the voting securities of such Party outstanding immediately prior thereto cease to represent at least fifty percent (50%) of the combined voting power of the surviving entity immediately after such merger, reorganization or consolidation; or (c) a person or entity, or group of persons or entities, acting in concert acquire more than fifty percent (50%) of the voting equity securities or management control of such Party.

1.7 "**CMC Information**" means Information related to the chemistry, manufacturing and controls of the Products, as specified by the FDA and other applicable Regulatory Authorities.

1.8 "**Combination Product**" means a Product that (a) includes one or more active ingredients in addition to a Compound or (b) is combined with one or more products, devices, pieces of equipment or components, but specifically excluding the formulations of KP415 and KP484 in existence as of the Effective Date.

1.9 "**Commercialization**," with a correlative meaning for "**Commercialize**" and "**Commercializing**," means all activities undertaken before and after obtaining Regulatory Approvals relating specifically to the pre-launch, launch, promotion, detailing, medical education and medical liaison activities, marketing, pricing, reimbursement, sale, and distribution of the Products, including strategic marketing, sales force detailing, advertising, market support, all customer support, product distribution, inventory, quality, production and invoicing and sales activities.

1.10 "**Commercially Reasonable Efforts**" means, with respect to either Party's obligations under this Agreement, the carrying out of such obligations with a level of efforts and resources consistent with the commercially reasonable practices of **[*****]**. For clarity, Commercially Reasonable Efforts will not mean that a Party guarantees that it will actually accomplish the applicable task or objective.

1.11 "**Company Competitor**" means any company that (itself or through an Affiliate) is developing or commercializing a product that is or could reasonably be expected to be, in competition with any product that Company (itself or through an Affiliate or Sublicensee) is developing or commercializing, including any Competing Product.

1.12 "**Company IP**" means all Information (including Data and Regulatory Materials) and Patents that (a) become Controlled by Company or its Affiliates during the Term and (b) are generated or used by Company or its Affiliates in connection with the Development, manufacture, or Commercialization of the Products, other than the Licensed Patents and Joint Patents.

1.13 "**Competing Product**" means **[*****]**.

1.14 "Compound" means SDX, d-MPH, amphetamine and any prodrugs of amphetamine or methylphenidate, and all salts, hydrates, solvates, esters, metabolites, intermediates, stereoisomers, polymorphs, and derivatives of any such compounds, as the context requires.

1.15 "Compulsory License" means a compulsory license under Licensed IP obtained by a Third Party through the order, decree, or grant of a competent Governmental Authority or court, authorizing such Third Party to develop, make, have made, use, sell, offer to sell, import or otherwise exploit a Competing Product or Product in the Field in any country in the Territory.

1.16 "**Confidential Information**" of a Party means any and all Information, separately or in combination, of such Party that is disclosed to the other Party prior to, or during the Term of this Agreement, whether in oral, written, graphic or electronic form, that by its nature or the circumstances of its disclosure would be understood by a reasonable person to be proprietary or confidential, or that is designated as such in writing such Party.

1.17 "**Control**," with a correlative meaning for "**Controlled**," means, with respect to any material, Information, or intellectual property right, that a Party (a) owns, or (b) has a license, other than a license granted to such Party under this Agreement, to such material, Information, or intellectual property right and, in each case, has the ability to grant to the other Party access, a license, or a sublicense, as applicable, to the foregoing on the terms and conditions set forth in this Agreement without violating the terms of any existing agreement or other arrangement with any Third Party or being obligated to pay any royalties or other consideration therefor, unless the other Party agrees in advance of any grant of rights thereto to pay such royalties or other consideration.

1.18 "**Covered**" means, with respect to a given product, process, method or service, that a Valid Claim would (absent a license thereunder or ownership thereof) be infringed (whether directly infringed or indirectly by induced or contributory infringement) by the making, using, selling, offering for sale, or importation of such product, process, method or service. With respect to a claim of a pending patent application, "infringed" refers to activity that would infringe or be covered by such Valid Claim if it were contained in an issued patent.

1.19 "**Data**" means all data generated by or on behalf of a Party or its Affiliate or their respective Sublicensees or subcontractors, as applicable, during the Development of the Products conducted under the Product Development Plan or otherwise. For clarity, Data does not include any patentable Inventions.

1.20 "**Development**," with a correlative meaning for "**Develop**" and "**Developing**," means all activities relating to preclinical and clinical trials, toxicology testing, statistical analysis and publication and presentation of study results with respect to the Products, and the reporting, preparation and submission of applications (including any CMC Information) for obtaining, registering and/or maintaining Regulatory Approval of the Products.

1.21 "**Facility Agreement**" means that certain Facility Agreement, dated as of June 2, 2014 by and between KemPharm and Deerfield Private Design Fund III, L.P. ("**DPDF**"), as amended, modified, restated or otherwise supplemented from time to time.

1.22 "**Facility Agreement Documents**" means the Security Agreements (as defined in the Facility Agreement).

1.23 "**FDA**" means the U.S. Food and Drug Administration and/or any successor entity.

1.24 "**Field**" means any and all prophylactic, palliative, therapeutic or diagnostic uses in humans.

1.25 "**First Commercial Sale**" means the first sale of a Product in a country in the Territory to a Third Party after Regulatory Approval has been obtained in such country in the Territory.

1.26 "**Generic Product**" means, with respect to a particular Product in the Field, any product that (a) is sold by a Third Party that is not a Sublicensee of Company or its Affiliates, or any of their Sublicensees, (b) contains a Compound as an active ingredient, and (c) is approved in reliance, in whole or in part, on the prior approval (or on safety or efficacy data submitted in support of the prior approval) of such Product as determined by the applicable Regulatory Authority, including any product authorized for sale (i) in the U.S. pursuant to Section 505(b)(2) or Section 505(j) of the FFDCA (21 U.S.C. 355(b)(2) and 21 U.S.C. 355(j), respectively), (ii) in the European Union pursuant to a provision of Articles 10, 10a or 10b of Parliament and Council Directive 2001/83/EC as amended (including an application under Article 6.1 of Parliament and Council Regulation (EC) No 726/2004 that relies for its content on any such provision), or (iii) in any other country or jurisdiction pursuant to all equivalents of such provisions, including any amendments and successor statutes with respect to the subsections (i) through (iii) thereto. A product produced by or on behalf of or authorized by Company, its Affiliates, or its Sublicensees will not constitute a Generic Product (e.g., an authorized generic product).

1.27 "**GCP**" or "**Good Clinical Practices**" means the then-current standards, practices and procedures promulgated or endorsed by the FDA as set forth in the guidelines entitled "Guidance for Industry E6 Good Clinical Practice: Consolidated Guidance," including related regulatory requirements imposed by the FDA, as they may be updated from time to time.

1.28 "**GLP**" or "**Good Laboratory Practices**" means the then-current good laboratory practice standards promulgated or endorsed by the FDA as defined in 21 C.F.R. Part 58, as they may be updated from time to time.

1.29 "**GMP**" or "**Good Manufacturing Practice**" means the then-current good manufacturing practice standards promulgated or endorsed by the FDA as defined in 21 C.F.R. Part 110, as they may be updated from time to time.

1.30 "**Governmental Authority**" means any multi-national, national, federal, state, local, municipal, provincial or other governmental authority of any nature, including any governmental division, prefecture, subdivision, department, agency, bureau, branch, office, commission, council, court or other tribunal.

1.31 "**Government Official**" means (a) any official or employee of any Governmental Authority, or any department, agency, or instrumentality thereof, including without limitation commercial entities owned or controlled, directly or indirectly, by a Governmental Authority, (b) any political party or official thereof, or any candidate for political office, or (c) any official or employee of any public international organization.

1.32 "**ICH**" means the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use.

1.33 "**Information**" means any Data, Regulatory Materials, results, technology, business or financial information or information of any type whatsoever, in any tangible or intangible form, including know-how, copyrights, trade secrets, practices, techniques, methods, processes, inventions, developments, specifications, formulae, software, algorithms, marketing reports, expertise, technology, test data, including pharmacological, biological, chemical, biochemical, clinical test data and/or data resulting from non-clinical studies, chemistry, manufacturing and/or controls data, stability data and/or other study data and procedures.

1.34 "**Initial Product**" means KP415 or KP484, as the context requires.

1.35 "**Inventions**" means any inventions and/or discoveries, including Information, processes, methods, assays, designs, protocols, and formulas, and improvements or modifications thereof, patentable or otherwise, that is generated, developed, conceived or reduced to practice by or on behalf of a Party or its Affiliate or their respective Sublicensees or subcontractors, as applicable, pursuant to activities conducted under this Agreement and that are directly related to the Products, in each case including all rights, title and interest in and to the intellectual property rights therein and thereto; provided, however, that Inventions shall exclude Data.

1.36 "**Joint IP**" means Joint Know-How and Joint Patents.

1.37 "**Joint Know-How**" means Information and Inventions that are conceived, discovered, developed or otherwise made or reduced to practice jointly by or on behalf of KemPharm or its Affiliates, on the one hand, and Company or its Affiliates, on the other hand, in each case in the course of performing Development activities hereunder.

1.38 "**Joint Patents**" means Patents claiming or disclosing Joint Know-How.

1.39 "**KemPharm Product Mark**" means the trademark selected by KemPharm for KP415 and alternate trade names listed in **Exhibit D** hereto, including all related logos, URLs and trade dress.

1.40 "**KP415**" means KemPharm's product candidate currently known as KP415, which contains **[*****]**, in any dosage form, formulation, presentation or package configuration, alone or in combination with one or more other active pharmaceutical ingredients.

1.41 "**KP484**" means KemPharm's product candidate currently known as KP484, which contains **[*****]**, in any dosage form, formulation, presentation or package configuration, alone or in combination with one or more other active pharmaceutical ingredients.

1.42 "**KP879**" means KemPharm's product candidate currently known as KP879, which contains **[*****]**, and is being developed as an extended-duration, agonist replacement therapy for the treatment of Stimulant Use Disorder ("**SUD**"), in any dosage form, formulation, presentation or package configuration, alone or in combination with one or more other active pharmaceutical ingredients.

1.43 "**KP922**" means one or more product candidates derived from KemPharm's proprietary prodrugs of amphetamine that are being developed for ADHD and related central nervous system disorders, in any dosage form, formulation, presentation or package configuration, alone or in combination with one or more other active pharmaceutical ingredients.

1.44 "**Laws**" means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of any federal, national, multinational, state, provincial, county, city or other political subdivision, domestic or foreign.

1.45 "**Licensed IP**" means the Licensed Know-How and Licensed Patents.

1.46 "**Licensed Know-How**" means all Information (including Data and Regulatory Materials) and Inventions that (a) (i) are Controlled by KemPharm or its Affiliates as of the Effective Date or (ii) become Controlled by KemPharm or its Affiliates during the Term, and (b) are necessary or useful for the Development, manufacture or Commercialization of the Products in the Field in the Territory. For clarity, Licensed Know-How includes the Information and Inventions referenced in clause (a) that are necessary or useful for the Development and manufacture of the Compounds associated with any Additional Products or ROFR Products in the Field in the Territory, but does not include KemPharm's or its Affiliates' interest in any Joint Know-How.

1.47 "**Licensed Patents**" means (a) with respect to Patents Controlled by KemPharm or any of its Affiliates as of the Effective Date, the Patents set forth in **Exhibit A** hereto; (b) with respect to any Patents that become Controlled by KemPharm or its Affiliates during the Term, such Patents that are necessary or useful for Development, manufacture or Commercialization of the Products in the Field in the Territory, such additional Patents to be included on **Exhibit A** as it may be updated from time to time, provided that a failure to so include a Patent on **Exhibit A** that otherwise meets the definition of a Licensed Patent shall not preclude such Patent from being deemed a Licensed Patent hereunder. For clarity, when and if Company elects to exercise any Additional Product Option under Section 2.6 or Right of First Refusal under Section 2.7, the definition of Licensed Patents and **Exhibit A** will be deemed to include all Patents Controlled by KemPharm or its Affiliates during the Term that were not already included in **Exhibit A** and are necessary or useful for Development, manufacture or Commercialization of the applicable

Additional Product or ROFR Product, respectively, in the Field in the Territory. For further clarity, Licensed Patents includes Patents that become Controlled by KemPharm or its Affiliates during the Term and are necessary or useful for Development or manufacture of the Compounds associated with any Additional Products or ROFR Products in the Field in the Territory, but does not include KemPharm's and its Affiliates' interest in any Joint Patents.

1.48 "**NDA**" means a New Drug Application filed with the FDA required for marketing approval for a Product in the U.S., but excluding pricing approvals.

1.49 "**Net Sales**" means the gross amounts billed or invoiced by Company or its Affiliates or Sublicensees for sales of the Products to unaffiliated Third Parties, less the following deductions to the extent reasonable and customary, provided to unaffiliated entities and as accrued and adjusted for deductions actually allowed and taken with respect to such sales:

(a) [*****];

(b) [*****];

(c) [*****];

(d) [*****];

(e) [*****];

(f) [*****];

(g) [*****];

(h) [*****]; and
(i) [*****].

Notwithstanding the foregoing, amounts received, billed or invoiced by Company, its Affiliates, their respective Sublicensees for the sale of Product among Company, its Affiliates or their respective Sublicensees shall not be included in the computation of Net Sales hereunder unless the purchasing entity is the end-user. For purposes of determining Net Sales, the Product shall be deemed to be sold when billed or invoiced. Net Sales shall be accounted for in accordance with U.S. GAAP, consistently applied in the Territory. For clarity, a particular item may only be deducted once in the calculation of Net Sales.

With respect to any transfer of any Product in the Territory for any substantive consideration other than monetary consideration on arm's length terms, for the purposes of calculating the Net Sales under this Agreement, such Product shall be deemed to be sold exclusively for money at the average Net Sales price charged to Third Parties for cash sales in the Territory during the applicable reporting period, or if there were only de minimis cash sales in the Territory, at the fair market value as determined by comparable markets. **[*****]**.

If a Product under this Agreement is sold in the form of a Combination Product, then Net Sales for such Combination Product shall be determined on a country-by-country basis by **[*****]**.

In the event Product is "bundled" for sale together with one or more other products in a country (a "**Product Bundle**"), then Net Sales for such Product sold under such arrangement shall be determined on a country-by-country basis by **[*****]**.

1.50 "**Patents**" means (a) pending patent applications, issued patents, utility models and designs; (b) all patents issuing from patent applications of any of the foregoing; (c) reissues, substitutions, confirmations, registrations, validations, re-examinations, additions, continuations, continued prosecution applications, continuations-in-part, or divisions of or to any of the foregoing; and (d) extensions, renewals or restorations of any of the foregoing by existing or future extension, renewal or restoration mechanisms, including supplementary protection certificate or the equivalent thereof.

1.51 "**Person**" means an individual, corporation, partnership, limited liability company, limited partnership, trust, business trust, association, joint stock company, joint venture, pool, syndicate, "group" as defined in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, sole proprietorship, unincorporated organization, Governmental Authority or any other form of entity not specifically listed herein.

1.52 "**Pre-Approved CRO**" means any of the Third Party contract research organizations listed on **Exhibit E** hereto, as such list may be amended from time to time by written agreement of the Parties.

1.53 "**Product**" means any Initial Product, any Additional Product which Company elects to include within the scope of this Agreement pursuant to Company's exercise of its Additional Product Option in accordance with Section 2.6, or any ROFR Product which Company elects to include within the scope of this Agreement (as it may be amended) pursuant to Company's exercise of its Right of First Refusal in accordance with Section 2.7, as the context requires. For clarity, for the purposes of this Agreement: different dosage strengths of a given Product using the same formulation shall be considered the same Product; any Product which has a specific formulation shall be considered a different Product when it has a different formulation, even if the two Products are used for the treatment of the same indication; and any Product with a specific formulation which is used for the treatment of a particular indication shall be considered the same Product when it is used for the treatment of a different indication.

1.54 "Proper Conduct Practices" means, each Party and each of its Representatives not, directly or indirectly, (a) making, offering, authorizing, providing or paying anything of value in any form, whether in money, property, services or otherwise to any Government Official, or other Person charged with similar public or quasi-public duties, or to any customer, supplier, or any other Person, or to any employee thereof, or failing to disclose fully any such payments in violation of the laws of any relevant jurisdiction to (i) obtain favorable treatment in obtaining or retaining business for it or any of its Affiliates, (ii) pay for favorable treatment for business secured, (iii) obtain special concessions or for special concessions already obtained, for or in respect of it or any of its Affiliates, in each case which would have been in violation of any applicable Law, (iv) induce the recipient to use his or her influence to affect any government act

or decision in connection with the Person's or its Affiliate's business or (v) induce the recipient to violate his or her duty of loyalty to his or her organization, or as a reward for having done so; (b) making any unlawful payment to any agent, employee, officer or director of any Person with which it or any of its Affiliates does business for the purpose of influencing such agent, employee, officer or director to do business with it or any of its Affiliates; (c) making any payment in the nature of bribery, fraud, or any other unlawful payment under the applicable Laws of any jurisdiction where it or any of its Affiliates conducts business or is registered; or, (d) if such Person or any of its Representatives is a Government Official, improperly using his or her position as a Government Official to influence the award of business or regulatory approvals to or for the benefit of such Person, its Representatives or any of their business operations, or failing to recuse himself or herself from any participation as a Government Official in decisions relating to such Person, its Representatives or any of their business operations.

1.55 "**Regulatory Approval**" means all approvals necessary for the commercial sale of a Product in the Field in a given country or regulatory jurisdiction.

1.56 "**Regulatory Authority**" means, in a particular country or jurisdiction, any applicable Governmental Authority involved in granting Regulatory Approval in such country or jurisdiction.

1.57 "**Regulatory Materials**" means regulatory applications, submissions, notifications, communications, correspondence, meeting minutes, registrations, Regulatory Approvals and/or other filings made to, received from or otherwise conducted with a Regulatory Authority in order to Develop, manufacture, market, sell or otherwise Commercialize the Products in a particular country or jurisdiction.

1.58 "**Representatives**" means, as to any Person, such Person's Affiliates and its and their successors, controlling Persons, directors, officers and employees.

1.59 "**Serious Material Breach**" means any (a) willful or grossly negligent breach by KemPharm of one or more of the following provisions: (i) KemPharm's grant of rights to Company under Section 2.1, Section 2.6 or Section 2.7; (ii) KemPharm's confidentiality obligations under Article 12 with respect to the results of Company's Development of any Product and any material information contained in any registration dossier or submission for any Regulatory Approval for any Product; or (iii) KemPharm's obligations under Section 2.5 or (b) any rejection of this Agreement by or on behalf of KemPharm as the Bankrupt Party in connection with any Bankruptcy Event. For the avoidance of doubt, a Serious Material Breach will also qualify as a breach of a material obligation for purposes of Section 13.4.

1.60 "**Sublicensee**" means a Person other than an Affiliate of Company to which Company (or its Affiliate) has, pursuant to Section 2.1(c), granted sublicense rights under any of the license rights granted under Section 2.1(a); provided, that "Sublicensee" shall exclude distributors.

1.61 "**Territory**" means all countries of the world.

1.62 "**Third Party**" means any entity other than KemPharm or Company or an Affiliate of either of them.

1.63 "**U.S. Dollar**" means a U.S. dollar, and "**US$**" shall be interpreted accordingly.

1.64 "**U.S.**" means the United States of America, including all possessions and territories thereof.

1.65 "**U.S. GAAP**" means the generally accepted accounting principles in the U.S., consistently applied.

