
**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): May 5, 2017

**INNOCOLL HOLDINGS
PUBLIC LIMITED COMPANY**

(Exact name of registrant as specified in its charter)

Ireland
(State or other jurisdiction of
incorporation)

001-37720
(Commission File Number)

N/A
(IRS Employer Identification
Number)

**Innocoll Holdings plc
Unit 9, Block D
Monksland Business Park
Monksland, Athlone
Ireland**

(Address of principal executive offices)

+353 (0) 90 648 6834
(Registrant's telephone number, including area code)

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

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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.

Loan Agreement

As previously announced, Innocoll Holdings plc, a public limited company incorporated in Ireland (the “Company”), issued an announcement (the “Rule 2.5 Announcement”) in accordance with Rule 2.5 of the Irish Takeover Panel Act 1997, Takeover Rules 2013, setting forth the terms of the recommended acquisition of the entire issued and to be issued ordinary share capital of the Company (the “Acquisition”) by Lough Ree Technologies Limited, an Irish private limited company and wholly-owned subsidiary of Gumet Point L.P. (“Gumet Bidco”), by means of a scheme of arrangement under Chapter 1 of Part 9 of the Irish Companies Act of 2014.

In connection with the Acquisition, on May 9, 2017, the Company (in its capacity as the Guarantor) and its wholly-owned subsidiary, Innocoll Pharmaceuticals Limited, an Irish private limited company (the “Borrower”) entered into a Loan and Guaranty Agreement (the “Loan Agreement”) with the parent of Gumet Bidco, Gumet Point L.P. acting through its general partner Waypoint International GP LLC (“Gumet Point”). Gumet Point may nominate any affiliate of Gumet Point from time to time to replace it as lender under the Loan Agreement (Gumet Point or any such replacement, the “Lender”). Pursuant to the Loan Agreement, upon the agreed upon drawdown date, the Lender will loan the Borrower an aggregate principal amount of up to \$10,000,000 (the “Loan”).

Under the terms of the Loan Agreement, the Loan will bear interest at a rate of 15% per annum. The principal amount of the Loan will be due and payable on December 31, 2017 (the “Non-Acquisition Term Loan Maturity Date”) (provided, that, if the Acquisition has occurred prior to such date, such date shall be automatically extended to the date that is 15 days after the maturity date of that certain Finance Contract, dated as of March 27, 2015 (the “Existing Facility”), by and among the Borrower, the Company and The European Investment Bank (“EIB”) (the “Acquisition Term Loan Maturity Date” and together with the Non-Acquisition Term Loan Maturity Date, each a “Term Loan Maturity Date”). Subject to certain exceptions, the Loan will be accelerated to become immediately due if the Company consummates certain alternative change in control proposals (other than the Acquisition) prior to the Non-Acquisition Term Loan Maturity Date.

The Company may prepay the principal amount and accrued interest of the Loan at any time and from time to time. However, if the Company voluntarily prepays the loan (i) on or prior to July 31, 2017, the Company will be required to pay a prepayment premium equal to 10% of the amount of the Loan being prepaid and (ii) on August 1, 2017 and thereafter until (but not including) the Non-Acquisition Term Loan Maturity Date, 5% of the amount of the Loan being prepaid. If the Company is required to prepay the loan pursuant to a mandatory prepayment (or if the commitments are terminated) (i) on or prior to July 31, 2017, Innocoll will be required to pay a premium equal to \$1,000,000 and (ii) on August 1, 2017 and thereafter until (but not including) the Non-Acquisition Term Loan Maturity Date, \$500,000 (provided that such fees shall be reduced by any additional fee paid by Innocoll in connection with a voluntary prepayment).

Repayment of the Loan will be secured by a security interest in favor of the Lender in all of the assets of the Borrower and negative pledge with respect to all of the assets of the Company. The security interest in favor of the Lender is subject and subordinate to an existing first priority security interest in favor of the EIB, the Borrower's existing lender. The security interests in favor of the Lender will be evidenced by the terms of an Equitable Charge over Shares between the Company and the Lender (the “Equitable Charge”) and a Debenture between the Borrower and the Lender (the “Debenture”), each of which will be executed in connection with the Loan.

The Loan Agreement and ancillary documents include certain affirmative covenants, including minimum worth of the Borrower, compliance with laws, maintenance of insurance, maintenance of assets, timely payment of taxes, notice of adverse events and other covenants typical for a loan of this nature. The Loan Agreement and ancillary documents include certain negative covenants, including limitations on liens on, and disposals of, assets of the Company and the Borrower, expenditure, acquisitions, indebtedness, guarantees, investments, hedging, change of business, merger and other covenants typical for a loan of this nature. The Loan Agreement and ancillary documents also include certain events of default, including payment defaults, defaults upon failure to perform or observe terms, covenants or agreements included in the Loan Agreement and ancillary documents, insolvency and bankruptcy defaults and dissolution and liquidation defaults and other events of default typical for a loan of this nature.

Upon entry into the Loan Agreement, the Company granted to Gumet Bidco a warrant (the "Warrant") to subscribe for up to 5% of the outstanding share capital of Innocoll as of December 31, 2017 for an exercise price of \$0.01 per Company share. The Warrant will be exercisable if the loan is not repaid in full by December 31, 2017.