1.66 "**Valid Claim**" means a claim of an issued and unexpired Patent which has not lapsed or been revoked, abandoned or held unenforceable or invalid by a final decision of a court or governmental or supra-governmental agency of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, and which has not been disclaimed, denied or admitted to be invalid or unenforceable through reissue, reexamination or disclaimer or otherwise.

1.67 Additional Definitions: The following table identifies the location of definitions set forth in various Sections of the Agreement:

Defined Terms	Section
DPDF	1.19
Company Sublicense Agreement	2.1(c)
Additional Product Option	2.6
Additional Product Option Period	2.6
Right of First Refusal	2.7
ROFR Product	2.7
CRO	2.10(b)
Alliance Manager	3.1
Joint Steering Committee, or JSC	3.2
Executive Officers	3.5
Product Development Plan, or PDP	4.2
Key Employee	4.3(b)
Development Costs	4.4
Resolution Period	4.8
Pre-Approved CRO	4.9(a)
Pharmacovigilance Agreement	5.7
Remedial Action	5.8
Commercialization Plan	6.2
30/13 Label	8.3
Royalty	8.5(a)
Royalty Term	8.5(b)
Consultation Fee	8.7
Tax Withholding	8.10(c)
VAT	8.10(d)

Defined Terms	Section
Company Patents	9.2(b)
Enforcing Party	9.3(c)
Infringement Actions	9.4
Company Housemarks	9.6(b)
Company Indemnitees	11.1
Losses	11.1
Claims	11.1
KemPharm Indemnitees	11.2
Indemnified Party	11.3
Indemnifying Party	11.3
Term	13.1
Bankruptcy Event	13.5(a)
Bankrupt Party	13.5(b)
Code	13.5(b)
Non-Bankrupt Party	13.5(b)
Payment Assignment	15.5(c)
Payment Assignment Notice	15.5.(c)
Exclusive Period	15.5(c)
Payment ROFR	15.5(c)

ARTICLE 2
LICENSE

2.1 License to Company.

(a) License Grant. Subject to the terms and conditions of this Agreement, KemPharm hereby grants Company an exclusive, even as to KemPharm and its Affiliates, license, with the right to sublicense solely as provided in Section 2.1(c), under the Licensed IP and KemPharm's or its Affiliates' rights in any Joint IP, (i) to Develop, market, promote, sell, have sold, offer for sale, import and otherwise Commercialize the Products in the Field in the Territory, and (ii) to manufacture or have manufactured the Products anywhere in the world for use and sale in the Field in the Territory.

(b) KemPharm Retained Rights. Notwithstanding the exclusive rights granted to Company in Section 2.1(a), KemPharm retains the right to practice the Licensed IP and the Joint IP within the scope of the license granted to Company under Section 2.1(a) only in order to perform, or have performed by a Third Party contractor (subject to Section 4.9(a)), KemPharm's express Development obligations under this Agreement pursuant to the applicable Product Development Plan. For clarity, until such time as any Additional Product is added within the scope of this Agreement pursuant to Company's exercise of its rights under Section 2.6 or Section 2.7, KemPharm retains the right, subject to Section 2.5, to practice the Licensed IP and the Joint IP to Develop Additional Products.

(c) Sublicense Rights. Company shall have the right, in its sole discretion, to grant sublicenses of the licenses granted in Section 2.1(a), in whole or in part to any of its Affiliates and through one or more tiers of Sublicensees. Company shall, within **[*****]** days after granting any sublicense under Section 2.1(a), notify KemPharm of the grant of such sublicense and provide KemPharm with a true and complete copy of the sublicense agreement with a Sublicensee (each, a "**Company Sublicense Agreement**"), provided, that Company may redact from each such Company Sublicense Agreement all provisions that are not relevant to Company's performance hereunder. For the avoidance of doubt, Company will not be required to provide KemPharm with a copy of any Company Sublicense Agreement between Company and any of its Affiliates. Unless agreed to in writing by KemPharm, each Company Sublicense Agreement shall be consistent with the terms and conditions of this Agreement, and Company shall be solely responsible for all of its Affiliates' and Sublicensees' activities thereunder and any and all failures by its Affiliates and Sublicensees to comply with the terms of this Agreement in connection with their exercise of any of the rights or licenses granted to Company hereunder.

2.2 Non-Exclusive Cross-Licenses. Each Party hereby grants the other Party a royalty-free, perpetual, worldwide, non-exclusive license, with the right to grant further sublicenses (through multiple tiers), under such Party's rights and interest in the Joint IP, to research, develop, make, have made, sell and otherwise commercially exploit compounds and products other than the Compounds and Products.

2.3 Negative Covenant. Company covenants that it will not, and further that it will not authorize any of its Affiliates or Sublicensees to, use or practice any Licensed IP outside the scope of the license granted to it under Section 2.1(a). In addition, each Party covenants that it will not, and further that it will not authorize any of its Affiliates or sublicensees to, use or practice any Joint IP outside the scope of the license granted to it under Section 2.2.

2.4 No Implied Licenses. Except as explicitly set forth in this Agreement, neither Party shall be deemed by estoppel or implication to have granted the other Party any license or other right to any intellectual property of such Party.

2.5 Exclusivity.

(a) Subject to Section 2.5(b), Section 2.5(c) and Section 2.5(d), during the Term of this Agreement neither Party shall, directly or indirectly, either by itself or through its Affiliates or any arrangement, or series of arrangements, with a Third Party, develop and/or commercialize any Competing Product in the Territory. In addition, **[*****]** shall ensure that **[*****]**.

(b) Notwithstanding anything to the contrary in this Agreement, the restrictions placed on Company's Affiliates in Section 2.5(a) will not apply to **[*****]** or to any Third Party that (i) controls, is controlled by or under common control with **[*****]** and (ii) is **[*****]**; and provided, further, that **[*****]**.

(c) Notwithstanding anything to the contrary in this Agreement, the restrictions placed on a Party and its Affiliates in Section 2.5(a) (the relevant restricted Party, the "**Restricted Party**"), will not apply to any Third Party that is **[*****]**, provided that **[*****]**.

(d) Notwithstanding anything to the contrary in this Agreement, the restrictions placed on a Restricted Party and its Affiliates in Section 2.5(a) will not apply to a Restricted Party or any of its Affiliates to the extent such Party or any of its Affiliates acquires, through an equity or asset purchase, merger, consolidation, license or other transaction (other than a Change of Control), in each case, whether in a single transaction or a series of related transactions, a Competing Product (other than in a transaction or series of transactions where **[*****]** of such transaction or series of transactions), provided that **[*****]**; and provided, further, that the Restricted Party or its Affiliate, as the case may be, either (i) **[*****]** with respect to **[*****]**, or (ii) **[*****]** for the remainder of the period in Section 2.5(a). Such Restricted Party shall not be in violation of Section 2.5(a), provided that such Restricted Party or its Affiliate complies with **[*****]**, on the one hand, and the **[*****]**, on the other hand, and the **[*****]**.

2.6 Additional Product Option. KemPharm hereby grants to Company an exclusive option to include Additional Products as Product(s) under this Agreement (the "**Additional Product Option**"). KemPharm shall keep Company reasonably informed as to its Development of each Additional Product through completion of Phase 1 proof-of-concept study of such Additional Product. Upon completion of such a study, KemPharm shall provide Company with a report and data package setting forth the results of such study in the form of **Exhibit C** hereto. KemPharm and Company shall negotiate in good faith regarding the economic terms of such Additional Product, and Company may exercise the Additional Product Option with respect to an Additional Product by delivering a written exercise notice to KemPharm within **[*****]** days after the receipt of such report and data package for such Additional Product (the "**Additional Product Option Period**"). If KemPharm and Company reach agreement on the terms for such Additional Product and Company timely exercises the applicable Additional Product Option, such Additional Product shall automatically be deemed a Product and licensed to Company under the terms and conditions of this Agreement, as amended to incorporate the negotiated terms for such Additional Product as mutually agreed between KemPharm and Company. For clarity, the scope of the exclusive license under Section 2.1(a), as applied to any Additional Product that becomes a Product pursuant to this Section 2.6 shall include the right to Develop and manufacture any Compound associated with such Additional Product in the Field in the Territory. If Company fails to exercise the applicable Additional Product Option before the expiration of the applicable Additional Product Option Period, then KemPharm shall have the right to continue the Development and Commercialization of such Additional Product, either on its own or in collaboration with a Third Party.

2.7 Right of First Refusal. Without limiting any Company's rights or KemPharm's obligations under Section 2.6, KemPharm hereby grants Company a right of first refusal ("**Right of First Refusal**") to acquire, license, and/or commercialize any Additional Product for which Company does not elect the Additional Product Option (each, a "**ROFR Product**"), respectively, and such right of first refusal may be exercised only once for each ROFR Product and shall expire upon acceptance of the NDA for each such ROFR Product. Company's Right of First Refusal shall be available for a period of no greater than **[*****]** Business Days following receipt of written notice from KemPharm of the existence of a bona fide offer to acquire, license, and/or commercialize any such ROFR Product from a Third Party. KemPharm shall disclose the material terms of the offer to Company. If Company exercises its Right of First Refusal and agrees to acquire, license and/or commercialize such ROFR Product on the same economic terms as offered by such Third Party, then the ROFR Product will be deemed a Product and licensed to Company under the terms and conditions of this Agreement, except that the Parties will amend this Agreement as appropriate to incorporate the economic terms offered by such Third Party. If Company fails to exercise its Right of First Refusal to acquire, license, and/or commercialize such ROFR Product on the same economic terms as offered by such Third Party, then, for example, KemPharm, its Affiliates, third party licensee or purchaser may commercialize such ROFR Product.

2.8 Cooperation. If Company exercises any of its rights under Sections 2.6 or 2.7, KemPharm shall, at its own cost and expense, provide Company with reasonable assistance and with access, including via an electronic data room, to all Information (e.g., Regulatory Materials, Data and reports associated with any clinical trial) Controlled by KemPharm which is related to any Additional Product or ROFR Product and is reasonably requested by Company in connection with its evaluation of any Additional Product Option under Section 2.6 or any Right of First Refusal under Section 2.7.

2.9 Confirmatory License. KemPharm shall, if requested to do so by Company, immediately enter into a confirmatory license in the form reasonably requested by Company for purposes of recording the licenses granted under this Agreement with such patent offices or other Regulatory Authorities as Company considers appropriate.

2.10 Technology Transfer.

(a) KemPharm will transfer to Company all Licensed Know-How and Information in KemPharm's possession and Control as of the Effective Date, including, without limitation, any and all clinical data and manufacturing Information related to the Initial Products, as soon as reasonably practicable after, but in no event later than **[*****]** days following, the Effective Date. During the Term, KemPharm shall provide to Company full and prompt disclosure, but in no event less frequently than **[*****]** and, at a minimum, within **[*****]** days following the data on which an NDA is submitted for any Initial Product, of any Information that becomes Controlled by KemPharm or any of its Affiliates after the Effective Date and that is necessary or useful to Company to conduct its activities or exercise its rights as contemplated hereunder and shall, promptly following such disclosure, transfer to Company such Information. The transfer of Information contemplated in this Section 2.10(a) shall occur in a format specified by Company and in an orderly fashion and in a manner such that the value, usefulness and confidentiality of the transferred Licensed Know-How is preserved in all material respects. Company will reimburse KemPharm for any costs it incurs in connection with the activities set forth in this Section 2.10(a) in accordance with Section 4.4.

(b) Without limiting any of KemPharm's obligations under Section 2.10(a), KemPharm hereby irrevocably authorizes and directs all contract research organizations (each, a "**CRO**") now or hereafter providing Development services on KemPharm's behalf with respect to any Products to make available and provide to Company, upon request, any and all Product-related Information in such CRO's possession or control. Within **[*****]** days after the Effective Date, KemPharm will deliver a written notice to each CRO currently providing Development services on its behalf with respect to any Products directing and authorizing such CRO to provide and make available the aforementioned Information to Company upon request and designating Company as an intended Third Party beneficiary of the terms contained in such notice. Thereafter KemPharm will provide Company, at **[*****]** cost and expense, with such other reasonable assistance and cooperation as may be requested by Company to enable it to access and receive the aforementioned Information from KemPharm's CROs.

ARTICLE 3
GOVERNANCE

3.1 Alliance Managers. Within **[*****]** days after the Effective Date, each Party shall appoint and notify the other Party of the identity of a representative having the appropriate qualifications, including a general understanding of pharmaceutical development and commercialization issues, to act as its alliance manager under this Agreement (the "**Alliance Manager**"). The Alliance Managers shall serve as the primary contact points between the Parties for the purpose of providing each Party with information on the progress and results of the Development, manufacture and Commercialization of the Initial Products under this Agreement. The Alliance Managers shall also be primarily responsible for facilitating the flow of information and otherwise promoting communication, coordination and collaboration between the Parties with respect to the Initial Products. Each Party may replace its Alliance Manager at any time upon written notice to the other Party.

3.2 JSC. Within **[*****]** days after the Effective Date, the Parties shall establish a joint steering committee (the "**Joint Steering Committee**" or "**JSC**") to oversee the Development of the Products under this Agreement. The role of the JSC shall be:

(a) to review, discuss and approve the Product Development Plan for each Initial Product, and amendments thereto;

(b) to oversee the implementation of the Product Development Plan for each Initial Product and to coordinate the Parties' activities under each respective Product Development Plan;

(c) to establish, implement and oversee the plan related to the transfer from KemPharm to Company of all Information and agreements necessary or useful for the manufacturing and supply of the Products to Company, including, to the extent possible, KemPharm's assignment of any of its existing agreements with Third Party manufacturers for any of the Compounds or the Products to Company or its designee;

(d) to monitor and coordinate all regulatory actions, communications and submissions for the Initial Products under the applicable Product Development Plan; and

(e) to perform such other functions related to the Development of the Initial Products as agreed to in writing by the Parties.

3.3 Members. The JSC shall be comprised of an equal number of representatives from each Party. Each Party's representatives shall be an officer or employee of such Party or its Affiliate having sufficient seniority within the applicable Party to make decisions arising within the scope of the JSC's responsibilities. The JSC may change its size from time to time by mutual consent of its representatives, and each Party may replace its representatives at any time upon written notice to the other Party. Each Party shall appoint one (1) of its representatives on the JSC to act as the co-chairperson of the JSC. The role of the co-chairpersons shall be to convene and preside at the JSC meetings and to ensure the circulation of meeting agendas at least **[*****]** days in advance of JSC meetings and the preparation of meeting minutes as set forth in Section 3.4, but the co-chairpersons shall have no additional powers or rights beyond those held by other JSC representatives.

3.4 Meetings. The JSC shall hold meetings at such times as it elects to do so, but in no event shall such meetings be held less frequently than **[*****]** prior to the receipt of the first Regulatory Approval for any Product in the U.S. or less frequently than **[*****]** after the receipt of the first Regulatory Approval for any Product in the U.S. Either Party may also call a special meeting of the JSC, by videoconference or teleconference, by giving at least **[*****]** Business Days prior written notice to the other Party in the event such Party reasonably believes that a significant matter must be addressed prior to the next regularly scheduled meeting, and such Party shall provide the JSC no later than **[*****]** Business Days prior to the special meeting with materials reasonably adequate to enable an informed decision regarding such matter. The JSC may meet in person, by videoconference or by teleconference. All JSC meetings shall be conducted in English and all communications under this Agreement shall be in English. The co-chairpersons shall be responsible for preparing reasonably detailed written minutes of the JSC meetings that reflect, without limitation, all material decisions made at such meetings. The co-chairpersons shall send draft meeting minutes to each representative of the JSC for review and approval within **[*****]** Business Days after the JSC meeting. Such minutes shall be deemed approved unless one or more JSC representatives object to the accuracy of such minutes within **[*****]** Business Days of receipt.

3.5 Decision Making. The JSC shall strive to seek consensus in its actions and decision-making process and all decisions by the JSC shall be made by consensus, with each Party having collectively one (1) vote in all decisions. If after reasonable discussion and good faith consideration of each Party's view on a particular matter before the JSC, the representatives of the Parties cannot reach an agreement as to such matter within **[*****]** Business Days after such matter was brought to the JSC for resolution, such disagreement shall be referred to the Chief Executive Officer of KemPharm and the President of Company (the "**Executive Officers**") for resolution. If the Executive Officers cannot resolve such matter within **[*****]** Business Days after such matter has been referred to them, then **[*****]** shall have the final decision making authority with respect to such matter.

3.6 Limitation of JSC Authority. The JSC shall only have the powers expressly assigned to it in this Article 3 and elsewhere in this Agreement and shall not have the authority to: (a) modify or amend the terms or conditions of this Agreement; (b) waive or determine either Party's compliance with the terms and conditions of under this Agreement; or (c) decide any issue in a manner that would conflict with the express terms and conditions of this Agreement.

3.7 Discontinuation of JSC. The activities to be performed by the JSC shall solely relate to governance under this Agreement and are not intended to be or involve the delivery of services. Unless the Parties agree to discontinue the JSC earlier, the JSC shall continue to exist during the Term of this Agreement, unless and until **[*****]** elects, by issuance of written notice to **[*****]**, to discontinue the JSC at any time after the **[*****]** anniversary of the date on which the first Regulatory Approval for any Product in the U.S. was received. Once its existence is discontinued, the JSC shall have no further obligations under this Agreement and, thereafter, the Alliance Manager for each Party shall coordinate the exchange of information between the Parties, subject to the other terms and conditions of this Agreement.

ARTICLE 4
DEVELOPMENT

4.1 Overview. Subject to the terms and conditions of this Agreement, the Parties will collaborate in the Development of the Initial Products in the U.S. under the direction of the JSC and in accordance with the applicable Product Development Plan, as set forth in more detail within this Article 4.

4.2 Product Development Plan. The Development of each Initial Product in the U.S. under this Agreement shall be conducted pursuant to a written development plan agreed to by the Parties (the "**Product Development Plan**" or "**PDP**"). The PDP shall contain in reasonable detail all Development work with respect to an Initial Product required to achieve NDA approval by the FDA of such Initial Product, including anticipated timeline and detailed budget for such work. As of the Effective Date, the Parties have agreed on the initial PDP for KP415, which is attached hereto as **Exhibit B**. A PDP shall be developed and reviewed by the JSC for KP484, if the Parties agree to Develop it together hereunder, based on the timing to be determined by the JSC. Each Party shall use Commercially Reasonable Efforts to perform the

Development activities assigned to such Party under the applicable PDP. If either Party proposes a change to a PDP, including to the scope of activities, timelines and/or budget associated therewith, the other Party will reasonably and in good faith consider and discuss with the proposing Party the proposed change. The Parties acknowledge that a change to an existing PDP may result in delays to the completion of a particular study or PDP, additional fees being charged to Company, or less fees being paid to KemPharm, and that any such changes, including any changes to the budgeted amount resulting therefrom, must be agreed upon by the Parties before the commencement of any services related to the proposed changes, in which case the Parties shall update PDP. For clarity, absent such agreement by the Parties, the applicable PDP will proceed in accordance with the then-current terms, without the proposed modification(s).

4.3 Development Responsibilities.

(a) Subject to the oversight of the JSC and except as otherwise agreed by the Parties or as set forth in Section 4.8, KemPharm shall be responsible for the coordination, performance, and payment of all Development work set forth on **Exhibit B**, including the conduct of clinical trials on behalf of Company, that is required to obtain NDA approval of the Initial Products by the FDA in the U.S. in accordance with the applicable PDP. For the avoidance of doubt, the Parties acknowledge and agree that both the renal and hepatic impairment pharmacokinetic clinical studies referenced in the PDP attached as **Exhibit B** hereto as of the Effective Date are required to be conducted by KemPharm prior to NDA approval of KP415 by the FDA in the U.S., unless the Parties mutually agree that new information conveyed to the Parties renders the renal and hepatic impairment pharmacokinetic studies unrequired. KemPharm will perform and conduct the activities set forth in the PDP with personnel who are appropriately qualified and possess at least the level of skill and experience that KemPharm's personnel engaged in discovery, research and other development activities for KemPharm's other programs possess. Company shall have the right to participate, whether directly or through a representative, in all internal meetings and teleconferences led by KemPharm related to the Development of any Product pursuant to a PDP, **[*****]**. Without limiting the foregoing, KemPharm will use Commercially Reasonable Efforts to perform all activities set forth in the PDP through completion thereof and within the specific timeframes and budgets for performance contemplated therein. Company shall have the exclusive right, and sole responsibility and decision-making authority, to research and Develop the Compounds and Products in any and all countries outside the U.S. (and in the U.S. as provided in Section 4.8), including the right and responsibility to conduct (either itself or through its Affiliates, agents, subcontractors and/or Sublicensees) all clinical and non-clinical studies Company believes appropriate to obtain Regulatory Approval for Products in the Field in any and all countries outside the U.S. Company shall also have the exclusive right, and sole responsibility and decision-making authority to conduct all Development of Products, including clinical and non-clinical studies of Products in the U.S. and any "phase IV post-marketing" or similar studies required by the FDA following Regulatory Approval of any Product, which are not expressly contemplated in a PDP.

(b) For the purpose of performing its Development obligations under this Agreement during the Term and without limiting any of its obligations under Section 4.3(a), KemPharm shall endeavor to maintain certain key employees under its employ during the Term, which are listed in **Exhibit F** attached hereto (each a "**Key Employee**"). Further, KemPharm shall not dismiss, terminate, or otherwise separate from its employ any Key Employee, except in the case of termination for cause as defined in the employment agreement by and between KemPharm and such Key Employee, without the prior written consent of Company, such consent not to be unreasonably withheld.

4.4 Development Cost. Subject to Section 4.8, Company shall be responsible for and shall reimburse KemPharm for all out-of-pocket actual Third Party costs paid by KemPharm after the Effective Date in the Development of the Products, including any costs incurred under Section 5.4 and/or Consultation Fees to KemPharm as provided in Section 8.7 for Development activities performed or managed by employees of KemPharm, in accordance with the applicable PDP approved by the JSC and the budget set forth therein ("**Development Costs**"). Notwithstanding the foregoing, as of the Effective Date, the total amount of KemPharm's Development Costs to be incurred in connection with its Development of KP415 pursuant to the applicable PDP after the Effective Date that will be reimbursed by Company, including the costs anticipated to be incurred related to establishing a second production site for the API for KP415 (SDX) and the costs of the related technology transfer and regulatory filings with the FDA and Consultation Fees, shall not exceed **[*****]**. Unless otherwise agreed by the Parties pursuant to Section 4.2, KemPharm shall be responsible, at its own cost and expense, for any and all internal and out-of-pocket costs or expenses in excess of **[*****]** which are required to be incurred by KemPharm to complete its obligations under the initial PDP. For clarity, unless otherwise agreed by the Parties, any out-of-pocket costs or expenses in excess of **[*****]** which are incurred by KemPharm in connection with its performance of any additional Development activities requested by Company and agreed to by KemPharm in accordance with Section 4.2 will be reimbursed by Company. Company shall be responsible for its own cost, both internal and out-of-pocket, incurred in connection with the Development of the Products.

4.5 Ownership of Information; Regulatory Materials. As between the Parties, Company shall own all of the Information generated from the Development of the Products under this Agreement and the applicable Compounds for such Products, whether conducted by or on behalf of Company or KemPharm, and Regulatory Materials derived from the Development of the Products under this Agreement. KemPharm hereby assigns, and shall take such other steps as are needed to assign, to Company all right, title and interest in, to and under such Information and Regulatory Materials.

4.6 Development Records. Each Party shall maintain complete and accurate records (in the form of technical notebooks and/or electronic files where appropriate) of all work conducted by it under the PDP and all Information resulting from such work. Such records, including any electronic files where such Information may also be contained, shall fully and properly reflect all work done and results achieved in the performance of the PDP in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes. Each Party shall have the right to review and copy such records maintained by the other Party at reasonable times and to obtain access to originals to the extent needed for patent or regulatory purposes or for other legal proceedings.

4.7 Development Reports.

(a) Each Party shall provide the JSC with written reports summarizing its Development activities under any existing PDP and the results of such activities at each regularly scheduled JSC meeting. The Parties shall discuss the status, progress and results of each Party's Development activities under any existing PDP at the JSC meetings. In addition, as soon as reasonably practicable after completion of the activities under a PDP, or after takeover by Company of the activities performed by KemPharm under a PDP pursuant to Section 4.8 (if any), KemPharm will deliver to Company, at KemPharm's cost and expense, within **[*****]** days following such completion/takeover, a copy of all Information and Regulatory Materials resulting from KemPharm's activities under the PDP that is in KemPharm's possession. KemPharm shall use reasonable efforts to cause the subcontractors who perform activities under the PDP on its behalf to promptly deliver to it a copy of all Information and Regulatory Materials that such subcontractors generate in the course of performing those activities.

(b) Within **[*****]** days after the end of each Calendar Year during the Term of the Agreement, Company shall provide KemPharm with a written report which summarizes, at a high level, the Development activities performed by or on behalf of Company or any of its Affiliates or Sublicensees with respect to any Product outside the United States during such Calendar Year, including any clinical results achieved.

4.8 Assumption of Development Responsibilities. Without limiting any of its other rights under this Article 4 or elsewhere in this Agreement, Company reserves the right to take over responsibility for any activities performed by KemPharm (a) under a specific PDP if Company reasonably determines that KemPharm is not able to complete such activities within the required timeframe and that KemPharm's inability to do so is likely to have an adverse effect on Company's Development and/or Commercialization of the Product subject to such PDP, (b) under any and all existing PDPs if (i) there is a Change of Control of KemPharm or (ii) in the event a Bankruptcy Event occurs or, in Company's reasonable determination, is more likely than not to occur with respect to KemPharm. Company shall provide written notice to KemPharm of Company's election to assume responsibility pursuant to clause (b)(i) within **[*****]** days following a Change of Control of KemPharm. Company shall provide written notice to KemPharm of any determination of the type referenced in clauses (a) or (b)(ii), including the reasons and conditions which gave rise to such determination, and KemPharm shall have **[*****]** days from the date of receipt to resolve such conditions to the satisfaction of Company (the "**Resolution Period**"). If, after the expiration of the Resolution Period, Company determines that such reasons or conditions remain, then Company may exercise its right to take over responsibility for KemPharm's activities, including but not limited to the conduct of regulatory activities under Article 5 of this Agreement, under any or all existing PDPs. If Company takes over responsibility for KemPharm's activities under any PDP(s) pursuant to this Section 4.8, then KemPharm shall promptly (A) transfer and assign to Company in accordance with Section 4.5 any Information and Regulatory Materials resulting from its performance of the activities under the applicable PDP(s) as contemplated in Section 4.3 above and, at Company's request, assign to Company any Third Party sub-contract agreements entered into by KemPharm relating to those activities and (B) take all actions that may be reasonably requested by Company for purposes of effectively teaching and transferring to Company the methods, steps, techniques and processes that Company reasonably needs to follow or know in order to practice or use effectively any or all of the Licensed IP in the performance of such activities. All out-of-pocket costs and expenses incurred by KemPharm in connection with the transfer of the activities under any PDP(s) to Company hereunder shall be borne by KemPharm. For the avoidance of doubt, no reimbursable Development Costs under Section 4.4 shall accrue following the completion of the takeover by Company. For the avoidance of doubt, ownership of any Patents, Information or Inventions developed or conceived by Company in the performance of any activities conducted following a takeover hereunder shall be determined according to Section 9.1.

4.9 Subcontracts.

(a) Other than to a subcontractor that is listed in **Exhibit E** attached hereto as of the Effective Date (each a Pre-Approved CRO), KemPharm shall not subcontract to Third Parties portions of any activities to be performed by it under any PDP or contract with consultants to provide services specifically relating to such activities without the prior written consent of Company, which consent shall not be unreasonably withheld. In any event, each subcontractor shall enter into an agreement with KemPharm requiring such subcontractor (i) to maintain all Confidential Information in confidence and (ii) to comply in all material respects with all requirements of applicable Laws, together with all applicable GLP, GMP and GCP. KemPharm shall negotiate and execute such agreements, as applicable, at its expense, and shall supervise and be responsible under this Agreement for such subcontracted work. All such subcontracts shall be consistent with the terms of this Agreement. When entering into agreements with Third Party subcontractors after the Effective Date pertaining to the performance of activities contemplated in any PDP, KemPharm shall use reasonable efforts to obtain the right to assign such agreements to Company or its Affiliates without the prior consent of the Third Party subcontractor. Any subcontract, granted or entered into by KemPharm, as contemplated by this Section 4.9(a), of the exercise or performance of all or any portion of the rights or obligations that KemPharm may have under this Agreement shall not relieve KemPharm from any of its obligations under this Agreement, except to the extent that such obligations are performed by such subcontractor in a manner consistent with KemPharm's obligations under this Agreement. KemPharm shall be responsible for the acts and omissions of its subcontractors in connection with their performance of any of KemPharm's obligations or exercise of any of KemPharm's rights hereunder and any material breach by a subcontractor may be imputed to KemPharm.

(b) Company may exercise any of its rights or perform any of its obligations under this Agreement (including any of the rights granted in Section 2.1) by subcontracting the exercise or performance of all or any portion of such rights and obligations on Company's behalf. Any subcontract granted or entered into by Company as contemplated by this Section 4.9(b) of the exercise or performance of all or any portion of the rights or obligations that Company may have under this Agreement shall not relieve Company from any of its obligations under this Agreement.

ARTICLE 5
REGULATORY MATTERS

5.1 Regulatory Responsibilities. Subject to the terms and conditions of this Agreement, including the oversight by the JSC, KemPharm will be responsible for the conduct of all regulatory activities required to obtain NDA approval by the FDA of the Initial Product(s) subject to a PDP, including drafting and submitting the NDA for such Initial Product(s) on behalf of and in the name of Company; provided, however, that Company shall be the sponsor of any clinical trials conducted by KemPharm on behalf of Company after the Effective Date.

Immediately upon submission of an NDA to the FDA for approval of any Initial Product, the Company shall be automatically deemed to own, and KemPharm will be deemed to have automatically assigned to Company, without any further action required by the Parties, such NDA, along with all other associated Regulatory Materials submitted by the Parties to the FDA in connection therewith. Upon request, KemPharm shall promptly take such steps and execute such other documentation as may be requested by Company to document Company's ownership of the NDA and such other Regulatory Materials. Following FDA approval an NDA for an Initial Product, Company shall be responsible for the conduct of all regulatory activities for such Initial Product. As between the Parties, Company shall be solely responsible for and shall have all decision-making control authority over the conduct of all regulatory activities for all other Products on a worldwide basis and for the Initial Product(s) subject to a PDP outside the U.S.

5.2 Regulatory Information Sharing. Each Party shall provide the JSC with drafts of all Regulatory Materials prepared by such Party for the Initial Product(s) being developed under a PDP in the U.S. for review and comment by the JSC, prior to the submission of such documents to the FDA and shall consider in good faith any comments received from the JSC. Without limiting the foregoing, the Parties shall work together to prepare and submit the NDA filing in the U.S. for the Initial Product(s) being developed under any PDP on behalf of, and in the name of, Company. Each Party shall also promptly provide the JSC and the other Party with copies of all Regulatory Materials for the Initial Product(s) being developed under a PDP which are submitted to or received from the FDA in the U.S.

5.3 Meetings with Regulatory Authorities. Subject to Section 4.8, KemPharm shall lead all interactions with Regulatory Authorities in the U.S. with respect to the Initial Product(s) being developed under a PDP through NDA approval by the FDA. Thereafter, Company shall lead all interactions with Regulatory Authorities with respect to such Initial Product(s). Company shall lead all interactions with Regulatory Authorities in the Territory with respect to all other Products. At each regularly scheduled JSC meeting, each Party shall provide the other Party with a list and schedule of any in-person meeting or teleconference with the applicable Regulatory Authorities, or related advisory committees, in the U.S., planned for the next calendar quarter that relates to any such Initial Product in the Field. In addition, each Party shall notify the other Party as soon as reasonably possible, but in no event later than **[*****]**, after such Party becomes aware of any additional such meetings or teleconferences that become scheduled for such calendar quarter. Each Party shall provide all reasonable assistance requested by the other Party to prepare for any such meeting or teleconference. To the extent permitted by applicable Laws, Company shall have the right to participate, whether directly or through a representative, in all such meetings and teleconferences with the FDA which are led by KemPharm, at Company's own cost.

5.4 Regulatory Costs. In accordance with, and subject to the limitations set forth in Section 4.4, Company shall be responsible for all out-of-pocket Third Party costs incurred by KemPharm in connection with the preparation and filing of any and all Regulatory Materials pertaining to the Initial Products in the Field in the U.S. and/or Consultation Fees to KemPharm as provided in Section 8.7 for regulatory activities performed or managed by employees of KemPharm or its Affiliates in accordance with the PDP approved by the JSC and the budget set forth therein. Company shall be responsible for its own cost, both internal and out-of-pocket, incurred in connection with the preparation and filing of any and all Regulatory Materials pertaining to the Products.

5.5 Right of Reference to Regulatory Materials. Company hereby grants KemPharm the right of reference to all Regulatory Materials pertaining to the Products submitted by or on behalf of Company, its Affiliates and its Sublicensees. KemPharm may use such right of reference solely for the purpose of seeking, obtaining and maintaining Regulatory Approval of any Additional Product or ROFR Product for which Company has not elected to exercise the Additional Product Option or Right of First Refusal, respectively, both inside and outside the Territory.

5.6 Notification of Threatened Action. Each Party shall immediately notify the other Party of any information it receives regarding any threatened or pending action, inspection or communication by or from any Third Party, including without limitation a Regulatory Authority, which may affect the Development, manufacture, Commercialization or regulatory status of any Product. Upon receipt of such information, if the JSC is still in existence as of such date, the Parties shall refer such matter to the JSC for discussion and resolution.

5.7 Adverse Event Reporting and Safety Data Exchange. No later than **[*****]** days after the Effective Date, the Parties shall enter into a written pharmacovigilance agreement (the "**Pharmacovigilance Agreement**") for any products (including any Initial Products) containing SDX. These responsibilities shall include mutually acceptable guidelines and procedures for the receipt, investigation, recordation, communication, and exchange, as between the Parties, of adverse event reports, pregnancy reports, and any other information concerning the safety of such products. Such guidelines and procedures shall be in accordance with, and enable the Parties to fulfill, local and national regulatory reporting obligations under applicable Laws. Furthermore, such agreed procedure shall be consistent with relevant ICH guidelines, except where said guidelines may conflict with existing local regulatory reporting safety reporting requirement, in which case local reporting requirement shall prevail. The Pharmacovigilance Agreement shall provide for a global safety database for all products containing SDX, including any Initial Products containing SDX, to be maintained by Company **[*****]**. As between the Parties, Company shall be responsible for preparing and filing with Regulatory Authorities in the Territory all adverse event reports and responses to safety issues and requests of Regulatory Authorities relating to such products in the Territory. KemPharm shall be responsible for reporting quality complaints, adverse events and safety data related to such Initial Products to Company for inclusion in the global safety database. Each Party hereby agrees to comply with its respective obligations under such Pharmacovigilance Agreement and to cause its Affiliates and permitted licensees and Sublicensees, as applicable, to comply with such obligations.

5.8 Remedial Actions. Each Party will notify the other Party immediately, and promptly confirm such notice in writing, if it obtains information indicating that any Product may be subject to any recall, corrective action or other regulatory action taken by virtue of applicable Laws (a "**Remedial Action**"). The Parties will assist each other in gathering and evaluating such information as is necessary to determine the necessity of conducting a Remedial Action. Company shall have sole discretion with respect to any matters relating to any Remedial Action in the Territory, including the decision to commence such Remedial Action and the control over such Remedial Action in the Territory, at its cost and expense. Each Party shall provide the other Party, at the other Party's expense, with such assistance in connection with a Remedial Action as may be reasonably requested by such other Party.

ARTICLE 6
COMMERCIALIZATION

6.1 Overview. As between the Parties, Company will have the exclusive right, and be solely responsible for and have operational and decision-making control and authority over all aspects of the Commercialization of the Products in the Field in the Territory, including: (a) negotiating with applicable Governmental Authorities regarding the price and reimbursement status of the Products; (b) marketing, advertising and promotion; (c) booking sales and distribution and performance of related services; (d) handling all aspects of order processing, invoicing and collection, inventory and receivables; (e) all aspects of monitoring manufacturing quality, including audits, remediation plans and related activities, (f) providing customer support, including handling medical queries, and performing other related functions; and (g) conforming its practices and procedures to applicable Laws relating to the marketing, detailing and promotion of the Products in the Field in the Territory. As between the Parties, Company shall be responsible for all of the costs and expenses incurred by or on behalf of Company in connection with such Commercialization activities.

6.2 Commercialization Plan.

(a) General. Company shall Commercialize KP415 in the Field in the Territory pursuant to a commercialization plan (the "**Commercialization Plan**"). The Commercialization Plan shall include (i) a high-level, summary description of all key strategic decisions, implementation tactics and pre-launch and post-launch activities and (ii) a high-level, summary description of Company's, its Affiliates' and their respective Sublicensees' planned Commercialization activities for the Products in the Territory for the next Calendar Year.

(b) Initial Plan and Amendments. No later than **[*****]** months before the anticipated NDA approval of KP415 by the FDA, Company shall prepare, and shall provide KemPharm for review and discussion, the initial Commercialization Plan. Thereafter, no later than **[*****]** of each Calendar Year, Company shall provide KemPharm with a copy of the then-current version of such Commercialization Plan to cover the Commercialization activities of such Product in the next Calendar Year. For clarity, Company will have no obligation to provide a Commercialization Plan with respect to any Product other than KP415.

6.3 Pricing. As between the Parties, Company shall be solely responsible for negotiating with applicable Governmental Authorities regarding the price and reimbursement status of the Products in the Field in the Territory. Subject to any determination by applicable Regulatory Authorities, as between the Parties, Company shall have the sole right to determine the pricing of the Products in the Territory. KemPharm shall not have any right to direct, control or approve Company's pricing of the Products in the Territory.

6.4 Commercial Diligence. Company shall use Commercially Reasonable Efforts to Commercialize at least one Product in the Field in the U.S. after receiving Regulatory Approval of such Product. Activities by Company's Affiliates and Sublicensees will be considered as Company's activities under this Agreement for purposes of determining whether Company has complied with its obligation to use Commercially Reasonable Efforts. For clarity, Company shall have no obligation to Develop or Commercialize any Products in any particular country or countries, except as expressly provided in the first sentence of this Section 6.4. Company shall be relieved of its diligence obligations under this Section 6.4 starting from the date Company provides KemPharm with a termination notice pursuant to Section 13.2 or Section 13.4.

6.5 Labeling. As between KemPharm and Company, Company shall have the sole authority to select and determine the proposed content for packaging and labeling (including with respect to product inserts) of the Products in the Field in the Territory.