Modification of a Material Definitive Agreement

On May 5, 2017, in order to obtain the consent of the EIB to enter into the Loan Agreement and to permit the Company to issue the Equitable Charge and the Debenture (i) the Company, the Borrower and the EIB entered into an Amendment and Waiver Agreement to modify certain terms of the Existing Facility (the "Amendment Agreement") and (ii) the Company, the Lender, the Borrower and the EIB entered into an Intercreditor Deed (the "Intercreditor Deed"). The Amendment Agreement permits the entry into the Loan Agreement and modifies certain terms of the Existing Facility, including the maturity date of the Existing Facility under the occurrence of certain events.

Pursuant to the terms of the Intercreditor Deed, payment of the interest and principal on the Loan and the security interests granted to the Lender pursuant to the ancillary agreements are subject and subordinate to the rights of the EIB. Under the terms of the Intercreditor Deed, the Lender may not move to collect on the assets of the Company or its subsidiaries, or obtain payment on the Loan prior to satisfaction in full of all obligations under the Existing Facility unless certain conditions are met.

Subject to the prior condition that the Company raises, prior to December 15, 2017, at least \$25 million through one or more equity financings, shareholder loans or licensing revenue and has at least \$25 million in cash on hand at December 30, 2017 (referred to as the "Extension Conditions"), the Intercreditor Deed provides that the Company may repay the Loan on December 30, 2017, prior to the repayment of the obligations under the Existing Facility, without such repayment constituting an event of default under the Existing Facility.

The Amendment Agreement further provides that, if on December 31, 2017, the Acquisition has not been effected and the Extension Conditions have not been achieved, the EIB has the right to demand repayment of all of the obligations outstanding under the Existing Facility on or after December 31, 2017 instead of having to wait until the existing maturity on the outstanding obligations.

A copy of the Loan Agreement is attached hereto as Exhibit 99.1 and is incorporated herein by reference. A copy of the Amendment Agreement is attached hereto as Exhibit 99.2 and is incorporated herein by reference. A copy of the Intercreditor Deed is attached hereto as Exhibit 99.3 and is incorporated herein by reference. A copy of the Warrant is attached hereto as Exhibit 99.4 and is incorporated herein by reference. The foregoing summary does not purport to be complete and is qualified in its entirety by reference to the attached Loan Agreement Amendment Agreement, Intercreditor Deed and Warrant.

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

Reference is made to the disclosure set forth under Item 1.01 of this Current Report on Form 8-K under the heading “Loan Agreement,” which is incorporated herein by reference.

Cautionary Statement Regarding Forward-Looking Statements

Certain statements included in this document are forward-looking and involve risks and uncertainties that could cause actual results to differ materially from those expressed or implied by such forward-looking statements. Forward-looking statements can typically be identified by the use of forward-looking terminology, such as “expects”, “believes”, “may”, “will”, “could”, “should”, “intends”, “plans”, “predicts”, “envisages”, “estimates”, “forecast”, “outlook”, “guidance”, “possible”, “projects”, “potential” or “anticipates” or other similar words and expressions and include, without limitation, any projections relating to results of operations and financial conditions of either Gumet Point, Gumet Bidco or the Company and their respective subsidiary undertakings from time to time, as well as plans and objectives for future operations, expected future revenues, financing plans, expected expenditures, expected synergies and divestments relating to Gumet Point, Gumet Bidco or the Company and discussions of Gumet Point’s, Gumet Bidco’s or the Company’s business plans. All forward-looking statements in this document made by Gumet Point and / or Gumet Bidco are based upon information known to Gumet Point and / or Gumet Bidco on the date of this document and all forward-looking statements in this document made by the Company are based upon information known to the Company on the date of this document. Except as expressly required by law, Gumet Point, Gumet Bidco and the Company disclaim any intent or obligation to update or revise these forward-looking statements. None of Gumet Point, Gumet Bidco or the Company undertake any obligation to update or revise any forward-looking statement, whether as a result of new information, future events or otherwise, save as may be required by law. Although none of Gumet Point, Gumet Bidco or the Company undertake any obligation to revise or update any forward-looking statements, whether as a result of new information, future events or otherwise, you are advised to consult any additional disclosures that any of Gumet Point, Gumet Bidco or the Company may make directly to you or through reports that any of Gumet Point, Gumet Bidco or the Company, in the future, may file with the SEC. Unless otherwise indicated, the information in this document is as of May 9, 2017.

It is not reasonably possible to itemize all of the many factors and specific events that could cause the forward-looking statements in this document to be incorrect or could otherwise have a material effect on the future operations or results of the Company. Further information on the primary risks of the business and the risk management of the Company is contained in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2016, which is filed with the SEC.

Important Additional Information to be Filed with the SEC

The Company, Gurnet and Gurnet Bidco are parties to a Transaction Agreement, dated April 4, 2017 (the “Transaction Agreement”). In connection with the Acquisition, on April 21, 2017, the Company filed with the SEC a preliminary proxy statement (the “Preliminary Proxy Statement”). The Company may also file other documents with the SEC regarding the Acquisition and will mail or otherwise provide to the Company’s securityholders the Definitive Proxy Statement (which will also constitute the Scheme Document) regarding the Acquisition when available. SECURITYHOLDERS ARE URGED TO READ THE DEFINITIVE PROXY STATEMENT (INCLUDING THE SCHEME DOCUMENT) AND OTHER RELEVANT DOCUMENTS FILED OR TO BE FILED WITH THE SEC AS WELL, AS ANY AMENDMENTS OR SUPPLEMENTS, THERETO CAREFULLY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE COMPANY, THE ACQUISITION AND RELATED MATTERS. Security holders may obtain free copies of the Preliminary Proxy Statement and will be able to obtain free copies of the Definitive Proxy Statement (including the Scheme Document) (when available) and other documents filed by the Company with the SEC at www.sec.gov. In addition, investors and shareholders will be able to obtain free copies of the Preliminary Proxy Statement and the Definitive Proxy Statement (including the Scheme Document) (when available) as well as other documents filed by the Company at www.innocoll.com.

Participants in the Solicitation

The Company, Gurnet Point and Gurnet Bidco and certain of its respective directors and executive officers and employees may be considered participants in the solicitation of proxies from the shareholders of the Company in respect of the transactions that will be contemplated by the Scheme Document/Definitive Proxy Statement. Information regarding the persons who may, under the rules of the SEC, be deemed participants in the solicitation of the shareholders of the Company in connection with the proposed transactions, including a description of their direct or indirect interests, by security holdings or otherwise, will be set forth in the Definitive Proxy Statement when it is filed with the SEC. Information regarding the Company’s directors and executive officers is contained in Amendment No. 1 to the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2016 (the “Form 10-K/A”), which is filed with the SEC. Information concerning the interests of the Company’s participants in the solicitation, which may, in some cases, be different than those of the Company’s shareholders generally is contained in the Company’s Form 10-K/A as well as the Preliminary Proxy Statement, which have been filed with the SEC, and will be set forth in the Definitive Proxy Statement relating to the Acquisition when it becomes available.

No Offer or Solicitation

This report is not intended to and does not constitute or form any part of an offer to purchase, sell, subscribe for, exchange or otherwise dispose of any securities, or the solicitation of an offer to purchase, sell, subscribe for, exchange or dispose of any securities or an invitation to purchase, sell, subscribe for, exchange or dispose of any securities or the solicitation of any vote or approval in any jurisdiction pursuant to the Acquisition or otherwise, nor shall there be any sale, issuance or transfer of securities in any jurisdiction in contravention of applicable law. The Acquisition will be made solely by means of the formal documentation for the Scheme (the “Scheme Document”) or, if applicable, the documents with respect to the Takeover Offer (the “Takeover Offer Document”), which will contain the full terms and conditions of the Acquisition, including details of how to vote in respect of the Acquisition. Any decision in respect of, or other response to, the Acquisition, should be made only on basis of the information contained in the Definitive Proxy Statement (including the Scheme Document). This report does not constitute a prospectus or a prospectus equivalent document. No offer of securities shall be made except by means of a prospectus meeting the requirements of section 10 of the Securities Act.

Statements Required by the Irish Takeover Rules

The Company's Directors accept responsibility for the information contained in this document, other than information relating to Gurnet Point, Gurnet Bidco, Gurnet Point Capital, the Gurnet Point Group, and the directors of Gurnet Bidco and the managers of Waypoint International GP LLC (in its capacity as general partner of Gurnet Point) and the members of their immediate families, related trusts and persons connected with them. To the best of the knowledge and belief of the Company's Directors (who have taken all reasonable care to ensure that such is the case), the information contained in this document for which they accept responsibility is in accordance with the facts and does not omit anything likely to affect the import of such information.

Piper Jaffray & Co., which is a securities broker-dealer registered with the U.S. Securities and Exchange Commission and subject to regulation by the SEC and the Financial Industry Regulatory Authority ("FINRA"), is acting as financial adviser exclusively for the Company and for no one else in connection with the Acquisition and the other matters referred to in this document, and will not be responsible to anyone other than the Company for providing the protections afforded to clients of Piper Jaffray or for providing advice in relation to the Acquisition or any other matters referred to in this document.

Rule 8 Dealing Disclosure Requirements

Under the provisions of Rule 8.3 of the Irish Takeover Rules, if any person is, or becomes, 'interested' (directly or indirectly) in 1% or more of any class of 'relevant securities' of the Company, all 'dealings' in any 'relevant securities' of the Company (including by means of an option in respect of, or a derivative referenced to, any such 'relevant securities') must be publicly disclosed by not later than 3:30 p.m. (New York time) on the 'business day' following the date of the relevant transaction. This requirement will continue until the date on which the 'offer period' ends. If two or more persons cooperate on the basis of any agreement, either express or tacit, either oral or written, to acquire an 'interest' in 'relevant securities' of the Company, they will be deemed to be a single person for the purpose of Rule 8.3 of the Irish Takeover Rules.

Under the provisions of Rule 8.1 of the Irish Takeover Rules, all 'dealings' in 'relevant securities' of the Company by Gurnet Point or Gurnet Bidco or by any party acting in concert with any of them, must also be disclosed by no later than 11:59 a.m. (New York time) on the 'business day' following the date of the relevant transaction.

A disclosure table, giving details of the companies in whose 'relevant securities' 'dealings' should be disclosed, can be found on the Panel's website at www.irishtakeoverpanel.ie.