ARTICLE 7
MANUFACTURE AND SUPPLY

7.1 Manufacture and Supply. Company shall be responsible for all aspects of manufacture and supply of the Compounds and Products for use in the Territory, **[*****]**, including entering into manufacture and supply agreements with contract manufacturers, provided that certain Development Costs related to KP415 are to be paid by **[*****]**, subject to the provisions of Section 4.4, including the cap set forth therein. The Parties agree that in the event that KemPharm incurs certain Development Costs directly related to manufacturing KP415 for validation and such Product may be sold by Company pursuant to applicable Laws, then to the extent that such costs have not already been reimbursed to KemPharm, Company shall reimburse KemPharm for such costs when its takes possession of such saleable Product. Upon request of Company, KemPharm shall participate in the negotiation of the manufacture and supply agreements between Company and its contract manufacturers and shall reasonably assist Company to establish such manufacturing relationships, and Company shall pay to KemPharm Consultation Fees as provided in Section 8.7 for manufacturing activities performed or managed by employees of KemPharm or its Affiliates subject to the oversight of JSC while it is still in existence and thereafter, subject to the oversight of Company.

ARTICLE 8
COMPENSATION

8.1 Upfront Cash Payment. Within **[*****]** Business Days following the Parties' execution of this Agreement and in partial consideration of KemPharm's grant of the rights and licenses to Company hereunder, Company shall pay to KemPharm an upfront cash payment of ten million U.S. Dollars (US$10,000,000).

8.2 Reimbursements. After the end of each calendar quarter during which KemPharm has paid any costs, or provided consultation services under this Agreement, which Company is required to reimburse KemPharm under Articles 4, 6 or 7, KemPharm shall submit to Company a reasonably detailed invoice setting forth such costs paid by KemPharm in such calendar quarter, along with appropriate supporting documentation and evidence of payment as may be necessary and/or as reasonably requested by Company. If such invoices with appropriate supporting documentation and evidence of payment are not provided within **[*****]** Business Days after the end of the quarter, KemPharm shall provide a good faith estimate of such amounts

to Company within **[*****]** Business Days after the end of the quarter and shall provide such invoices and supporting documentation and evidence of payment as soon as practical. Company shall reimburse KemPharm for such costs within **[*****]** days after the date of receipt of such invoices with supporting documentation and evidence of payment from KemPharm.

8.3 Approval Milestones. KemPharm shall promptly notify Company upon the receipt of (a) written confirmation from the FDA of acceptance of the NDA submitted by KemPharm for any Initial Product (as contemplated by the applicable PDP) and (b) NDA approval of such Initial Product by the FDA. Without limiting its obligations under Section 4.5, KemPharm shall promptly provide Company with a copy of any NDA submitted to the FDA for approval, along with written evidence of the FDA's acceptance thereof, and a copy of the associated NDA approval. As further partial consideration for KemPharm's grant of the rights and licenses to Company hereunder, Company shall pay to KemPharm the corresponding one-time, non-refundable and non-creditable milestone payments set forth below within **[*****]** days after the receipt of the copy of such NDA acceptance notice or NDA approval, as applicable, from KemPharm:

Approval Milestone Event	**Milestone Payment**
1) FDA acceptance of NDA submission for KP415	[*****]
2) Regulatory Approval of KP415 in the U.S. **[*****]**	[*****]
3) Regulatory Approval of a KP415 in the U.S., with a label approved by the FDA that includes 30-minute onset and 13-hour duration (the "**30/13 Label**"):	
a. If Regulatory Approval with the 30/13 Label is received **[*****]**; or	[*****]
b. If Regulatory Approval with the 30/13 Label is not achieved **[*****]**, but the 30/13 Label is included in a subsequent Regulatory Approval for KP415 received by **[*****]**	[*****]
4) Regulatory Approval for KP484 by the FDA	[*****]

With respect to each approval milestone event in numbers 1 through 4 above, the milestone payments to be made under this Agreement shall be due and payable only once upon the first achievement of the applicable milestone, regardless of the number of Products Developed or Commercialized, and regardless of the number of indications pursued or approved, or whether a Product is discontinued after a milestone payment has been made.

8.4 Sales Milestone Payments. Company shall notify KemPharm upon the achievement of the sales milestone events set forth below with respect to the Net Sales of any Initial Product in the U.S. in a given Calendar Year in the quarterly report referred to in Section

8.5(e). As further partial consideration for KemPharm's grant of the rights and licenses to Company hereunder, Company shall pay to KemPharm the corresponding one-time, non-refundable and non-creditable sales milestone payments set forth below upon delivery of such quarterly report referred to in Section 8.5(e) after achieving the applicable milestone:

Sales Milestone Event	**Milestone Payment**
1) Year total annual U.S. Net Sales of any Initial Product first exceed **[*****]**, payable only if KP415's first Regulatory Approval does not include the 30/13 Label.	**[*****]**
2) Year total annual U.S. Net Sales of any Initial Product first exceeds **[*****]**	**[*****]**
3) Year total annual U.S. Net Sales of any Initial Product first exceeds **[*****]**	**[*****]**
4) Year total annual U.S. Net Sales of any Initial Product first exceeds **[*****]**	**[*****]**
5) Year total annual U.S. Net Sales of any Initial Product first exceeds **[*****]**	**[*****]**

Net Sales of all Initial Products in the U.S. shall not include **[*****]**. In addition, **[*****]** shall not count towards the calculation of the annual U.S. Net Sales thresholds above.

For the avoidance of doubt, each aforementioned sales milestone event payments shall be made only once, the first time the milestone event is achieved, regardless of the number of Initial Products achieving the commercial event milestones, or the number of Calendar Years in which any Initial Product achieves such commercial event milestone. For example, if for a Calendar Year, aggregate annual worldwide Net Sales for KP415 are **[*****]**, the total sales milestone payment earned shall be **[*****]**, and such sales milestone payment shall no longer be triggered by any Initial Product in any Calendar Year. Furthermore, the total maximum milestones payable under this Section 8.4 shall not exceed four hundred and twenty million U.S. Dollars (US$420,000,000).

8.5 Royalty.

(a) U.S. Royalty Rate. Following the First Commercial Sale of any Initial Product in the Field in the U.S. and as further consideration for KemPharm's grant of the rights and licenses to Company hereunder, Company shall pay to KemPharm a tiered royalty ("**Royalty**") on the Net Sales of such Initial Product in the U.S. as calculated by multiplying the applicable royalty rate set forth below by the corresponding incremental aggregate annual Net Sales:

Aggregate annual Net Sales of each Initial Product sold in the U.S.	**Royalty Rate**
1) For that portion of aggregate annual Net Sales in the U.S. per Calendar Year less than or equal to **[*****]**	**[*****]**
2) For that portion of aggregate annual Net Sales in the U.S. per Calendar Year greater than **[*****]** and less than or equal to **[*****]**	**[*****]**
3) For that portion of aggregate annual Net Sales in the U.S. per Calendar Year greater than **[*****]** and less than or equal to **[*****]**	**[*****]**
4) For that portion of aggregate annual Net Sales in the U.S. per Calendar Year greater than **[*****]** and less than or equal to **[*****]**	**[*****]**
5) For that portion of aggregate annual Net Sales in the U.S. per Calendar Year greater than **[*****]** and less than or equal to **[*****]**	**[*****]**
6) For that portion of aggregate annual Net Sales in the U.S. per Calendar Year greater than **[*****]** and less than or equal to **[*****]**	**[*****]**
7) For that portion of aggregate annual Net Sales in the U.S. per Calendar Year greater than **[*****]**	**[*****]**

Net Sales of any Initial Product in the U.S. shall not include **[*****]**. In addition, in no event shall the manufacture of an Initial Product give rise to a Royalty obligation. For clarity, Company's obligation to pay Royalties to KemPharm under this Section 8.5(a) is imposed only once with respect to the same unit of Initial Product regardless of the number of Licensed Patents pertaining thereto.

By way of illustration, assume in a Calendar Year, during the Royalty Term, that (i) aggregate annual Net Sales of KP415 in the U.S. total **[*****]** and (ii) no adjustments or deductions to payments under this Article 8 apply. Then the total Royalties due and payable by Company to KemPharm for such Net Sales would be **[*****]**, calculated as follows:

[*****]

[*****]

[*****]

[*****]

(b) Ex-U.S. Payments. Following the First Commercial Sale of any Initial Product in the Field in any country outside of the U.S. and as further consideration for KemPharm's grant of the rights and licenses to Company hereunder, Company shall pay to KemPharm the following:

(i) If Company or its Affiliates directly Commercialize such Initial Product in any country outside of the U.S., Company shall pay to KemPharm a Royalty on the Net Sales of such Initial Product in each applicable country outside of the U.S., as calculated by multiplying such Royalty rate by the corresponding aggregate annual Net Sales in each such country:

Aggregate annual Net Sales of an Initial Product sold outside the U.S.	**Royalty Rate**
1) For that portion of aggregate annual Net Sales in each country per Calendar Year less than or equal to **[*****]**	**[*****]**
2) For that portion of aggregate annual Net Sales in each country per Calendar Year greater than **[*****]**	**[*****]**

Net Sales of any Initial Product outside the U.S. shall not include **[*****]**. In addition, in no event shall the manufacture of an Initial Product give rise to a Royalty obligation. For clarity, Company's obligation to pay Royalties to KemPharm under this Section 8.5(b) is imposed only once with respect to the same unit of Initial Product regardless of the number of Licensed Patents pertaining thereto.

(ii) If Company or its Affiliates enters into a sublicense to Commercialize such Initial Product in any country outside of the U.S., Company shall pay a one-time value share payment to KemPharm equal to **[*****]**. For clarity, Company shall not be obligated to make any payment to KemPharm under this Section 8.5(b)(ii) with respect to any other compensation or consideration received by Company in connection with (but after the execution of) such sublicense agreement, including any value received in the form of royalty payments.

(c) Royalty Term. Company's obligation to pay royalties pursuant to this Section 8.5 shall continue, on an Initial Product-by-Initial Product and country-by-country basis, until the earlier of: (i) the expiration of the last-to-expire Valid Claim in the Licensed Patents in such country that claims the sale or use of such Initial Product in such country; and (ii) **[*****]** years from the date of the commercial launch of any Generic Product of such Initial Product in such country, provided that if the applicable Generic Product of such Initial Product has been removed from the market in such country due to a successful enforcement action by either Party in such **[*****]** year period, then the Royalty term shall not expire pursuant to this clause (ii) for such applicable Generic Product of such Initial Product that has been removed from the market (although it may expire for other Generic Products of such Initial Product that are not removed) (the "**Royalty Term**").

(d) Royalty Payment Reduction.

(i) If the first Regulatory Approval for the first approved label of KP415 by the FDA does not include the 30/13 Label, the Royalty set forth in Section 8.5(a) shall be reduced by **[*****]** with respect to all sales of KP415 in the U.S., except as set forth in the next sentence. If, subsequent to the first Regulatory Approval of KP415 in the U.S., the previously approved label for KP415 is adjusted to include the 30/13 Label, and such adjustment is resubmitted to the FDA and the 30/13 Label is subsequently approved by the FDA, the Royalty rates applicable to the sale of KP415 in the U.S. shall be increased to **[*****]** of the Royalty rates set forth in Section 8.5(a) from and after the date of such adjusted label's approval by the FDA and during the remainder of the Royalty Term.

(ii) On an Initial Product-by-Initial Product and country-by-country basis, after the launch of the first Generic Product of such Initial Product in such country, the Royalty set forth in Section 8.5(a) or Section 8.5(b), as applicable, shall be reduced (after giving effect to all other applicable reductions set forth herein) by **[*****]** after the launch of any Generic Product of such Initial Product, provided that if the applicable Generic Product of such Initial Product has been removed from the market in the U.S. as a result of a successful enforcement action by either Party in the first **[*****]** years from the date of its commercial launch, then the royalty rate shall no longer be reduced as provided in this Section 8.5(d)(ii); provided further that if other Generic Products of such Initial Product are on the market (or enter the market), then the Royalty shall continue to be reduced (or shall be reduced) by **[*****]** until such time as such other Generic Products of such Initial Product, if any, are not on the market as a result of a successful enforcement action by either Party from the date of their respective commercial launch.

(iii) In the event that Company or any of its Affiliates or Sublicensees is required to pay royalties, damages or other amounts to any Third Party in order to obtain or as consideration for a license under any Patent or other intellectual property owned or controlled by such Third Party which is necessary for the Commercialization of an Initial Product in any country in the Territory, Company shall have the right to deduct, from the payments that would otherwise have been due pursuant to this Agreement (after giving effect to all other applicable reductions set forth herein), an amount equal to the payment made by Company, or its Affiliates or Sublicensee to such Third Party pursuant to such license on account of the sale of such Initial Product in such country during such calendar quarter, provided that the reduction taken under this Section 8.5(d)(iii) shall not exceed **[*****]** of the Royalty otherwise due for any calendar quarter on Net Sales for the applicable Initial Product, and provided that any excess amounts remaining to be deducted may be deducted from each subsequent sequential quarter until fully recouped by Company.

(iv) In the event that KemPharm or Company receives a request for a Compulsory License anywhere in the world, it shall promptly notify the other Party. If any Third Party obtains a Compulsory License, then KemPharm or Company (whoever has first notice) shall promptly notify the other Party. Thereafter, as of the date the Third Party obtained such Compulsory License, the Royalty rate payable under Section 8.5 to KemPharm for Net Sales will be adjusted (after giving effect to all other applicable reductions set forth herein) to equal any lower royalty rate granted to such Third Party for such country with respect to the sales of such

Initial Product therein. In addition, should Company grant a sublicense to a Third Party in the U.S. to avoid the imposition of such a Compulsory License, the Royalty rate payable under Section 8.5 to KemPharm for Net Sales in such country shall also be adjusted to match any lower royalty rate payable by such Sublicensee for such country under such sublicense.

(v) The reductions and deductions set forth in this Section 8.5(d) are cumulative and shall apply, in each case, to the maximum extent applicable.

(e) Royalty Reports and Payment. Following the First Commercial Sale of any Initial Product in the Territory, within **[*****]** days after the end of each of the first three (3) calendar quarters in a Calendar Year and **[*****]** days after the end of the last calendar quarter of a Calendar Year, Company shall submit to KemPharm a report setting forth, on an Initial Product-by-Initial Product and country-by-country basis: (i) the amount of gross sales of each Initial Product sold in such calendar quarter; (ii) a calculation of Net Sales showing the deductions from gross sales (by major category as set forth in the definition of Net Sales) to determine Net Sales; (iii) a calculation of the Royalty payment due to KemPharm for such calendar quarter, including any deductions taken under Section 8.5(d); (iv) the aggregate annual Net Sales of such Initial Products and whether any sales milestone has been achieved; and (v) the exchange rates used in the forgoing calculation, if any. Concurrent with the delivery of the quarterly Royalty report, Company shall pay to KemPharm all Royalties owed for such calendar quarter.

8.6 Payment Method. All payments due under this Agreement shall be made by wire transfer U.S. Dollars in immediately available funds to a bank and account designated in writing by the receiving Party.

8.7 KemPharm Consultation Fees. As provided in Articles 4, 6 and 7 and subject to the overall cap on reimbursements to KemPharm in Section 4.4, as applicable, Company shall pay to KemPharm a consultation fee, billed hourly per employee, for services and/or activities related to Development, regulatory or manufacturing activities for the Products (a) expressly contemplated in a PDP or otherwise requested in writing by Company and (b) provided or managed by employees of KemPharm ("**Consultation Fee**"). Initially, the Consultation Fee shall be **[*****]** per hour and will increase by **[*****]** on each anniversary of the Effective Date of this Agreement.

8.8 Records; Audits.

(a) Company shall and shall ensure that its Affiliates and its and their respective Sublicensees, maintain complete and accurate records in sufficient detail to permit KemPharm to confirm the accuracy of the calculation of Royalty payment (including Net Sales) and the achievement of the sales milestone events. All payments and other amounts under this Agreement shall be accounted for in accordance with U.S. GAAP. Upon reasonable prior notice, such records shall be available for examination during regular business hours for a period of **[*****]** years from the end of the Calendar Year to which they pertain, and not more often than **[*****]** each Calendar Year, by an independent certified public accountant selected by KemPharm and reasonably acceptable to Company, for the sole purpose of verifying the accuracy of the financial reports furnished by Company pursuant to this Agreement and any

payments with respect thereto. Any amounts shown to be owed but unpaid shall be paid within **[*****]** days from the accountant's report. Any overpayment based on the computations set forth in Section 8.5, shall become a credit for future amounts owed by Company to KemPharm. KemPharm shall bear the full cost of such audit unless such audit discloses an underpayment by Company of more than **[*****]** of the amount due for the audited period, in which case Company shall bear the full cost of such audit.

(b) KemPharm shall, and shall ensure that its Affiliates, maintain complete and accurate records in sufficient detail to permit Company to confirm the accuracy of the calculation of the Development cost reimbursed under this Agreement. All such cost shall be accounted for in accordance with U.S. GAAP. Upon reasonable prior notice, such records shall be available for examination during regular business hours for a period of **[*****]** years from the end of the Calendar Year to which they pertain, and not more often than **[*****]** each Calendar Year, by an independent certified public accountant selected by Company and reasonably acceptable to KemPharm, for the sole purpose of verifying the accuracy of the financial reports furnished by KemPharm pursuant to this Agreement and any payments with respect thereto. Any such auditor shall not disclose KemPharm's Confidential Information, except to the extent such disclosure is necessary to verify the accuracy of the financial reports submitted by KemPharm and/or the amount of payments due with respect thereto. Any overage or underpayment to Company shall be refunded or paid, if applicable, within **[*****]** days from the accountant's report, as calculated from the original date such overage was applied or underpayment was due. Any overpayment based on the computations set forth in Section 8.5 shall become a credit for future amounts owed by KemPharm. Company shall bear the full cost of such audit unless such audit discloses an overage or underpayment by KemPharm of more than **[*****]** of the amount of due for the audited period, in which case KemPharm shall bear the full cost of such audit.

(c) If a Party disputes an auditor's report, the dispute shall be subject to the dispute resolution process set forth in Article 14.

(d) Each Party shall treat all information that it receives under this Section 8.8 in accordance with the confidentiality provisions of Article 12 of this Agreement, and shall cause its accounting firm to enter into an acceptable confidentiality agreement with the other Party obligating such firm to retain all such financial information in confidence pursuant to such confidentiality agreement, except to the extent necessary for such Party to enforce its rights under this Agreement.

8.9 Taxes.

(a) Taxes on Income. Except as otherwise provided in this Section 8.9, each Party shall be solely responsible for the payment of all taxes imposed on its share of income arising directly or indirectly from the efforts of the Parties under this Agreement.

(b) Tax Cooperation. The Parties agree to cooperate with one another and use reasonable efforts to reduce or eliminate Tax Withholding or similar obligations in respect of the milestone payment, Royalty payment, and other payments made under this Agreement. To the extent a Party is required to deduct and withhold taxes from any payment to the other Party,

the paying Party shall pay the amounts of such taxes to the proper Governmental Authority in a timely manner and promptly transmit to the receiving Party an official tax certificate or other evidence of such withholding sufficient to enable the receiving Party to demonstrate such payment of taxes to any applicable Governmental Authority. The receiving Party shall provide the paying Party any tax forms that may be reasonably necessary in order for the paying Party not to withhold tax or to withhold tax at a reduced rate under an applicable bilateral income tax treaty. Each Party shall provide the other with reasonable assistance to enable the recovery, as permitted by applicable Laws, of withholding taxes or similar obligations resulting from payments made under this Agreement, such recovery to be for the benefit of the Party bearing such withholding tax.

(c) Withholding Taxes. If a Party is required by applicable Laws to make any tax deduction, tax withholding or similar payment from any amount paid or payable by such Party to the other Party (a "**Tax Withholding**") under this Agreement, then such amounts shall be deducted from the amount otherwise required to be paid.