'Interests in securities' arise, in summary, when a person has long economic exposure, whether conditional or absolute, to changes in the price of securities. In particular, a person will be treated as having an 'interest' by virtue of the ownership or control of securities, or by virtue of any option in respect of, or derivative referenced to, securities.

Terms in quotation marks are defined in the Irish Takeover Rules, which can be found on the Irish Takeover Panel's website. If you are in any doubt as to whether you are required to disclose a dealing under Rule 8, please consult the Irish Takeover Panel's website at www.irishtakeoverpanel.ie or contact the Panel on telephone number +353 1 678 9020 or fax number +353 1 678 9289.

Rounding Adjustments

Certain figures included in this document have been subjected to rounding adjustments. Accordingly, figures shown for the same category presented in different tables may vary slightly and figures shown as totals in certain tables may not be an arithmetic aggregation of the figures that precede them.

No Profit Forecast / Asset Valuation

No statement in this document is intended to constitute a profit forecast for any period, nor should any statements be interpreted to mean that earnings, earnings per share, losses or losses per share will necessarily be greater or lesser than those for the relevant preceding financial periods for Innocoll as appropriate. No statement in this document constitutes an asset valuation.

General

Certain capitalized words used in this document and not herein defined have the meanings given to such words in the Rule 2.5 Announcement. The bases and sources set out in the Rule 2.5 Announcement have been used in this document, unless otherwise stated or the context otherwise requires.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

The following exhibits are filed with this Current Report on Form 8-K:

<u>Exhibit No.</u>	<u>Description</u>
99.1	Loan and Guaranty Agreement, dated May 9, 2017, by and among Innocoll Holdings plc, Innocoll Pharmaceuticals Limited and Gumet Point L.P.
99.2	Amendment and Waiver Agreement, dated May 5, 2017, by and between Innocoll Holdings plc, Innocoll Pharmaceuticals Limited and The European Investment Bank
99.3	Intercreditor Deed, dated May 5, 2017, by and among Innocoll Holdings plc, Innocoll Pharmaceuticals Limited, Gumet Point L.P. and The European Investment Bank
99.4	Warrant Agreement, dated May 9, 2017, by and between Innocoll Holdings plc and Lough Ree Technologies Limited

SIGNATURES

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

Date: May 9, 2017

INNOCOLL HOLDINGS PLC

By: /s/ Anthony Zook

Name: Anthony Zook

Title: Chief Executive Officer

EXHIBIT INDEX

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99.4	Warrant Agreement, dated May 9, 2017, by and between Innocoll Holdings plc and Lough Ree Technologies Limited

LOAN AND GUARANTY AGREEMENT

THIS LOAN AND GUARANTY AGREEMENT (this “**Agreement**”), dated May 9, 2017, by and among INNOCOLL PHARMACEUTICALS LIMITED, an Irish private limited company and having its registered office at Unit 9, Block D, Monksland Business Park, Monksland, Athlone, County Roscommon, Ireland (“**Borrower**”), INNOCOLL HOLDINGS PUBLIC LIMITED COMPANY, an Irish public limited company (registration number 544604) and having its registered office at Unit 9, Block D, Monksland Business Park, Monksland, Athlone, County Roscommon, Ireland (the “**Guarantor**”), and GURNET POINT L.P., a Delaware limited partnership acting through its general partner, Waypoint International GP LLC (“**Gurnet Point**”), provides the terms on which Gurnet shall make the Term Loan (as defined below) to the Borrower and the Borrower shall repay the Term Loan to Gurnet. The parties agree as follows:

INTERPRETATION AND DEFINITIONS

(a) Interpretation

In this Agreement:

- (i) References to Articles and Sections, are, save if explicitly stipulated otherwise, references respectively to articles and sections of this Agreement.
- (ii) References to a provision of law are references to that provision as amended or re-enacted.
- (iii) References to any other agreement or instrument are references to that other agreement or instrument as amended, novated, supplemented, extended or restated.

(b) Definitions

In this Agreement:

“**Accounting Reference Date**” means 31 December.

“**Act**” means the Irish Companies Act 2014 and all enactments which are to be read as one with, or construed or read together as one with, the Irish Companies Act 2014.

“**Acting in Concert**” has the meaning given to that term in the Takeover Panel Act.

“**Affiliate**” means, in relation to any Person, a Subsidiary of that Person or a Holding Company of that Person or any other Subsidiary of that Holding Company.

“**Agreement**” has the meaning set forth in the preamble.

“**Authorisation**” means an authorisation, permit, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

“**Borrower**” has the meaning set forth in the preamble.

“**Borrowing Notice**” is that certain form attached hereto as Exhibit A.

“**BSA**” has the meaning set forth in Section 3.02.

“**Business Day**” means a day (other than a Saturday or Sunday) on which Gurnet and commercial banks are open for general business in New York.

“**Business Plan**” has the meaning given to it in the Existing Facility.

“**CAPEX**” has the meaning given to it in the Existing Facility.