(d) VAT. All payments due pursuant to this Agreement shall be offset by any value-added tax ("**VAT**") (which, if applicable, shall be payable by the paying Party upon receipt of a valid VAT invoice). If the receiving Party determines that it is required to report any such tax, the paying Party shall promptly provide the receiving Party with applicable receipts and other documentation necessary or appropriate for such report. For clarity, this Section 8.9(d) is not intended to limit Company's right to deduct VAT in determining Net Sales.

ARTICLE 9
INTELLECTUAL PROPERTY MATTERS

9.1 Inventions.

(a) Ownership. Inventorship of any Inventions will be determined in accordance with the standards of inventorship and conception under U.S. patent laws, and ownership of Inventions shall follow inventorship. Each Party shall solely own any Inventions made solely by its and its Affiliates' employees, agents, or independent contractors. The Parties shall jointly own any Joint IP. Except to the extent KemPharm is restricted by the licenses granted to Company under this Agreement, each Party shall be entitled to practice, license, assign and otherwise exploit the Joint IP without the duty of accounting or seeking consent from the other Party. Each Party shall require all of its employees, and use its best efforts to require its contractors and agents, and any Affiliates and Third Parties working on its behalf under this Agreement (and their respective employees, contractors and agents), to execute such documents and to take such other actions as are necessary to assign, transfer or otherwise convey to such Party any Inventions made by any of them on behalf of such Party as is sufficient for Company or KemPharm to meet their obligation to the other Party under this Agreement.

(b) Disclosure. Each Party shall promptly disclose to the other Party all Inventions, including all invention disclosures or other similar documents submitted to such Party by its, or its Affiliates', employees, agents or independent contractors relating to such Inventions, and shall also respond promptly to reasonable requests from the other Party for additional information relating to such Inventions.

9.2 Patent Prosecution.

(a) Prosecution by the Parties. KemPharm shall have the first right, at its own cost and expense, to prepare, file, prosecute and maintain the Licensed Patents through Patent grant and Company shall have the first right to prepare, file, prosecute and maintain the Joint Patents as well as maintain and prosecute the Licensed Patents subsequent to Patent grant during the Term of this Agreement, **[*****]**, on a worldwide basis. For the purpose of this Article 9, "prosecution" shall include any post-grant proceeding in the Territory, including opposition proceedings. KemPharm shall provide Company reasonable opportunity to review and comment, as well as participate in internal and external meetings, on such prosecution efforts regarding the Licensed Patents as follows: KemPharm shall promptly provide Company with copies of all material communications from any patent authority and any translations in KemPharm possession in the Territory regarding the Licensed Patents, and shall provide Company, for its review and comment, with drafts of any material filings or responses to be made to such patent authorities in a reasonable amount of time in advance of submitting such filings or responses. KemPharm shall consider in good faith comments thereto provided by Company in connection with the prosecution of the Licensed Patents, but the inventors shall have the final decision-making authority with respect to the prosecution of Licensed Patents. With regard to Joint IP, Company shall provide KemPharm reasonable opportunity to review and comment, as well as participate in internal and external meetings, on such prosecution efforts regarding the Joint Patents as follows: Company shall promptly provide KemPharm, for its review and comment, with drafts of any material filings or responses to be made to such patent authorities in a reasonable amount of time in advance of submitting such filings and responses. Company shall consider in good faith comments thereto provided by KemPharm in connection with the prosecution of the Joint Patents, but Company shall have the final decision-making authority with respect to the prosecution of Joint Patents.

(b) Abandonment by the Parties. KemPharm shall notify Company of any decision by KemPharm to cease prosecution and/or maintenance of any Licensed Patents in any country in the Territory during the period of time that KemPharm is responsible for prosecution of the Licensed Patents pursuant to Section 9.2(a). KemPharm shall provide such notice reasonably in advance of any filing or payment due date, but in any event prior to any due date that requires action in order to avoid loss of rights, in connection with such Licensed Patent. In such event, KemPharm shall assign all right, title and interest in and to such Patent to Company, at KemPharm's expense, and thereafter such Patent shall cease to be a Licensed Patent for all purposes of this Agreement and Company may elect, at its discretion, to continue the prosecution and maintenance of such Patent in such country in the Territory. Company shall notify KemPharm of any decision by Company to cease prosecution and/or maintenance of any Joint Patents in any country in the Territory. Company shall provide such notice reasonably in advance of any filing or payment due date, but in any event prior to any due date that requires action in order to avoid loss of rights, in connection with such Joint Patent. In such event, Company shall permit KemPharm, at KemPharm's discretion and expense, to continue the prosecution and maintenance of such Joint Patent in such country in the Territory. In addition, as between the Parties, Company shall have the sole right, but not the obligation, to prepare, file, prosecute and maintain any patents included in the Company IP ("**Company Patents**") at its own cost and expense.

(c) Collaboration. Each Party shall provide the other Party with all reasonable assistance and cooperation in the patent prosecution efforts under this Section 9.2 requested by the other Party, including providing any necessary powers of attorney and executing any other required documents or instruments for such prosecution and providing any Data in a Party's Control that, in the prosecuting party's reasonable determination, is needed to support prosecution of a Licensed Patent or Joint Patent.

(d) Listing of Patents. KemPharm and Company shall collaborate to determine which of the Licensed Patents or Joint Patents, if any, shall be listed for inclusion in the Approved Drug Products with Therapeutic Equivalence Evaluations pursuant to 21 U.S.C. Section 355, or any successor Law in the U.S., together with any comparable Laws in any other country in the Territory. Should the Parties disagree, **[*****]** shall have the final decision.

9.3 Patent Enforcement.

(a) Notification. If either Party becomes aware of any existing or threatened infringement of any Licensed IP or Joint IP, or if a Third Party claims that any Licensed Patent or Joint Patent is invalid or unenforceable, it shall promptly notify the other Party in writing to that effect. In addition, each Party shall immediately give written notice to the other Party of any certification of which they become aware filed pursuant to 21 U.S.C. Section 355(b)(2)(A) (or any amendment or successor statute thereto) claiming that any Licensed Patents or Joint Patents covering any Compound or Product, or the manufacture or use of either of the foregoing, are invalid or unenforceable, or that infringement will not arise from the manufacture, use or sale of a product by a Third Party.

(b) Enforcement Rights.

(i) As between the Parties, Company shall have the first right, but not the obligation, to resolve any infringement or claim by a Third Party of the type referenced in Section 9.3(a), including the right to bring an appropriate suit, defend against any such claim, or take other action to enforce or defend the applicable Licensed Patent or Joint Patent against any such Third Party, including as a defense or counterclaim in connection with any Infringement Action, and to compromise or settle any such infringement or claim, **[*****]**. If Company does not commence a suit or take such other action as Company reasonably determines is necessary or appropriate to enforce or defend the applicable Licensed Patents or Joint Patents against such Third Party infringement or claim (which may include sending a cease and desist letter) within **[*****]** days of first becoming aware of such infringement or claim, then, subject to Company's prior consent (not to be unreasonably withheld, conditioned, or delayed), KemPharm shall have the right but not the obligation to commence such a suit or take such other action in regards to the applicable Licensed Patents or Joint Patents against such Third Party infringement or claim, at KemPharm's own cost and expense.

(ii) Delegation of Enforcement Rights. Company shall have the right, in its sole discretion, to delegate its rights under Section 9.3(b), in whole or in part, to any of its Affiliates or one or more Sublicensees, provided that any such Affiliate or Sublicensee shall comply with the terms of this Section 9.3.

(c) Collaboration.

(i) Each Party shall provide to the Party bringing a claim, suit or action under Section 9.3(b) (the "**Enforcing Party**") with reasonable assistance in such enforcement or defense, at such Enforcing Party's request and expense, including joining such action as a party plaintiff if required by applicable Laws to pursue such action. The Enforcing Party shall keep the other Party regularly informed of the status and progress of such enforcement efforts and shall reasonably consider the other Party's comments on any such efforts. The non-enforcing Party shall be entitled to separate representation in such matter by counsel of its own choice and at its own expense. The Enforcing Party shall not settle any such suit or action in any manner that admits that any Licensed Patent or Joint Patent is invalid or unenforceable without the other Party's prior written consent and, in the case of KemPharm, KemPharm may not settle or otherwise compromise any suit or action in a way that adversely affects or would be reasonably expected to adversely affect Company's rights or benefits hereunder, without Company's prior written consent, and in the case of Company, Company may not settle or otherwise compromise any suit or action in a way that adversely affects, or would be reasonably expected to affect, KemPharm's rights or benefits hereunder, without KemPharm's express written consent. The foregoing shall not limit Company's rights under Section 8.5(d)(iii).

(ii) Each Party shall share with the other Party all Information available to it regarding such alleged infringement or claim to the Licensed IP or Joint IP by a Third Party, pursuant to a mutually agreeable "common interest agreement" executed by the Parties under which the Parties agree to their shared, mutual interest in the outcome of any suit to enforce the Licensed Patents or Joint Patents against such Third Party; provided, however, that no Party shall be required to disclose Information to the other Party to the extent such disclosure would cause the loss of attorney/client privilege or would be considered confidential information not subject to the terms of this Agreement.

(d) Expenses and Recoveries. The Enforcing Party shall be solely responsible for any expenses it incurs as a result of such enforcement action. If the Enforcing Party recovers monetary damages in such claim, suit or action brought under Section 9.3(b), such recovery shall be allocated **[*****]**; provided, however, that if **[*****]** is the Enforcing Party, then such remaining amounts shall be **[*****]**.

(e) Other Infringements. Company shall have the sole right and authority, but not the obligation, to enforce Company Patents against any Third Party infringement and to defend against any claim that any Company Patent is invalid or unenforceable, including as a defense or counterclaim in connection with any Infringement Action, at its own cost and expense, and Company shall be entitled to retain all recoveries resulting from all such enforcement actions. KemPharm shall provide reasonable assistance to Company with respect thereto, including providing access to relevant documents and other evidence and making its employees available, subject to Company's reimbursement of any reasonable out-of-pocket expenses incurred by KemPharm on an on-going basis in providing such assistance.

9.4 Third Party Infringement Claims. If the manufacture, sale or use of the Products in the Field in the Territory pursuant to this Agreement results in a claim, suit or proceeding alleging Patent infringement against KemPharm or Company, or their respective Affiliates, licensees or Sublicensees (each, an "**Infringement Action**"), such Party shall promptly notify the other Party hereto in writing. Company shall have the right, **[*****]**, but not the obligation, to defend any Infringement Action and to compromise or settle such Infringement Action. If Company declines or fails to assert its intention to defend such Infringement Action within **[*****]** days after sending (in the event that KemPharm is the notifying Party) or receipt (in the event that Company is the notifying Party) of notice under this Section 9.4, then KemPharm shall have the right to defend such Infringement Action. The Party defending such Infringement Action shall have the sole and exclusive right to select counsel for such Infringement Action. Each Party shall share with the other Party all Information available to it regarding such Infringement Actions, pursuant to a mutually agreeable "common defense agreement" executed by the Parties under which the Parties agree to their shared, mutual interest in the outcome of any such Infringement Actions; provided, however, that no Party shall be required to disclose Information to the other Party to the extent such disclosure would cause the loss of attorney/client privilege. Neither Party shall settle such Infringement Action, or make any admissions or assert any position in such Infringement Action, in a manner that would materially adversely affect the rights or interests of the other Party hereunder, without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed. For clarity, the foregoing sentence shall not serve to limit or condition Company's exercise of its rights under Section 8.5(d)(iii). Subject to the respective indemnity obligations of the Parties set forth in Article 11, the Party controlling the defense of the Infringement Action shall pay all costs associated with such Infringement Action other than the expenses of the other Party if the other Party elects to join such Infringement Action (as provided in the last sentence of this Section 9.4); provided, that, without limitation of KemPharm's indemnification obligations under Article 11, **[*****]**. Each Party shall have the right to join an Infringement Action defended by the other Party, at its own expense.

9.5 Patent Term Extensions. Company shall be responsible, in KemPharm's name, for making decisions, and KemPharm will cooperate with Company, at Company's cost and expense, in regards to seeking and obtaining patent term extensions, including any pediatric exclusivity extensions as may be available, patent term adjustments or supplemental protection certificates or their equivalents in the Territory with respect to any Licensed Patents, Joint Patents or Products. In the event that any election with respect to obtaining patent term extensions is to be made, Company shall have the right to make such elections, and KemPharm shall abide by all such elections.

9.6 Trademarks.

(a) Product Mark.

(i) KemPharm shall, and hereby does, assign to Company all rights, title and interest in the KemPharm Product Mark(s), for use in the Territory to Company. KemPharm shall at any time, whether during or after the Term, execute any documents that shall reasonably be required by Company to confirm Company's ownership of the KemPharm Product Mark in the Territory.

(ii) Company shall Commercialize the Products in the Territory under the trademark selected by Company, which may be a KemPharm Product Mark.

(iii) Company shall register and maintain in the Territory, at Company's cost and expense, the applicable Product trademark.

(b) Company Housemarks. In addition, Company shall have the right to brand the Products in the Field in the Territory with those trademarks of Company that are associated with Company's name or identity ("**Company Housemarks**"); provided, however, that Company shall not, and shall ensure that its Affiliates and Sublicensees will not, make any use of trademarks that are confusingly similar to any trademarks or house marks of KemPharm or its Affiliates, including the corporate name of KemPharm or any of its Affiliates, without KemPharm's prior written consent. Company shall own all rights in the Company Housemarks, and all goodwill in the Company Housemarks shall accrue to Company.

ARTICLE 10
REPRESENTATIONS AND WARRANTIES; COVENANTS

10.1 Mutual Representations and Warranties. Each Party hereby represents and warrants to the other Party as follows:

(a) Corporate Existence. As of the Effective Date, it is a company or corporation duly organized, validly existing, and in good standing under the Laws of the jurisdiction in which it is incorporated.

(b) Corporate Power, Authority and Binding Agreement. As of the Effective Date, (i) it has the corporate power and authority and the legal right to enter into this Agreement and perform its obligations hereunder; (ii) it has taken all necessary corporate action on its part required to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder; and (iii) this Agreement has been duly executed and delivered on behalf of such Party, and constitutes a legal, valid, and binding obligation of such Party that is enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally.

10.2 Additional Representations and Warranties of KemPharm. KemPharm represents and warrants to Company as follows, as of the Effective Date:

(a) Title; Encumbrances. It has sufficient legal and/or beneficial title, ownership or license, free and clear from any mortgages, pledges, liens, rights of first refusal, security interests, conditional and installment sale agreement, encumbrances, charges or claim of any kind (except as provided pursuant to the Facility Agreement Documents), of the Licensed IP and KemPharm Product Mark to grant the licenses under the Licensed IP and assign the KemPharm Product Mark to Company as purported to be granted pursuant to this Agreement;

(b) No Infringement. It has not received any notice, written or otherwise, from any Third Party asserting or alleging that the Development or Commercialization of the Compounds or Products or that the exercise of rights in any of the Licensed IP in the Territory would infringe or misappropriate the intellectual property rights of any Third Party and, to KemPharm's knowledge, there is no reasonable basis for any Third Party to issue such a notice;

(c) No Proceeding. There is no pending, and to KemPharm's knowledge, no threatened, adverse action, suit or proceeding in the Territory against KemPharm involving Licensed IP, KemPharm Product Mark or the Products;

(d) No Conflicts. KemPharm has not entered, and shall not enter, into any agreement with any Third Party that is in conflict with the rights granted to Company under this Agreement with respect to the Product, and has not taken and shall not take any action that would in any way prevent it from granting the rights granted to Company under this Agreement, or that would otherwise materially conflict with or adversely affect Company's rights under this Agreement;

(e) No Other Licenses. KemPharm has not granted and will not grant any licenses or other contingent or non-contingent right, title, or interest under or relating to Licensed IP or KemPharm Product Mark that conflicts with the rights granted to Company herein, and is not nor will be under any obligation, that does or will conflict with or otherwise affect this Agreement with respect to such exclusivity.

(f) Prior Art; Litigation. KemPharm is not aware of any prior art or other information existing as of the Effective Date that would adversely affect the validity, enforceability, term, or scope of any Licensed Patent and there is no settled, pending, or, to its knowledge, threatened litigation or reissue application, re-examination, post-grant, inter partes, or covered business method patent review, interference, derivation, opposition, claim of invalidity, or other claim or proceeding, with respect to the Licensed Patents.

(g) No Consents. No consent by any Third Party or Governmental Authority is required with respect to the execution and delivery of this Agreement by KemPharm or the consummation by KemPharm of the transactions contemplated hereby;

(h) No Unauthorized Use. To the knowledge of KemPharm, there is no unauthorized use, infringement or misappropriation of any of Licensed IP or Regulatory Materials by any employee or former employee of KemPharm, or any other Third Party;

(i) Sufficiency of Licensed Patents. The Licensed Patents (i) constitute all Patents owned or Controlled by KemPharm as of the Effective Date that are directly related to, or are necessary or useful for, the research, Development, manufacture, use or Commercialization of any Compound or Product and (ii) listed on **Exhibit A** hereto constitute all Patent rights that are, to KemPharm's knowledge, directly related to, or are necessary or useful for, the research, Development, manufacture, use or Commercialization of any Compound or Product;

(j) Sufficiency of Licensed Know-How. The Licensed Know-How (i) constitutes all Information and Inventions owned or Controlled by KemPharm as of the Effective Date that are directly related to, or are necessary or useful for, the research, Development, manufacture, use or Commercialization of any Compound or Product and (ii) constitutes all Information and Inventions that are, to KemPharm's knowledge, directly related to, or are necessary or useful for, the research, Development, manufacture, use or Commercialization of the Compound and Product;

(k) No Competing Products. KemPharm has not developed, subcontracted or licensed to a Third Party the right to develop a Competing Product;

(l) Assignment of Rights. All Representatives of KemPharm who have performed any activities on its behalf in connection with Development of the Compound or Product have assigned to KemPharm the whole of their rights in any intellectual property made, discovered or developed by them as a result of such Development, and no Third Party has any rights to any such intellectual property;

(m) Information Disclosure. All Information provided by or on behalf of KemPharm to Company on or before the Effective Date in contemplation of this Agreement was and is true, accurate and complete in all material respects, and KemPharm has not failed to disclose, or cause to be disclosed, any information or data that would cause the Information that has been disclosed to be misleading in any material respect;

(n) Third Party Agreements. There are no agreements between KemPharm or any of its Affiliates and any Third Parties pursuant to which KemPharm has in-licensed, or otherwise obtained rights, with respect to any Compound or Product; and

(o) No Blocking IP. KemPharm is not aware of any additional Third Party licenses that have to be taken now or in the future to guarantee freedom-to-operate to Develop, manufacture and Commercialize Products without any limitation.

10.3 Compliance with Laws.

(a) KemPharm and its contractors have conducted the Development and manufacture of any Compound and Product prior to the Effective Date in material compliance with Proper Conduct Practices and all applicable Laws, including the GCP, GLP and the rules and regulations of any Regulatory Authority and Governmental Authority health care programs having jurisdiction.

(b) Each Party shall, and shall ensure that its Affiliates and their respective contractors, licensees, and Sublicensees, as applicable, will, comply in all respects with Proper Conduct Practices and all applicable Laws in the Development, manufacture and Commercialization of the Compounds and Products and in the performance of its obligations under this Agreement (e.g., under each Product Development Plan), including the GCP, GLP and the rules and regulations of any Regulatory Authority and Governmental Authority health care programs having jurisdiction in such Party's respective territory, each as may be amended from time to time.