“**Change of Control Event**” means (a) the termination of the Transaction Agreement by the Guarantor pursuant to Clause 9.1(h) of the Transaction Agreement to enter into any agreement, understanding or arrangement providing for a Innocoll Superior Proposal (as term is defined in the Transaction Agreement) or (b) the termination of the Transaction Agreement by either Guarantor or Gurnet Sub pursuant to Clause 9.1 of the Transaction Agreement and a Innocoll Alternative Proposal (as defined in the Transaction Agreement) is consummated or a definitive agreement providing for a Innocoll Alternative Proposal (as defined in the Transaction Agreement) is entered into, in each case prior to the Term Loan Maturity Date (provided, that a license of the rights to sell XaraColl solely in one or more countries in Europe shall not be deemed to be a Innocoll Alternative Proposal (as defined in the Transaction Agreement)).

“**Claims**” has the meaning set forth in Section 9.03(a).

“**Closing Date**” means the date that the conditions set forth in Section 2.01 are satisfied.

“**Code**” means the United States Internal Revenue Code of 1986, as amended.

“**Compliance Certificate**” means a certificate substantially in the form set out in Schedule E.2 of the Existing Facility.

“**Concert Parties**”, means, in relation to any party hereto, such Persons as are Acting in Concert with such party (including such Persons as are deemed to be Acting in Concert with such party pursuant to Rule 3.3 of Part A of the Takeover Rules).

“**Court**” means the High Court of Ireland.

“**Credit**” has the meaning given to it in the Existing Facility.

“**Criminal Offence**” means any of the following criminal offences as applicable: fraud, corruption, coercion, collusion, obstruction, money laundering, financing of terrorism.

“**Debenture**” means the debenture dated on or about the Drawdown Date between the Borrower and Gurnet.

“**Default Rate**” has the meaning set forth in Section 1.03(b).

“**Disruption Event**” means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with this Agreement; or

- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of either Gurnet or the Borrower, preventing that party:
 - (i) from performing its payment obligations under this Agreement; or
 - (ii) from communicating with other parties in accordance with the terms of this Agreement,

and which disruption (in either such case as per (a) or (b) above) is not caused by, and is beyond the control of, the party whose operations are disrupted.

“**Dollars**” or “**\$**” shall mean dollars of the United States.

“**Drawdown Date**” means the date on which actual drawdown of the Term Loan is made by the Borrower.

“**Drawdown Period**” means the period commencing on the date falling ten days after the posting of the Scheme Document to the shareholders of the Guarantor (or such other date mutually agreed to between the Borrower and Gurnet) and ending on the date which is 60 days after the date of commencement of such period; provided, that the EIB Amendment and Consent shall be entered into prior to the commencement of the Drawdown Period.

“**EBITDA**” has the meaning given to it in the Existing Facility.

“**EIB**” means The European Investment Bank.

“**EIB Amendment and Consent**” means that certain Amendment and Waiver Agreement, dated May 5, 2017, by and among EIB, Gurnet, the Guarantor and the Borrower.

“**Environment**” means the following, in so far as they affect human health and social wellbeing:

- (a) fauna and flora;
- (b) soil, water, air, climate and the landscape; and
- (c) cultural heritage and the built environment,

and includes, without limitation, occupational and community health and safety.

“**Environmental Claim**” means any claim, proceeding, formal notice or investigation by any Person in respect of any Environmental Law.

“**Environmental Law**” means:

- (a) European Union law, including principles and standards;
- (b) laws and regulations; and
- (c) applicable international treaties,

of which a principal objective is the preservation, protection or improvement of the Environment.

“Euro” and “€” shall mean the single currency of the European Union as constituted by the Treaty on European Union and as referred to in the legislative measures of the European Union for the introduction of, changeover to, or operation of the Euro in one or more member states.

“Event of Default” means any of the circumstances, events or occurrences specified in Article 6.01.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to Lender or required to be withheld or deducted from a payment to Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of Lender being organized under the laws of, or having its principal office or in the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) Taxes attributable to Lender’s failure to comply with Section 1.06(f), (c) any U.S. federal withholding Taxes imposed under FATCA, (d) Taxes resulting from the gross negligence or willful misconduct of Gurnet, (e) penalties, interest and additions to Tax relating to any of the foregoing, (f) Irish withholding tax that arises solely because the Lender is not or has ceased to be a Qualifying Lender (other than as a result of a change of law after the date it became a Lender under this Agreement or in the interpretation, administration, or application of any law or tax treaty, or any published practice or published concession of any relevant tax authority) and (g) Taxes excluded from the definition of Other Taxes.

“Existing Facility” means that certain Finance Contract, dated March 27, 2015, by and among the Borrower, the Guarantor and EIB, as in effect on the date hereof and amended by the EIB Amendment and Consent.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant thereto, including any intergovernmental agreements and any rules or guidance implementing such intergovernmental agreements, and any substantially comparable non-U.S. law.

“Finance Documents” means:

- (a) this Agreement;
- (b) the Security Documents;
- (c) the Intercreditor Deed; and
- (d) any other document the parties agree to designate a Finance Document.

“Finance Lease” means any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance or capital lease.

“Financial Quarter” means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

“Financial Year” means the annual accounting period of the Group ending on the Accounting Reference Date.

“GAAP” means in relation to the Borrower and Guarantor (if applicable), generally accepted accounting principles in Ireland, including IFRS.

“**Group**” means, collectively, the Guarantor, the Borrower and each of their respective Subsidiaries.

“**Group Structure Chart**” has the meaning set forth in Section 3.19(cc).

“**Guarantor**” has the meaning set forth in the preamble.