(c) Each Party shall immediately notify the other Party if it has any information or suspicion that there may be a violation of any applicable Laws in connection with its performance under this Agreement or the Development, manufacture or Commercialization of any Compound or Product hereunder. In the event that either Party has violated or been suspected of violating any of its obligations, representations, warranties or covenants in Section 10.3(a) or Section 10.3(b), such Party will take reasonable actions to remedy such breach and to prevent further such breaches from occurring.

10.4 No Debarment. Each Party represents and warrants to the other Party that neither such Party nor any of its Affiliates is debarred or disqualified under the Act or comparable applicable Laws outside the U.S. Neither Party nor any of its Affiliates will employ or use the services of any Person who is debarred or disqualified under the Act, or comparable applicable Laws outside the U.S., in connection with activities relating to any Compound or Product; and in the event that a Party becomes aware of the debarment or disqualification or threatened debarment or disqualification of any Person providing services to such Party or any of its Affiliates with respect to any activities relating to any Product, such Party will promptly notify the other Party in writing and shall cease, or cause its Affiliate to cease, as applicable, employing, contracting with, or retaining any such Person to perform any services relating to any Product.

10.5 No Other Representations or Warranties. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR NON-MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, ARE MADE OR GIVEN BY OR ON BEHALF OF A PARTY OR ITS AFFILIATE, AND ALL SUCH REPRESENTATIONS AND WARRANTIES, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED. For clarity and without limiting the foregoing, KemPharm makes no representation or warranty concerning the Compounds, Products or Licensed IP except as expressly set forth in this Article 10.

ARTICLE 11
INDEMNIFICATION

11.1 Indemnification by KemPharm. KemPharm shall defend, indemnify, and hold Company and its Affiliates and their respective officers, directors, employees, and agents, successors and assigns (the "**Company Indemnitees**") harmless from and against any and all losses, damages, liabilities, expenses and costs, including reasonable legal expense and attorneys' fees ("**Losses**") to which any Company Indemnitee may become subject as a result of any claim, demand, action or other proceeding by any Third Party (collectively, "**Claims**") to the extent arising out of (a) the Development and manufacture of the Products by or on behalf of KemPharm (excluding Company, its Affiliates and its Sublicensees); (b) the breach of any of KemPharm's representations, warranties or covenants set forth in Article 10; (c) the willful misconduct or negligent acts or omissions of any KemPharm Indemnitee; and (d) any Infringement Action. The foregoing indemnity obligation shall not apply to the extent that (i) the Company Indemnitees fail to materially comply with the indemnification procedures set forth in Section 11.3 and KemPharm's defense of the relevant Claim is prejudiced by such failure, or (ii) any Claim arises from, is based on, or results from any activity or occurrence for which Company is obligated to indemnify the KemPharm Indemnitees under Section 11.2.

11.2 Indemnification by Company. Company shall defend, indemnify, and hold KemPharm and its Affiliates and their respective officers, directors, employees, and agents (the "**KemPharm Indemnitees**") harmless from and against any and all Losses to which any KemPharm Indemnitee may become subject as a result of any Claims by any Third Party to the extent arising out of, based on, or resulting from (a) the Development, manufacture and Commercialization of the Products in the Field in the Territory by or on behalf of Company or its Affiliates or Sublicensees (other than the Development or manufacture of the Product by or on behalf of KemPharm), (b) the breach of any of Company's representations and warranties set forth in Article 10, or (c) the willful misconduct or negligent acts or omissions of any Company Indemnitee. The foregoing indemnity obligation shall not apply to the extent that (i) the KemPharm Indemnitees fail to materially comply with the indemnification procedures set forth in Section 11.3 and Company's defense of the relevant Claim is prejudiced by such failure, or (ii) any Claim arises from, is based on, or results from any activity or occurrence for which KemPharm is obligated to indemnify the Company Indemnitees under Section 11.1.

11.3 Indemnification Procedures. The Party claiming indemnity under this Article 11 (the "**Indemnified Party**") shall give written notice to the Party from whom indemnity is being sought (the "**Indemnifying Party**") promptly after learning of such Claim and shall offer control of the defense of such Claim to the Indemnifying Party. The Indemnified Party shall provide the Indemnifying Party with reasonable assistance, at the Indemnifying Party's expense, in connection with the defense of the Claim for which indemnity is being sought. The Indemnified Party may participate in and monitor such defense with counsel of its own choosing **[*****]**; provided, however, the Indemnifying Party shall have the right to assume and control conduct the defense, settlement or compromise of the Claim with counsel of its choice. The Indemnifying Party shall not settle any Claim which admits fault or negligence on the part of the Indemnified Party or any indemnitee without the prior written consent of the Indemnified Party, not to be unreasonably withheld. The Indemnifying Party shall have no liability under this Article 11 with respect to claims or suits settled or compromised without its prior written consent.

11.4 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY OR ANY OF ITS AFFILIATES FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES OR ANY LOST PROFITS ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION 11.4 IS INTENDED TO OR SHALL LIMIT OR RESTRICT THE INDEMNIFICATION RIGHTS OR OBLIGATIONS OF ANY PARTY UNDER SECTIONS 11.1 or 11.2, OR DAMAGES AVAILABLE FOR A PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS IN ARTICLE 12 OR FOR EITHER PARTY'S BREACH OF ITS OBLIGATIONS IN SECTION 2.5.

11.5 Insurance. Each Party shall procure and maintain insurance, including product liability insurance, adequate to cover obligations for which it is liable hereunder and consistent with normal business practices of prudent companies similarly situated. It is understood that such insurance shall not be construed to create a limit of either Party's liability with respect to its indemnification obligations under this Article 11. Each Party shall provide the other Party with written evidence of such insurance upon request and shall name the other Party as an additional insured under such policies. Each Party shall provide the other Party with written notice at least **[*****]** days prior to the cancellation, non-renewal or material change in such insurance.

ARTICLE 12
CONFIDENTIALITY

12.1 Confidentiality. Each Party agrees that, during the Term and for a period of **[*****]** years thereafter, it shall keep confidential and shall not publish or otherwise disclose and shall not use for any purpose other than as provided for in this Agreement (which includes the exercise of any rights or the performance of any obligations hereunder) any Confidential Information of the other Party, except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the Parties. The foregoing confidentiality, non-disclosure and non-use obligations shall not apply to any portion of the other Party's Confidential Information that the receiving Party can demonstrate by competent written proof:

(a) was already known to the receiving Party or its Affiliate, other than under an obligation of confidentiality, at the time of disclosure by the other Party;

(b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party;

(c) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the receiving Party, its Affiliate or their respective Representatives in breach of this Agreement;

(d) was disclosed to the receiving Party or its Affiliate by a Third Party who has a legal right to make such disclosure and who did not obtain such information directly or indirectly from the other Party; or

(e) was independently discovered or developed by the receiving Party or its Affiliate without access to or aid, application, use of the other Party's Confidential Information, as evidenced by a contemporaneous writing.

12.2 Authorized Disclosure. Notwithstanding the obligations set forth in Section 12.1, a Party may disclose the other Party's Confidential Information and the terms of this Agreement to the extent:

(a) such disclosure is reasonably necessary (i) for filing or prosecuting Patent rights as contemplated by this Agreement; (ii) to comply with the requirements of Regulatory Authorities with respect to obtaining and maintaining Regulatory Approval of Product pursuant to this Agreement; or (iii) for prosecuting or defending litigation as contemplated by this Agreement;

(b) such disclosure is reasonably necessary to its or its Affiliates' employees, agents, consultants, contractors, or Sublicensees, as applicable, on a need-to-know basis for the sole purpose of performing its obligations or exercising its rights under this Agreement; provided that in each case, the disclosees are bound by obligations of confidentiality, non-disclosure and non-use that are at least as restrictive as those contained in this Agreement;

(c) such disclosure is reasonably necessary to any bona fide potential or actual investor, acquiror, merger partner, or other financial or commercial partner for the sole purpose of evaluating or carrying out an actual or potential investment, acquisition or other business relationship; provided that in connection with such disclosure, such Party shall inform each disclosee of the confidential nature of such Confidential Information; and provided, further, that such disclosee is bound by written obligations of confidentiality, non-disclosure and non-use at least as restrictive as those contained in this Agreement; or

(d) such disclosure is reasonably necessary to comply with applicable Laws, including regulations promulgated by applicable security exchanges, court order, administrative subpoena or order.

Notwithstanding the foregoing, in the event a Party is required to make a disclosure of the other Party's Confidential Information pursuant to Sections 12.2(a) or 12.2(d), such Party shall promptly notify the other Party of such required disclosure and shall use reasonable efforts to obtain, or to assist the other Party in obtaining, a protective order preventing or limiting the required disclosure.

12.3 Publicity; Terms of Agreement.

(a) The Parties agree that the terms of this Agreement are the Confidential Information of both Parties, subject to the special authorized disclosure provisions set forth in this Section 12.3.

(b) If either Party desires to make a public disclosure concerning the terms of this Agreement, such Party shall give reasonable prior advance notice of the proposed text of such disclosure to the other Party for its prior review and approval, except as otherwise provided herein, which approval shall not be unreasonably withheld or delayed. A Party commenting on such a proposed disclosure shall provide its comments, if any, within **[*****]** Business Days after receiving the proposed disclosure for review, or such shorter period of time as necessitated by regulatory requirements. In addition, where required by applicable Law, including regulations promulgated by applicable security exchanges, either Party shall have the right to make a press release or other public disclosure regarding the achievement of each approval or sales milestone under this Agreement as it is achieved, or the occurrence of other events that affect either Party's rights or obligations under this Agreement, in each case subject only to the review procedure set forth in the preceding sentences. In relation to the other Party's review of such an announcement, such other Party may make specific, reasonable comments on such proposed press release within the prescribed time for commentary. Neither Party shall be required to seek the permission of the other Party to repeat any information regarding the terms of this Agreement that has already been publicly disclosed by such Party, or by the other Party, in accordance with this Section 12.3.

(c) The Parties acknowledge that either or both Parties, or their Affiliates, respectively, may be obligated to file under applicable Laws, including regulations promulgated by applicable security exchanges, a copy of this Agreement with Governmental Authorities. Each Party and its Affiliates shall be entitled to make such a required filing, provided that it requests confidential treatment of the commercial terms and sensitive technical terms hereof and thereof to the extent such confidential treatment is reasonably available. In the event of any such filing, each Party will provide the other Party with a copy of this Agreement marked to show provisions for which such Party or its Affiliate intends to seek confidential treatment and shall reasonably consider and incorporate the other Party's timely comments thereon to the extent consistent with the legal requirements, with respect to the filing Party or Affiliate, governing disclosure of material agreements and material information that must be publicly filed.

12.4 Technical Publication. Prior to the first NDA approval for each Product which is co-Developed by the Parties under this Agreement pursuant to a PDP, Company may not publish peer-reviewed manuscripts, or provide other forms of public disclosure including abstracts and presentations, pertaining to such Product or Licensed Know-How relevant to such Product, without the prior written consent of KemPharm, such consent not to be unreasonably withheld or delayed. Thereafter, Company may publish peer-reviewed manuscripts, or provide other forms of public disclosure in its sole discretion.

12.5 Equitable Relief. Each Party acknowledges that its breach of this Article 12 may cause irreparable harm to the other Party, which may not be reasonably or adequately compensated in damages in an action at law. By reasons thereof, each Party agrees that the other Party shall be entitled, in addition to any other remedies it may have under this Agreement or otherwise, to seek preliminary and permanent injunctive and other equitable relief to prevent or curtail any actual or threatened breach of the obligations relating to Confidential Information set forth in this Article 12 by the other Party. For the avoidance of doubt, any use or disclosure by a Party of any Information that is authorized under this Article 12 shall not be restricted by, or be deemed a violation of, any pre-existing confidentiality agreement between the Parties.

ARTICLE 13
TERM AND TERMINATION

13.1 Term. The term of this Agreement (the "**Term**") shall commence upon the Effective Date and, unless earlier terminated pursuant to this Article 13, shall, (a) with respect to the rights and licenses granted to Company under Section 2.1(a) for the Initial Products, continue on an Initial Product-by-Initial Product and country-by-country basis until the expiration of the Royalty Term for such Initial Product in such country and (b) with respect to the rights and licenses granted to Company under Section 2.1(a) for all other Products, continue on an exclusive, perpetual, fully paid basis. After the expiration (but not early termination) of this Agreement for an Initial Product in a country, the licenses granted by KemPharm to Company under Section 2.1(a) shall become exclusive, fully paid, perpetual and irrevocable with respect to such Initial Product in such country.

13.2 Termination by Company. Company may terminate this Agreement, in its entirety or on a Product-by-Product or country-by-country basis, at Company's convenience either (i) prior to the first Regulatory Approval of a Product upon **[*****]** days' prior written notice to KemPharm, or (ii) subsequent to the first Regulatory Approval of a Product upon **[*****]** days' prior written notice to KemPharm.

13.3 Termination by KemPharm. KemPharm may terminate this Agreement in its entirety immediately upon written notice to Company, if Company or its Affiliates directly or indirectly, individually or in association with any other person or entity, challenges the validity, enforceability or scope of any Licensed Patent and such challenge is not required under a court order or subpoena and is not a defense against a claim, action or proceeding asserted by KemPharm. Additionally, KemPharm may terminate this Agreement in its entirety immediately upon written notice to Company, if a Sublicensee of Company or its Affiliates directly or indirectly, individually or in association with any other person or entity, challenges the validity, enforceability or scope of any Licensed Patent, and such challenge is not required under a court order or subpoena and is not a defense against a claim, action or proceeding asserted by KemPharm, and Company fails, within **[*****]** days of a written request by KemPharm, to either terminate the applicable sublicense agreement with such Sublicensee or cause such Sublicensee to cease such patent challenge; provided however that KemPharm may not terminate if a court of competent jurisdiction has prevented Company from terminating such applicable sublicense agreement through an injunction or similar mechanism provided that Company is continuing to make reasonable efforts to terminate such applicable sublicense agreement.

13.4 Termination for Breach.

(a) Each Party may terminate this Agreement immediately upon written notice to the other Party, if the other Party materially breaches its obligations under this Agreement and, after receiving written notice identifying such material breach in reasonable detail, fails to cure such material breach within **[*****]** days from the date of such notice. For clarity, such material obligations may apply to the performance of either: (i) this Agreement in its entirety, in which case this provision shall apply to the entire Agreement; or (ii) a specific Product or Product(s), in which case this provision shall apply only to such affected Product or Product(s).

(b) Serious Material Breach. If KemPharm commits a Serious Material Breach and such breach by KemPharm is not cured within **[*****]** days of receipt following a notice from Company under Section 13.4(a) (the "**Cure Period**") or is unable to be cured, Company may elect not to terminate this Agreement and, instead, during the period commencing at the end of the Cure Period or, if such breach is unable to be cured, upon KemPharm's receipt of Company's notice of breach under Section 13.4(a) and continuing until the end of the last Royalty Term in all countries, (i) reduce the approval milestone payments under Section 8.3, the sales milestone payments under Section 8.4 and the then-applicable Royalty rates under Section 8.5 by **[*****]** and (ii) assume full and exclusive control and responsibility for all activities being performed or to be performed by KemPharm with respect to any Product hereunder, including all Development activities being conducted by KemPharm under any PDP and all further interactions with Regulatory Authorities with respect to any Product; provided, that such elections under this Section 13.4(b) shall not be Company's sole remedy with respect to the Serious Material Breach by KemPharm.

(c) Material Breach Dispute. Any dispute regarding an alleged material breach of this Agreement shall be resolved in accordance with Article 14 hereof.

13.5 Termination Due to Bankruptcy.

(a) A Party may terminate this Agreement in its entirety immediately upon written notice to the other Party, if the other Party files in any court or agency pursuant to any statute or regulation of any state, country or jurisdiction, a petition in bankruptcy or insolvency or for reorganization or for an arrangement or for the appointment of a receiver or trustee of such other Party or of its assets, or if the other Party proposes a written agreement of composition or extension of its debts, or if the other Party is served with an involuntary petition against it, filed in any insolvency proceeding, and such petition is not dismissed within **[*****]** days after the filing thereof, or if the other Party proposes or becomes a party to any dissolution or liquidation, or if the other Party makes an assignment for the benefit of its creditors (each of the foregoing, a "**Bankruptcy Event**").

(b) If this Agreement is terminated due to the rejection of this Agreement by or on behalf of a Party (the "**Bankrupt Party**") under Section 365 of the United States Bankruptcy Code (the "**Code**") or an equivalent type of provision under a relevant Law applicable to the Bankrupt Party, all licenses and rights to licenses granted under or pursuant to this Agreement by the Bankrupt Party to the other Party (the "**Non-Bankrupt Party**") are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the Code, licenses of rights to "intellectual property" as defined under Section 101(35A) of the Code. The Parties agree that the Non-Bankrupt Party, as a licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the Code, and that upon commencement of a bankruptcy proceeding by or against the Bankrupt Party under the Code, the Non-Bankrupt Party shall be entitled to a complete duplicate of, or complete access to (as the Non-Bankrupt Party deems appropriate), any such intellectual property and all embodiments of such intellectual property. Such intellectual property and all embodiments thereof shall be promptly delivered to the Non-Bankrupt Party (i) upon any such commencement of a bankruptcy proceeding upon written request therefor by the Non-Bankrupt Party, unless the Bankrupt Party elects to continue to perform all of its obligations under this Agreement, or (ii) if not delivered under (i) above, upon the rejection of this Agreement by or on behalf of the Bankrupt Party upon written request therefor by the Non-Bankrupt Party. The foregoing provisions are without prejudice to any rights the Non-Bankrupt Party may have arising under the Code or other applicable Law. The Parties intend for the substance of this Section 13.5(b) to apply worldwide, even if the Code does not expressly apply to the Bankrupt Party or to the Non-Bankrupt Party.

(c) Right of First Refusal. In addition to the foregoing, in the event of a Bankruptcy Event involving KemPharm, Company shall, to the extent allowed by Law, have a Right of First Refusal to purchase all of KemPharm's interest in the Product and the Licensed IP (the "**Additional Right of First Refusal**"). The Additional Right of First Refusal shall operate as follows:

(i) KemPharm (or other authorized representative of KemPharm, including a bankruptcy trustee) shall promptly send to Company a reasonably detailed written notification of any Bankruptcy Event.

(ii) KemPharm (or other authorized representative of KemPharm, including a bankruptcy trustee) shall promptly send to Company a written notification of any Third Party offer made on the Compound, Product or Licensed IP. For a period of up to **[*****]** days after Company receives such notice (such period, the "**Additional Right of First Refusal Notice Period**"), it shall notify KemPharm of its intention to exercise its Additional Right of First Refusal. In the event Company exercises its Additional Right of First Refusal, the terms of the Third Party offer shall become binding upon Company and KemPharm. For the avoidance of doubt, KemPharm shall not enter into any agreement with a Third Party relating to KemPharm's interest in the Products or Licensed IP during the Additional Right of First Refusal Notice Period.

13.6 Effect of Termination. Upon any early termination of this Agreement (but not expiration), the following shall apply, in addition to any other rights and obligations under this Agreement, with respect to such Product(s) and country(ies) as are the subject of such termination:

(a) Licenses. All licenses and other rights granted by KemPharm to Company under this Agreement shall terminate. At KemPharm's request, if this Agreement is terminated by Company pursuant to Sections 13.2, Company shall negotiate in good faith a grant by Company or its Affiliates to KemPharm of a milestone (including an up-front payment) and royalty-bearing license in the Field under any Company IP necessary to make, have made, import, use, offer to sell and sell such Product(s). Such license shall contain such customary representations, warranties, covenants and agreements satisfactory in form and substance to the Parties and their legal advisors as are necessary or appropriate for transactions of this type. For the avoidance of doubt, such obligation to negotiate in good faith does not impose on either Party an obligation to enter into an agreement for the grant of such a license if the Parties cannot agree through such good faith negotiations on the terms and conditions of such license.