“**Guarantor Shares**” means the issued or unconditionally allotted ordinary share capital in the Guarantor and any further such shares which may be issued or unconditionally allotted pursuant to the exercise of any subscription or conversion rights, options or otherwise.

“**Gurnet**” means Gurnet Point or any other Person that becomes a Lender in accordance with the terms of this Agreement.

“**Gurnet Sub**” means Lough Ree Technologies Limited, an Irish private limited company and a wholly-owned Subsidiary of Gurnet Point.

“**Hedging Policy**” means any derivative transaction by a member of the Group to hedge actual or projected exposure arising in the ordinary course of trading or any derivative instrument of a member of the Group which is accounted for on a hedge accounting basis and does not include any derivative transaction and/or instrument for speculative purposes.

“**HMT**” has the meaning set forth in the definition of “Sanctions”.

“**Holding Company**” means, in relation to a Person, any other Person in respect of which the first Person is a Subsidiary.

“**IFRS**” means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

“**Indebtedness**” means any:

- (a) obligations for borrowed money;
- (b) indebtedness under any acceptance credit;
- (c) indebtedness under any bond, debenture, note or similar instrument;
- (d) instrument under any bill of exchange;
- (e) indebtedness in respect of any interest rate or currency swap or forward currency sale or purchase or other form of interest or currency hedging transaction (including without limit caps, collars and floors);
- (f) indebtedness under any Finance Lease;
- (g) indebtedness (actual or contingent) under any guarantee, bond security, indemnity or other agreement;
- (h) indebtedness (actual or contingent) under any instrument entered into for the purpose of raising finance;

- (i) indebtedness in respect of a liability to reimburse a purchaser of any receivables sold or discounted in the event that any amount of those receivables is not paid;
- (j) indebtedness arising under a securitisation; or
- (k) other transaction which has the commercial effect of borrowing.

“**Indemnified Person**” has the meaning set forth in [Section 9.03\(a\)](#).

“**Indemnified Tax**” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Finance Document and (b) to the extent not otherwise described in clause [\(a\)](#), Other Taxes.

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

“**Intellectual Property Rights**” means intellectual property of every designation (including patents, utility patents, copyrights, design rights, trademarks, service marks and know how), whether capable of registration or not.

“**Intercreditor Deed**” means the intercreditor deed dated May 5, 2017 between, amongst others, the Borrower, the Guarantor, EIB and Gumet.

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

“**Joint Venture**” means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity.

“**Legal Reservations**” means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court, and the limitations on enforcement imposed by laws relating to insolvency, reorganisation, and other laws generally affecting the rights of creditors; and
- (b) similar principles, rights and defences under the laws of any relevant jurisdiction.

“**Lender**” means, subject to [Section 9.01](#), Gumet and any Person to which Gumet or its successors and assigns may sell, transfer, assign, or negotiate all or any part of, or any interest in, such Person’s obligations, rights, and benefits under this Agreement and the other Finance Documents or any Person that replaces Gumet under this Agreement and the other Finance Documents; provided that Gumet shall be considered to become a Lender on the date of this Agreement and any other Person shall be considered to become a Lender on the date such Person acquires an interest in another Person’s obligations, rights, and benefits or replaces that Person under this Agreement and the other Finance Documents.

“**Lien**” means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing).

“Mandatory Prepayment/Commitment Termination Trigger” means:

- (a) the occurrence of a Change of Control Event; or
- (b) the granting of any U.S. rights to XaraColl or any other asset(s) with an aggregate fair market value in excess of \$1,000,000 (as reasonably determined in good faith by the Borrower and Gumet) of the Guarantor, the Borrower or any of their Subsidiaries (provided, that a license of the rights to sell XaraColl solely in one or more countries in Europe shall not be deemed to be rights or assets with an aggregate fair market value in excess of \$1,000,000).

“Material Adverse Change” means, any event or change of condition, which has a material adverse effect on:

- (a) the ability of the Borrower or the Guarantor to perform its obligations under the Finance Documents;
- (b) the business, operations, property, condition (financial or otherwise) or prospects of the Borrower, the Guarantor or the Group as a whole; or
- (c) the validity or enforceability of the rights or remedies of Gumet under the Finance Documents.

“Non-Transaction Term Loan Maturity Date” has the meaning set forth in the definition of “Term Loan Maturity Date”.

“Obligations” are the Borrower’s obligations to pay when due any debts, principal, interest, any applicable Premium, and other amounts Borrower owes Gumet now or later, whether under this Agreement, the other Finance Documents, or otherwise, including, without limitation, any interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Gumet, and the performance of Gumet’s duties under the Finance Documents.

“OFAC” has the meaning set forth in the definition of “Sanctions”.

“Other Connection Taxes” means, with respect to Lender, Taxes imposed as a result of a present or former connection between such Lender and the jurisdiction imposing such Tax (other than connections arising solely from (and that would not have existed but for) such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received, engaged in any other transaction pursuant to or enforced any Finance Document).

“Other Taxes” means all present or future stamp, court or documentary, excise or property, intangible, recording, filing or similar Taxes and all liabilities with respect thereto (including by reason of any delay in payment hereof) that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt, or otherwise with respect to, any Finance Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment, grant of a participation, designation of a new office for receiving payments by or on account of the Borrower or other transfer (other than an assignment or designation of a new office made by Lender).

“Paid in Full” means with respect to Gurnet (a) all Obligations to Gurnet (other than contingent claims for indemnification or reimbursement not then asserted) have been indefeasibly repaid in full in cash and have been fully performed and (b) all commitments of Gurnet, if any, to extend credit that would constitute Obligations have been terminated or have expired.

“Participant” has the meaning set forth in [Section 9.02\(b\)](#).

“Participant Register” has the meaning set forth in [Section 9.02\(b\)](#).

“Permitted Acquisition” means an acquisition by a member of the Group of an asset sold, leased, transferred or otherwise disposed of by another member of the Group in circumstances permitted by [Article 3.01](#).

“Permitted Disposal” means any act effecting a sale, transfer, lease or other disposal (other than a sale, transfer, lease or other disposal of the XaraColl, Cogenzia or CollaGUARD Intellectual Property Rights which is permitted only as covered by paragraph [\(e\)](#) below):

- (a) related to the sale of finished products and/or services made on arm’s length terms in the ordinary course of business of a Borrower or other member of the Group;
- (b) by one member of the Group to another member of the Group;
- (c) for cash in an amount reflecting or exceeding the fair market value of such assets, which is reinvested in assets of comparable or superior type, value and quality;
- (d) made in exchange for other assets comparable or superior as to type, value and quality;
- (e) constituted by a licence of Intellectual Property Rights on an arm’s length basis to a third party;
- (f) made in relation to non-material assets which have depreciated to less than 25% (twenty five per cent) of their initial value or which are obsolete; or
- (g) of assets for cash where the higher of the book value and net consideration in aggregate does not exceed €500,000 in total at all times during the life of the Credit.

“Permitted Guarantees” means guarantees issued by any member of the Group under or in connection with:

- (a) under the Guarantee Agreement (as defined in the Existing Facility);
- (b) under any negotiable instruments issued in the ordinary course of trade;
- (c) in connection with any performance bond issued in the ordinary course of trade;
- (d) in connection with any Permitted Indebtedness;
- (e) issued by one member of the Group in respect of the obligations of another member of the Group; or
- (f) in connection with the Existing Facility.

“Permitted Indebtedness” means Indebtedness of the Borrower and/or members of the Group incurred:

- (a) in the ordinary course of trading by members of the Group;
- (b) under this Agreement;
- (c) under any finance or capital leases of equipment related to expansion of manufacturing facilities in line with the Business Plan, if the aggregate liability in respect of the equipment leased does not at any time exceed €2,000,000 (Two Million Euros) (or its equivalent in another currency or currencies);
- (d) under any hedging or derivative transactions entered into in accordance with the Hedging Policy;
- (e) under a Permitted Guarantee;
- (f) under any overdrafts made available to the Group provided that the aggregate amount of the Indebtedness in respect of such arrangements for the Group does not exceed €500,000 (or its equivalent in other currencies) in aggregate at any time;
- (g) arising under any loan made by a member of the Group to another member of the Group;
- (h) any other Indebtedness incurred with the prior written consent of Gumet; or
- (i) under the Existing Facility.

“Permitted Lien” means:

- (a) Liens arising under this Agreement and the other Finance Documents;
- (b) Liens for taxes, assessments or governmental charges or levies not overdue by more than 30 days and payable or that are being contested in good faith by appropriate proceedings;
- (c) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default;
- (d) deposits or pledges (other than a pledge of all assets of the pledger) to secure obligations under worker’s compensation, social security or similar laws, or under unemployment insurance;
- (e) deposits or pledges (other than a pledge of all assets of the pledger) to secure bids, tenders, contracts (other than contracts for the payment of money), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the ordinary course of business;
- (f) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code (or equivalent in foreign jurisdiction) on items in the course of collection;
- (g) licenses of Intellectual Property permitted under this Agreement and not interfering in any material respect with the ordinary conduct of business of the members of the Group;

- (h) to the extent constituting a Lien, escrow arrangements securing indemnification obligations associated with any acquisition;
- (i) Liens on cash collateral and deposits securing obligations in respect of credit card and/or purchase card arrangements and payment processing services;
- (j) carriers', landlords', bailees' repairmens', mechanics', workers', materialmen's or other like Liens arising by statute and in the ordinary course of business with respect to obligations which are not yet due and payable or which are being contested in good faith by appropriate proceedings;
- (k) easements, rights-of-way, zoning restrictions, minor defects or irregularities in title and other similar charges or encumbrances, in each case, which do not interfere in any material respect with the ordinary course of business of the members of the Group;
- (l) Liens on unearned insurance premiums and proceeds thereof to secure premiums payable under insurance policies;
- (m) any interest or title of a lessor or sublessor under any lease permitted by this Agreement;
- (n) Liens in favor of customs and revenue authorities arising as a matter of law which secure payment of customs duties in connection with the importance of goods in the ordinary course of business;
- (o) intercompany licenses, sublicenses, leases or subleases permitted pursuant to this Agreement; or
- (p) Liens incurred in connection with the Existing Facility.