(b) Regulatory Materials; Data. If this Agreement is terminated by KemPharm pursuant to Section 13.3, 13.4, or 13.5, Company shall transfer and assign to KemPharm or its designee all Regulatory Materials, including Regulatory Approvals, prepared or obtained by or on behalf of Company prior to the date of such termination to the extent solely related to such Product(s) and country(ies) and to the extent such transfer and assignment is possible under applicable Law in the Territory. Company shall also promptly transfer and/or assign to KemPharm all Data, including pharmacovigilance data, generated under this Agreement (whether generated by or on behalf of KemPharm or Company), in Company's Control as of the effective date of termination to the extent solely related to such Product(s) and country(ies). Company shall have the right to retain one copy of such transferred Regulatory Materials and Data for record-keeping purposes. In addition, each Party shall promptly return or destroy, at the other Party's election, all Confidential Information of such Party.

(c) Transition Assistance. Except to the extent this Agreement is terminated by Company pursuant to Section 13.2, 13.4 or 13.5 and to the extent not prohibited by Law, Company shall wind down any ongoing clinical trials with respect to such Product(s) or, at KemPharm's option and upon KemPharm's request, provide such assistance as may be reasonably necessary for KemPharm to assume responsibility for the conduct of such clinical trials. Additionally, Company shall provide KemPharm with copies of any promotional and marketing materials generated by or on behalf of Company with respect to the Products prior to the effective date of early termination, except to the extent this Agreement is terminated by Company pursuant to Section 13.2, 13.4 or 13.5.

(d) Cost. If this Agreement is terminated by KemPharm pursuant to Section **[*****]**, Company shall bear its own costs incurred under Sections **[*****]**; otherwise KemPharm shall reimburse Company for all such costs.

(e) Inventory. KemPharm shall have the right, but not the obligation to purchase any and all of the inventory of the Products, including any samples and/or ingredients, held by Company or its Affiliates or Sublicensees as of the date of termination, at a price equal to **[*****]**.

(f) Partial Termination. For the avoidance of doubt, if this Agreement is terminated with respect to only one or more Product(s) or country(ies), then this Section 13.7 shall apply only to such terminated Product(s) or country(ies).

(g) Survival of Sublicenses. Upon any termination of this Agreement, each of Company's Sublicensees shall continue to have the rights and license set forth in its sublicense agreements, which agreements shall be automatically assigned to KemPharm; provided, however, that such Sublicensee is not then in breach of any of its material obligations under its sublicense agreement.

(h) Diligence Obligations. Immediately following Company's notification of termination to KemPharm pursuant to Sections 13.2 or 13.4(a), the diligence obligations in Section 4.2 and Section 6.4 shall no longer apply and Company shall have the right to wind-down all then on-going Development, manufacturing and/or Commercialization activities.

13.7 Survival. Termination or expiration of this Agreement shall not affect rights or obligations of the Parties under this Agreement that have accrued prior to the date of termination or expiration. Notwithstanding anything to the contrary, the following provisions shall survive any expiration or termination of this Agreement: Articles 1, 8 (only with respect to any payment obligations that accrued prior to the date of termination or expiration), 11, 12 (for the period of time referenced in Section 12.1), 14, and 15, and Sections 9.1, 10.5, 13.6, 13.7 and 13.8.

13.8 Accrued Liabilities; Termination Not Sole Remedy. Expiration or termination of this Agreement shall not relieve the Parties of any liability that accrued hereunder prior to the effective date of such termination. In addition, termination is not the sole remedy under this Agreement and, whether or not termination is affected and notwithstanding anything contained in this Agreement to the contrary, all other remedies under this Agreement or at Law or in equity shall remain available, except as agreed to otherwise herein.

ARTICLE 14
DISPUTE RESOLUTION

14.1 Disputes; Internal Resolution. The Parties recognize that disputes as to certain matters may from time to time arise that relate to either Party's rights and/or obligations hereunder. It is the objective of the Parties to establish procedures to facilitate the resolution of disputes arising under this Agreement in an expedient manner by mutual cooperation. To accomplish this objective, the Parties agree that, if a dispute arises under this Agreement with respect to which a Party does not have final decision-making authority pursuant to Section 3.5, and the Parties are unable to resolve such dispute within **[*****]** days after such dispute is first identified by either Party in writing to the other, the Parties shall refer such dispute to the Executive Officers for attempted resolution by good faith negotiations within **[*****]** days after such notice is received, which shall include at least one (1) in person meeting of the Executive Officers within **[*****]** days after such notice is received. If the dispute is not resolved within such **[*****]** days, either Party may resolve such dispute in accordance with Section 14.2.

14.2 Governing Law. Resolution of all disputes and any remedies relating thereto, shall be governed by and construed under the laws of the State of Delaware, U.S., without giving effect to any choice of law principles that would require the application of the laws of a different state. Each of the Parties hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of Delaware for any matter arising out of or relating to this Agreement and the transactions contemplated hereby and agrees not to commence any litigation relating thereto except in such courts. Each of the Parties hereby irrevocably and unconditionally waives any objection to the laying of venue of any matter arising out of this Agreement or the transactions contemplated hereby in the courts of the State of Delaware and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such matter brought in any such court has been brought in an inconvenient forum.

ARTICLE 15
MISCELLANEOUS

15.1 Entire Agreement; Amendment. This Agreement, including the Exhibits hereto, sets forth the complete, final and exclusive agreement and all the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties hereto with respect to the subject matter hereof and supersedes, as of the Effective Date, all prior and contemporaneous agreements and understandings between the Parties with respect to the subject matter hereof, including any pre-existing confidentiality agreement between the Parties related to the subject matter of this Agreement. The foregoing shall not be interpreted as a waiver of any remedies available to either Party as a result of any breach, prior to the Effective Date, by the other Party of its obligations under the Confidentiality Agreement. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties other than as are set forth in this Agreement. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party.

15.2 Force Majeure. Both Parties shall be excused from the performance of their obligations under this Agreement to the extent that such performance is prevented by force majeure and the nonperforming Party promptly provides notice of the prevention to the other Party. Such excuse shall be continued so long as the condition constituting force majeure

continues and the nonperforming Party takes reasonable efforts to remove the condition. For purposes of this Agreement, force majeure shall include conditions beyond the reasonable control of the applicable Party, which may include an act of God, war, civil commotion, terrorist act, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe, and failure of plant or machinery.

15.3 Notices. Any notice required or permitted to be given under this Agreement shall be in writing, shall specifically refer to this Agreement, and shall be addressed to the appropriate Party at the address specified below or such other address as may be specified by such Party in writing in accordance with this Section 15.3, and shall be deemed to have been given for all purposes (a) when received, if hand-delivered or sent by a reputable courier service, or (b) **[*****]** Business Days after mailing, if mailed by first class certified or registered airmail, postage prepaid, return receipt requested.

If to KemPharm: KemPharm, Inc.
2500 1180 Celebration Blvd., Suite 103
Celebration, Florida 34747
Attn: R. LaDuane Clifton, CFO, Secretary and Treasurer

with copies to, which shall not constitute notice:

Cooley LLP
One Freedom Square
Reston, VA 20190-5656
Attn: Brent Siler, Esq.

If to Company: Boston Pharmaceuticals Holdings SA
1 Avenue Giuseppe-Motta 31-37
c/o Bemido SA, 1202
Genève, Switzerland

with copies to, which shall not constitute notice:

Gurnet Point Capital
55 Cambridge Parkway, Suite 401
Cambridge, MA, 02142
Attn: James Singleton, Esq.

And

Gunderson Dettmer LLP
One Marina Park Drive
Suite 900
Boston, MA 02110
Attn: Timothy H. Ehrlich, Esq.

15.4 No Strict Construction; Headings. This Agreement has been prepared jointly by the Parties and shall not be strictly construed against either Party. Ambiguities, if any, in this Agreement shall not be construed against any Party, irrespective of which Party may be deemed to have authored the ambiguous provision. The headings of each Article and Section in this Agreement have been inserted for convenience of reference only and are not intended to limit or expand on the meaning of the language contained in the particular Article or Section. Except where the context otherwise requires, the use of any gender shall be applicable to all genders.

15.5 Assignment.

(a) Except as set forth in this Section 15.5, neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other Party, except that either Party may make such an assignment without the other Party's express written consent to its Affiliates or its successor in interest to all or substantially all of its business or asset to which this Agreement relates. Notwithstanding the foregoing, Company acknowledges and consents to the collateral assignment by KemPharm of all of its rights under this Agreement to DPDF in accordance with the Facility Agreement Documents.

(b) KemPharm shall not assign or transfer any Licensed IP or its interest in any Joint IP to any of its Affiliates or any Third Party without the prior written consent of Company, except (i) to a Person to whom the rights or obligations hereunder are assigned by KemPharm in accordance with the first sentence of Section 15.5(a), or (ii) pursuant to the Facility Agreement Documents (the security interests in the Licensed IP granted to DPDF pursuant to the Facility Agreement Documents being hereby acknowledged by Company).

(c) Without limiting the foregoing, if KemPharm either receives a bona fide offer that its Board of Directors intends to accept, or the Board of Directors of KemPharm decides to sell, assign, contribute, convey, grant or otherwise transfer to any Third Party (other than DPDF) or any of KemPharm's Affiliates all or any of KemPharm's rights to receive payment and the corresponding royalty reports under this Agreement (each a "**Payment Assignment**"), then, within **[*****]** Business Days after KemPharm's receipt of, or the Board of Directors' decision with respect to, such Payment Assignment, KemPharm shall provide Company with written notice (the "**Payment Assignment Notice**") of the existence of such potential Payment Assignment. During the Exclusive Period (as defined below), Company shall have a right of first negotiation as follows: (a) KemPharm shall negotiate in good faith with Company regarding any Payment Assignment proposal which Company elects to deliver to KemPharm during such period, and (b) KemPharm shall not enter into a binding agreement regarding any Payment Assignment with any Third Party unless approved by Company in writing. "**Exclusive Period**" means the period (a) beginning on **[*****]** and (b) ending **[*****]** days after the date that KemPharm has delivered the Payment Assignment Notice to Company. KemPharm shall not enter into any binding agreement with any Third Party regarding a Payment Assignment until after its compliance with this Section 15.5(c) for the Exclusive Period. If KemPharm and Company do not enter into a binding agreement with respect to a Payment Assignment within the Exclusive Period, then KemPharm may pursue the Payment Assignment with any Third Party, including the Third Party that triggered the Payment Assignment Notice, if applicable, for a period of **[*****]** months following the end of the Exclusive Period. Prior to executing any definitive agreement with such Third Party in regards to any Payment Assignment,

KemPharm shall provide Company with a written summary of the material terms of the offer proposed by such Third Party and Company shall have **[*****]** Business Days following receipt of such written summary from KemPharm to notify KemPharm whether or not Company agrees to enter into the Payment Assignment with KemPharm on the same economic terms as offered by such Third Party ("**Payment ROFR**"). If Company exercises its Payment ROFR in a timely manner, then the Parties will execute such documents, including (as necessary) an amendment to this Agreement, to memorialize the Payment Assignment. If Company fails to exercise its Payment ROFR, then KemPharm will be free to continue to pursue the original Payment Assignment with the original Third Party that triggered the original Payment Assignment Notice for the duration of such **[*****]** month period. If KemPharm receives an additional Payment Assignment from a new Third Party during the **[*****]** month period described above, or KemPharm does not enter into a Payment Assignment transaction with the original Third Party that triggered the Payment Assignment Notice within the aforementioned **[*****]** month period and subsequently receives a bona fide offer for a Payment Assignment from a different Third Party that the KemPharm Board of Directors intends to accept, then KemPharm shall deliver an additional Payment Assignment Notice to Company and a new Exclusive Period shall commerce upon such delivery with regard to such new Third Party. Company agrees that in connection with any Payment Assignment, unless otherwise prohibited by Law, upon written notice from KemPharm, Company will deliver any future payments contemplated by this Agreement, together with the royalty reports contemplated by Section 8.5(e) of this Agreement, to the extent and in accordance with the directions in such written notice. For the avoidance of doubt, (i) nothing contained in this Section 15.5(c) shall constitute any approval of, or consent to, any Payment Assignment, to the extent such Payment Assignment would be prohibited under the Facility Agreement Documents, and (ii) the provisions of this Section 15.5(c) shall not apply to any transfer or assignment effected pursuant to the Facility Agreement Documents (or the security interests granted thereunder).

(d) Any permitted assignee shall assume all obligations of its assignor under this Agreement. Any assignment or attempted assignment by either Party in violation of the terms of this Section 15.5 shall be null, void and of no legal effect.

15.6 Change of Control. In the event of a Change of Control of KemPharm in which a Company Competitor acquires control (as defined in Section 1.3) of KemPharm, then as from the date of such Change of Control:

(a) Company shall cease to have any reporting obligations hereunder toward KemPharm or its successor entity, and in particular the obligations of Company under Section 4.7(b) shall no longer apply; and

(b) KemPharm or its successor entity shall promptly assign, and shall, as applicable, cause its Affiliates to promptly assign to Company, to the extent assignable, all right, title, and interest in, to and under the Licensed Patents, including the right to file, prosecute and maintain such Licensed Patents in the Territory, and provide Company with such assistance as Company shall request to effect such assignment; provided, however, that (i) all such Licensed Patents shall continue to be deemed Licensed Patents only for the purposes of Section 8.5 of this Agreement, and (ii) should this Agreement ever be terminated by Company pursuant to Section 13.2, subsequent to such an assignment pursuant to this Section 15.6(b), Company shall reassign,

and shall, as applicable, cause its Affiliates to reassign, to KemPharm all right, title and interest in, to and under such Licensed Patents, including the right to file, prosecute and maintain such Licensed Patents in all the countries of the Territory, and provide KemPharm with such assistance as KemPharm shall reasonably request to effect such reassignment.

15.7 Performance by Affiliates. Each Party may discharge any obligations and exercise any right hereunder through any of its Affiliates. Each Party hereby guarantees the performance by its Affiliates of such Party's obligations under this Agreement and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance. Any breach by a Party's Affiliate of any of such Party's obligations under this Agreement shall be deemed a breach by such Party, and the other Party may proceed directly against such Party without any obligation to first proceed against such Party's Affiliate.

15.8 Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

15.9 Severability. If any one or more of the provisions of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction from which no appeal can be or is taken, the provision shall be considered severed from this Agreement and shall not serve to invalidate any remaining provisions hereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

15.10 No Waiver. Any delay in enforcing a Party's rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of such Party's rights to the future enforcement of its rights under this Agreement, except with respect to an express written and signed waiver relating to a particular matter for a particular period of time.

15.11 Independent Contractors. Each Party shall act solely as an independent contractor, and nothing in this Agreement shall be construed to give either Party the power or authority to act for, bind, or commit the other Party in any way. Nothing herein shall be construed to create the relationship of partners, principal and agent, or joint-venture partners between the Parties.

15.12 English Language. This Agreement was prepared in the English language, which language shall govern the interpretation of, and any dispute regarding, the terms of this Agreement.

15.13 Interpretation. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." All references herein to Articles, Sections, and Schedules shall be deemed references to Articles and Sections of, and Schedules to, this Agreement unless the context shall otherwise require. Except where the context otherwise requires, wherever used, the singular shall include the plural, the plural the singular, the use of any gender shall be applicable to all genders and the word "or" is used in the inclusive sense (and/or). Whenever this Agreement refers to a number of days, unless otherwise specified, such number refers to calendar days. Each Party represents that it has been represented by legal

counsel in connection with this Agreement and acknowledges that it has participated in the drafting hereof. In interpreting and applying the terms and provisions of this Agreement, the Parties agree that no presumption will apply against the Party which drafted such terms and provisions. Unless the context otherwise requires, countries shall include territories.

15.14 Counterparts. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

{Signature Page Follows}

IN WITNESS WHEREOF, the Parties have executed this Collaboration and License Agreement in duplicate originals by their duly authorized officers as of the Effective Date.

KEMPHARM, INC. ("**KemPharm**")

By: /s/ Travis C. Mickle
Name: Travis C. Mickle, Ph.D.
Title: President and Chief Executive Officer

BOSTON PHARMACEUTICALS HOLDINGS SA ("**Company**")

By: /s/ Christopher Viehbacher
Name: Christopher Viehbacher
Title: Director

By: /s/ Frederic Boder
Name: Frederic Boder
Title: Director

{Signature Page to Collaboration and License Agreement}

LIST OF EXHIBITS

Exhibit A:	**Licensed Patents**
Exhibit B:	**Initial Product Development Plan for KP415**
Exhibit C:	**Form of Proof of Concept Report and Data Package**
Exhibit D:	**KemPharm Product Marks**
Exhibit E:	**List of Pre-Approved CROs**
Exhibit F:	**Key Employees**

Exhibit A
Licensed Patents

[*****]

Exhibit B
Initial Product Development Plan for KP415

[*****]

Exhibit C
Form of Proof of Concept Report and Data Package

[*****]

Exhibit D
KemPharm Product Marks

[*****]

Exhibit E
List of Pre-Approved CROs

[*****]

Exhibit F
Key Employees

[*****]

KemPharm Announces Entry into Definitive Collaboration and License Agreement for its ADHD Candidates, KP415 and KP484, with an Affiliate of Gurnet Point Capital

Up to a Total of $493 Million in Upfront, Sales and Development Milestone Payments, as well as Royalties on Net Sales

KemPharm Will Host a Conference Call and Live Audio Webcast with Slide Presentation Today, Wednesday, September 4, 2019, at 10:00 a.m. ET

Celebration, FL – September 4, 2019 – KemPharm, Inc. (Nasdaq: KMPH), a specialty pharmaceutical company engaged in the discovery and development of proprietary prodrugs, today announced its entry into a definitive collaboration and license agreement (the License Agreement) with an affiliate of Gurnet Point Capital (GPC), a private investment firm focused on the life sciences and medical technology sectors. The License Agreement provides for an exclusive worldwide license to develop, manufacture and commercialize KemPharm's product candidates containing serdexmethylphenidate (SDX) and d-methylphenidate (d-MPH), including KemPharm's attention deficit and hyperactivity disorder (ADHD) product candidates, KP415 and KP484.

KemPharm also announced its entry into a debt exchange agreement and other amendments to its senior debt facility (the Exchange Agreement) with funds managed by Deerfield Management Company, L.P. (Deerfield), potentially reducing its debt outstanding by up to $22 million over a period of 240 days, and up to $30 million, in the aggregate.

Under the terms of the License Agreement, KemPharm will receive an upfront payment of $10 million, and is eligible to receive pre-approval cost reimbursements, regulatory milestone payments both prior to and upon approval, and sales milestone payments totaling as much as $483 million, as well as tiered royalty payments on a product-by-product basis for net sales under the License Agreement. These royalty rates range, on a product-by-product basis, from a percentage in the high single digits up to the mid-twenties for U.S. net sales, and a percentage in the low to mid-single digits of net sales in each country outside of the U.S.

Under the License Agreement, GPC also receives an option to certain other KemPharm pipeline programs, including KP879 and KP922. KP879 is KemPharm's prodrug product candidate which is also based on SDX and intended for the treatment of Stimulant Use Disorder (SUD). KP922 is KemPharm's newly discovered prodrug of amphetamine which is intended for the treatment of ADHD.

"We believe Gurnet Point Capital is an ideal partner for KemPharm in the ongoing development and potential commercialization of KP415 and KP484, product candidates that we believe have the potential to reshape the ADHD treatment landscape," said Travis Mickle, Ph.D., President and Chief Executive Officer of KemPharm. "By partnering with GPC, KemPharm has aligned itself with an organization that shares our excitement for the large and growing ADHD market, agrees with the value that KP415 can potentially bring to patients and physicians, if approved, and has the experience, resources and long-term commitment to maximize the commercial potential of both KP415 and KP484."

“We are pleased to announce our partnership with KemPharm and to support with investment and deep expertise its focus on bringing the next-generation of ADHD treatments to physicians, patients and their families,” said Dr. Sophie Kornowski, Senior Partner at GPC. “We believe KP415 and KP484 are significant innovations that have the potential to address unmet medical needs for patients and physicians in this important therapeutic area. Our first priority will be to support KemPharm in achieving regulatory approval, and then to successfully launch KP415 as rapidly as possible, if approved. In addition, we are impressed by KemPharm’s prodrug discovery and development capabilities, and we look forward to the potential to collaborate with the KemPharm team on other pipeline product candidates in the future.”

RBC Capital Markets served as KemPharm’s exclusive financial advisor.

KemPharm Enters into Debt Exchange Agreement and Other Amendments to its Senior Debt Facility with Deerfield:

Contemporaneous with execution of the License Agreement, KemPharm also entered into the Exchange Agreement with Deerfield, whereby the Company’s total outstanding debt may be reduced by up to $22 million over a period of 240 days, and up to $30 million in the aggregate. Specifically, on September 4, 2019, Deerfield initially exchanged principal amount of $3 million of KemPharm’s 5.50% Senior Convertible Notes due 2021 (2021 Notes) for 1,499,894 shares of KemPharm’s Common Stock and 1,576 shares of KemPharm’s Series B-1 preferred stock. Each share of Series B-1 Preferred Stock is convertible into 1,053 shares of Common Stock, based on a conversion price of $1,000 divided by $0.9494, which represents the last sale price of the Company’s Common Stock on the Nasdaq Global Market on September 3, 2019 (the Last Sale Price). In addition, under the Exchange Agreement, KemPharm granted Deerfield a right to exchange, at Deerfield’s option, up to an additional $27 million principal of the 2021 Notes into a combination of KemPharm’s Common and/or Series B-2 Preferred Stock according to the terms and conditions of the Exchange Agreement, including limits as to the principal amount that can be exchanged prior to specific dates therein.

Under the Exchange Agreement, KemPharm and Deerfield also amended Deerfield’s 9.75% Senior Convertible Note (the 2014 Note) to (i) postpone the due date of the principal and interest payment originally due on June 2, 2019, to June 1, 2020; (ii) allow KemPharm to add accrued interest to principal in lieu of quarterly cash interest payments until the maturity date; and (iii) reduce the 9.75% coupon rate on the 2014 Note to 6.75% for the remainder of the term of the 2014 Note.

“Taken together, the License Agreement and the Exchange Agreement provide the opportunity to transform our financial position; we have secured a commercial partnership for our two co-lead ADHD candidates, reduced external development spending, reduced interest expense and cash interest payments, and created the possibility of significant balance sheet improvement through potential debt reduction over the next eight months,” said LaDuane Clifton, CPA, KemPharm’s Chief Financial Officer, Secretary and Treasurer. “The development cycle for KP415 is nearing its natural completion as we prepare to submit the NDA by the end of this year, and future development costs for KP484 will be the responsibility of the licensee. Combined with our continuing efforts to contain general and administrative costs, KemPharm’s near-term cash requirements have been reduced, allowing us to fully support our partners and continue to develop our product candidate pipeline.”

KemPharm Enhances Pipeline with the Addition of KP922, a Prodrug of Amphetamine for the Treatment of ADHD

KP922 is KemPharm's newly discovered prodrug of amphetamine designed for the treatment of ADHD. KP922 offers the potential to address several prescriber and patient needs with amphetamine-based ADHD medications, including changing the overall pharmacokinetic profile and the ability to lower the abuse potential of the drug. Developed via KemPharm's LAT™ technology, KP922 is considered a new molecular entity and is eligible for patent protection as a novel composition of matter and may also be eligible to use the 505(b)(2) NDA pathway.

Amphetamine remains the most widely prescribed treatment regimen for ADHD with over 46 million prescriptions written in 2018, representing approximately 64% of the ADHD market in 2018.

Dr. Mickle stated, "We are extremely excited to announce the discovery of KP922, our prodrug of amphetamine, and the opportunity to potentially add this to our collaboration with GPC in the future. Like KP415 and KP484, we believe KP922 could address several needs that are unmet by current amphetamine-based products, including changing the overall pharmacokinetic profile and lowering the abuse potential. Additionally, the discovery of KP922 again demonstrates the potential of our LAT™ technology to allow KemPharm to develop new prodrugs that improve the properties of existing drugs by identifying pharmaceutical product opportunities where conversion to a prodrug could enable better treatment outcomes, alleviate unwanted or unintended side-effects, or enhance the marketability of the drug."

Conference Call Information:

KemPharm will host a conference call and live audio webcast with a slide presentation today, Wednesday, September 4, 2019, at 10:00 a.m. ET. Interested participants and investors may access the conference call by dialing either:

- (866) 395-2480 (U.S.)
- (678) 509-7538 (international)
- Conference ID: 5286552

An audio webcast with slide presentation will be accessible via the Investor Relations section of the KemPharm website http://investors.kempharm.com/. An archive of the webcast and presentation will remain available for 90 days beginning later today, September 4, 2019, at approximately 6:00 p.m. ET.

Details about the Series B-1 and Series B-2 Preferred Stock:

The Series B-2 Preferred Stock will be convertible into the number of shares of Common Stock equal to $1,000 divided by a conversion price equal to the greater of (i) the 15-day volume-weighted average price (VWAP) of KemPharm's Common Stock as of the date of Deerfield's optional exchange, or (ii) the Last Sale Price. If Deerfield chooses to convert any principal amount of the 2021 Notes into shares of Common Stock, then such Common Stock will be issued at a price per share equal to the greater of (i) the 15-day VWAP of KemPharm's Common Stock as of the date of Deerfield's optional exchange, or (ii) the Last Sale Price. There are an aggregate of 1,659,996 shares of Common Stock issuable upon conversion of the Series B-1 Preferred Stock and up to 28,439,015 shares of Common Stock may be issued in connection with any optional exchanges under the Exchange Agreement, including any shares of Common Stock which may be issued upon conversion of shares of Series B-2 Preferred Stock, in each case, subject to adjustment to reflect stock splits and similar events. Both the Series B-1 and B-2 Preferred Stock have a nominal liquidation preference and, thereafter, will share in any distribution with the Company's Common Stock or other outstanding shares of preferred stock on an as-converted to Common Stock basis.

About KP415 and KP484:

KP415 is KemPharm's prodrug product candidate being developed for the treatment of ADHD. KP415 consists of SDX, co-formulated with immediate-release d-MPH. KP415 is designed to address unmet needs with currently marketed methylphenidate ADHD treatments, including earlier onset of therapy, longer duration of therapy and consistency of therapeutic effect. In addition, the SDX component of KP415 may offer the possibility of lower abuse potential.

KP415's safety and efficacy were assessed via a multicenter, randomized, parallel, double-blind, placebo-controlled analog laboratory classroom clinical trial in 150 children aged 6-12 years old with a diagnosis of ADHD. Results from this pivotal study of KP415 met the primary endpoints for efficacy, and secondary endpoints suggesting onset of action at 30 minutes and duration of effect up to 13 hours.

KP415 was also the subject of a Human Abuse Potential (HAP) program, which was designed to assess the abuse potential of SDX in comparison to d-methylphenidate via the intravenous, intranasal and oral routes of abuse. The program included three FDA required clinical trials, KP415.A01 (oral), KP415.A02 (intranasal) and KP415.A03 (intravenous), as well as tampering studies. In summary, results from the HAP program suggest that the SDX component of KP415 may have lower abuse potential than relevant d-methylphenidate comparators when misused intranasally, intravenously, or orally at high doses.

KP484 is KemPharm's co-lead clinical development candidate being developed for the treatment of ADHD in patients that respond best when a very long duration of therapy is required. Similar to KP415, KP484 consists of SDX, KemPharm's prodrug of d-MPH. Preclinical and clinical studies of KP484 have demonstrated that the prodrug may produce a longer duration release of d-MPH compared to the most prescribed methylphenidate products. KP484 has the potential to be the first new methylphenidate-based product being developed with the intent to address the specific needs of the adult ADHD population.

About Gurnet Point Capital

Gurnet Point Capital is a unique healthcare fund founded by Ernesto Bertarelli and led by Christopher Viehbacher, who, together, have decades of expertise in an industry for which they share a passion, both as Chief Executives and as investors. With an initial allocation of $2 billion, GPC is investing long-term capital and supporting entrepreneurs in building a new generation of companies. Based in Cambridge, MA, its remit is global, encompassing life sciences and medical technologies. The fund invests across all stages of product development through to commercialization and does so with an approach that is a hybrid of venture and private equity investing strategies. www.gurnetpointcapital.com.

About KemPharm:

KemPharm is a specialty pharmaceutical company focused on the discovery and development of proprietary prodrugs to treat serious medical conditions through its proprietary LAT™ (Ligand Activated Therapy) technology. KemPharm utilizes its proprietary LAT™ technology to generate improved prodrug versions of FDA-approved drugs as well as to generate prodrug versions of existing compounds that may have applications for new disease indications. KemPharm's prodrug product candidate pipeline is focused on the high need areas of attention deficit hyperactivity disorder, or ADHD, and stimulant use disorder. KemPharm's co-lead clinical development candidates for the treatment of ADHD, KP415 and KP484, are both based on a prodrug of d-methylphenidate, but have differing duration/effect profiles. In addition, KemPharm has received FDA approval for APADAZ®, an immediate-release combination product containing benzhydrocodone, a prodrug of hydrocodone, and acetaminophen. For more information on KemPharm and its pipeline of prodrug product candidates visit www.kempharm.com or connect with us on Twitter, LinkedIn, Facebook and YouTube.

Caution Concerning Forward Looking Statements:

This press release may contain forward-looking statements made in reliance upon the safe harbor provisions of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements include all statements that do not relate solely to historical or current facts, including without limitation our proposed development and commercial timelines, and can be identified by the use of words such as “may,” “will,” “expect,” “project,” “estimate,” “anticipate,” “plan,” “believe,” “potential,” “should,” “continue” or the negative versions of those words or other comparable words. Forward-looking statements are not guarantees of future actions or performance. These forward-looking statements, including KemPharm’s future financial position and its ability to continue as a going concern, the potential to receive any royalty or milestone payments under the License Agreement, the potential future exchange of any principal of the 2021 Notes under the Exchange Agreement, the potential timing and outcome of the NDA submission for KP415 or any other product candidate, and the potential benefits of KP415, KP484, KP879 and KP922, are based on information currently available to KemPharm and its current plans or expectations and are subject to a number of uncertainties and risks that could significantly affect current plans. Risks concerning KemPharm’s business are described in detail in KemPharm’s Annual Report on Form 10-K for the year ended December 31, 2018, and KemPharm’s other Periodic and Current Reports filed with the Securities and Exchange Commission. KemPharm is under no obligation to (and expressly disclaims any such obligation to) update or alter its forward-looking statements, whether as a result of new information, future events or otherwise.

KemPharm Contacts:

Jason Rando / Maureen McEnroe
Tiberend Strategic Advisors, Inc.
212-375-2665 / 2664
jrando@tiberend.com
mmcenroe@tiberend.com

Exhibit 99.2

KemPharm

KP415/KP484 License Agreement with Gurnet Point Capital

September 4, 2019

Cautionary Note Regarding Presentation Information

This presentation contains forward-looking statements, including statements about any royalty or milestone payments under our license agreement, the exchange of any future principal under our exchange agreement, our plans to develop and commercialize our product candidates, our planned clinical trials for our prodrug product candidates, the timing of and our ability to obtain and maintain regulatory approvals for our product candidates, including expectations about our ability to use the 505(b)(2) pathway and expedited FDA review, the clinical utility of our product candidates and our intellectual property position. These statements involve substantial known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from the information expressed or implied by these forward-looking statements. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements we make. The forward-looking statements in this presentation represent our views as of the date of this presentation. These and other risks concerning our business are described in additional detail in our Quarterly Report on Form 10-Q filed with the SEC on August 13, 2019, and our other Periodic and Current Reports filed with the SEC. We anticipate that subsequent events and developments will cause our views to change. However, while we may elect to update these forward-looking statements at some point in the future, we have no current intention of doing so except to the extent required by applicable law. You should, therefore, not rely on these forward-looking statements as representing our views as of any date subsequent to the date of this presentation. Further, the information contained in this presentation speaks only as the date hereof. While we may elect to update the information in this presentation in the future, we disclaim any obligation to do so except to the extent required by applicable law.

This presentation also contains estimates and other statistical data made by independent parties and by us relating to market size and other data about our industry. This data involves a number of assumptions and limitations, and you are cautioned not to give undue weight to such estimates. In addition, projections, assumptions and estimates of our future performance and the future performance of the markets in which we operate are necessarily subject to a high degree of uncertainty and risk.

KP415/KP484 License Agreement Call Participants

- **Travis Mickle, Ph.D.** – President & Chief Executive Officer
- **R. LaDuane Clifton, CPA** – Chief Financial Officer, Secretary & Treasurer
- **Gordon K. "Rusty" Johnson** – Chief Business Officer

KP415/KP484 Collaboration and License Agreement

- ✓ **KemPharm has entered into a definitive collaboration and license agreement with an affiliate of Gurnet Point Capital (GPC)**
- ✓ **Up to a total of $493M in upfront, regulatory, development and sales milestone payments; plus royalty percentages of up to mid-20s of net sales**
  - Licensee granted exclusive worldwide licenses for KP415 and KP484, plus options to add KP879 and product candidates based on KP922, a new prodrug of amphetamine
  - KemPharm to manage all development activities and Licensee responsible for development costs under the license agreement
  - Licensee responsible for commercialization and manufacturing activities, seeking to build a best-in-class CNS sales and managed markets team, with KP415 as its leading product candidate
  - This collaboration is a unique opportunity to bring innovative products to ADHD patients and their families

Summary of Deal Terms

Upfront cash	– $10M, as well as reimbursement of certain pre-approval development costs for KP415
Development costs and activities	– Licensee covers development costs for KP415 post-approval, KP484, and if added, KP879 and KP922 – KemPharm manages development activities
Regulatory milestone payments	– Up to $63M at specified regulatory milestones, both prior to and upon approval, based upon timing and final label for KP415, and approval of KP484
Sales milestone payments	– Payments totaling up to $420M upon achievement of various tiers of annual U.S. Net Sales
Royalty payments	– Tiered royalty payments of up from a percentage in the high single digits to mid-20s of U.S. Net Sales – Tiered royalty payments from a percentage in the low to mid single digits for Net Sales in each country outside the U.S.

Gurnet Point Capital

- ✓ **GPC is a healthcare fund that invests long-term capital into life sciences and medical technology companies across all stages of project development**
  - Founded by Ernesto Bertarelli, former CEO of Serono, SA, and led by Christopher Viehbacher, Managing Partner and former CEO and board member of Sanofi, who together bring decades of expertise in an industry for which they share a passion
  - GPC brings significant experience at guiding novel drugs through development and commercialization, aided by its unique long-term investment horizon, which helps ensure development and commercial success
  - GPC's investment portfolio includes: Auregen BioTherapeutics, Axcella Health, Before Brands, Boston Pharmaceuticals, Corium International, Innocoll Holdings and Zikani Therapeutics

The ADHD and ER Methylphenidate Market Opportunity

- ~$12 billion ADHD market with prescription growth of >4% year-over-year
- The branded portion of the ADHD market was ~$6 billion in 2018 and more than 95% of these branded prescriptions are for extended release
- Methylphenidate (MPH) accounted for approximately 19.4 million TRx's and ~$4 billion in sales in 2018
- Market research indicates that prescribers perceive several unmet medical needs with current ADHD products and see the following potential KP415 features as key advantages
  - Duration of action (60%)
  - Lower abuse potential (52%)
  - Early onset of action (43%)
- Market research also indicates that prescribers estimate that MPH is given as the preferred first line of therapy for children under the age of 13 approximately 60% of the time

Source: Symphony Health, PHAST 2018

KP415 and KP484 Product Overviews

KP415

- Prodrug of d-MPH (SDX) with extended release properties, co-formulated with IR d-MPH
- Potential features and benefits:
  - Once-daily dosing
  - Earlier onset, long duration
  - Lower abuse potential
  - Patient-friendly dosage form
- Potential to be first MPH product approved for pre-school ages
- No generic equivalent product
- Composition-based patent expires in 2032; pending applications, if granted, may potentially expire in 2037; potentially NCE eligible

KP484

- Prodrug of d-MPH (SDX) with extended release properties
- Potential features and benefits
  - Once-daily dosing
  - Longer duration than other extended release ADHD products
  - Lower abuse potential
- No generic equivalent product
- Composition-based patent expires in 2032; pending applications, if granted, may potentially expire in 2037; potentially NCE eligible

KP879 and KP922 Product Overviews

KP879

- Stand-alone formulation of prodrug of d-MPH (SDX)
- Potential to be the first approved treatment option for Stimulant Use Disorder (SUD)
- Very gradual onset of blood concentrations of released d-MPH followed by sustained release
- Low oral, IN, and IV abuse potential
- May qualify for FDA fast track, breakthrough therapy and/or priority review
- May qualify for orphan designation depending on exact indication and target population

KP922

- Prodrugs of d-amphetamine with various release properties
- Product candidates can potentially be tailored to fit market opportunity
  - IR or ER
  - Co-formulated with various API's (stimulants, non-stimulants)
  - Low abuse potential
- No generic equivalent product
- Potential for long-lived composition of matter patent production

Deerfield Debt Exchange Agreement

✓ **KemPharm has simultaneously entered into debt amendment and exchange agreement with Deerfield**

- Exchange agreement reduces long-term debt by up to $30M and reduces the interest rate on senior debt to 6.75%
- Immediately, $3M of the 2021 Notes held by Deerfield have been exchanged into a combination of KMPH common and preferred shares, and Deerfield has an option to exchange another $27M at the greater of (i) 15-day VWAP as of date option is used, or (ii) $0.9494 ("Optional Exchange Price")
- The exchange agreement includes limits as to the principal amount that can be exchanged prior to specified dates
- Interest rate on the senior 2014 Note reduced to 6.75% from 9.75%; interest through maturity to be added to principal in lieu of cash payments
- Principal and interest payment originally due on June 2, 2019, has been extended to June 1, 2020

KemPharm Next Steps

- KP415
  - Work with GPC on review and NDA submission, expect to file in 2019
  - PDUFA date in 2020 based on anticipated NDA submission date
- KP484
  - Work with GPC to review and finalize the product development plan, expect to commence development following KP415's NDA filing
- APADAZ
  - Work with KVK to launch APADAZ in 2019
- KP879
  - File IND for KP879 in 2019
- KP922
  - Advance one or more product candidates to a potential IND filing in 2020
- Continue our efforts to reduce debt and cash burn
- Discovery and Research efforts ongoing in multiple therapeutic areas as we continue to develop our pipeline

KP415/KP484 License Agreement with Gurnet Point Capital

September 4, 2019