“Permitted Merger” means any amalgamation, demerger, merger or corporate reconstruction which does not result in a Material Adverse Change and which is on a solvent basis, and where:

- (a) only members of the Group are involved;
- (b) the resulting entity will not be incorporated or located in a country which is in a jurisdiction that is blacklisted by any Sanctions Authority in connection with activities such as money laundering, financing of terrorism, tax fraud and tax evasion or harmful tax practices as such blacklist may be amended from time to time;
- (c) if the Borrower is involved, (i) the rights and obligations of the Borrower under this Agreement will remain with the Borrower, (ii) the surviving entity would be the Borrower and the statutory seat of the Borrower would not as a result of such merger be transferred to a different jurisdiction, (iii) the merger will not have an effect on the validity, legality or enforceability of the Borrower's obligations under this Agreement; and (iv) all of the business and assets of the Borrower are retained by it; or
- (d) such amalgamation, demerger, merger or corporate reconstruction is the Transaction.

“Permitted Payments” means

- (a) payments in respect of shares purchased from former employees, former managers or former directors, provided that such shares were awarded under a share programme of the Borrower or the Guarantor;
- (b) dividends of any member of the Group distributed, or repayments of intercompany loans, to the Guarantor or any of its Subsidiaries;
- (c) subject to applicable mandatory corporate law and other mandatory regulatory restrictions that would restrict the distribution of cash or profits, dividends payments or share repurchases by a Borrower or other Group members, provided that no default has occurred and is continuing and to the extent that any such dividends or repurchases do not exceed 10 % (ten per cent) of the net earnings as reported in the annual, audited, consolidated accounts for the preceding Financial Year;
- (d) only if the Transaction has been consummated, any payment made in cash to Gurnet or any of its Affiliates to pay, or the proceeds of which are applied to Gurnet or such Affiliate to pay, cash dividends and distributions to Gurnet or such Affiliate; or
- (e) only if the Transaction has been consummated, repayment of principal and interest under the Existing Facility on the scheduled maturity date (as of the date hereof) for such facility,

in each case without double counting.

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

“Premium” means:

- (a) with respect to Section 1.02(c), an additional fee payable to Gurnet in an amount equal to (i) on and prior to July 31, 2017, 10% of the amount of the Term Loan being repaid and (ii) on August 1, 2017 and thereafter until (but not including) the Non-Transaction Term Loan Maturity Date, 5% of the amount of the Term Loan being repaid, in each case as of the date of such prepayment; and
- (b) with respect to Section 1.02(d), an additional fee payable to Gurnet in an amount equal to: (i) on and prior to July 31, 2017, \$1,000,000 and (ii) on August 1, 2017 and thereafter until (but not including) the Non-Transaction Term Loan Maturity Date, \$500,000, in each case as of the date immediately prior to such prepayment or termination of commitments, as applicable; provided, that any additional fee payable pursuant to this clause (b) shall be reduced by any additional fee paid pursuant to clause (a).

“Qualifying Lender” means a body corporate that is:

- (a) resident for tax purposes in a Member State of the EU (other than Ireland) or a country with which Ireland has a double taxation treaty (a Treaty) and that Member State or country (as the case may be) imposes a tax that generally applies to interest receivable in that territory or member state by companies from sources outside that territory or member state;

- (b) (i) is exempted from the charge to income tax under a Treaty in force between Ireland and the country in which the Lender is resident for tax purposes or (ii) would be exempted from the charge to income tax if a Treaty made on or before the date of payment of the interest between Ireland and the country in which the Lender is resident for tax purposes, that does not have the force of law under the procedures set out in section 826(1) of the Taxes Consolidation Act 1997, had the force of law when the interest was paid; or
- (c) a United States corporation that is subject to tax in the United States on its worldwide income; or
- (d) a United States limited liability company where the ultimate recipients of the interest payable to it are Qualifying Lenders within clauses (a), (b), or (c) above and the business conducted through the limited liability company is so structured for market reasons and not for tax avoidance purposes;

provided that in the case of clause (a), (b), (c) and (d) above, such interest is not paid to the body corporate in connection with a trade or business which is carried on in Ireland by the body corporate through a branch or agency.

“Quarter Date” means each of 31 March, 30 June, 30 September and 31 December from the date of this Agreement until the applicable Term Loan Maturity Date.

“Register” has the meaning set forth in Section 9.02(a).

“Sanctions” means the economic or financial sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by the United States government, the United Nations, the European Union or the United Kingdom, and the governmental institutions and agencies of each of the foregoing including, without limitation, the Office of Foreign Assets Control of the United States Department of Treasury (**“OFAC”**), the United States Department of State, and Her Majesty’s Treasury (**“HMT”**) (each a **“Sanctions Authority”** and together, the **“Sanctions Authorities”**).

“Sanctions Authorities” has the meaning set forth in the definition of **“Sanctions”**.

“Sanctions List” means the **“Specially Designated Nationals and Blocked Persons”** list maintained by OFAC, the **“Consolidated List of Financial Sanctions Targets”** maintained by HMT, or any similar publicly available list maintained by, or public announcement of Sanctions designation made by, any of the Sanctions Authorities, including, but not limited to, the European Union and/or the United Nations.

“Scheme” means the proposed scheme of arrangement under Chapter 1 of Part 9 of the Act and the related capital reduction under Sections 84 and 85 of the Act to effect the Transaction pursuant to and on the terms set forth in the Transaction Agreement and the Rule 2.5 Announcement (as defined in the Transaction Agreement), and in such form not being inconsistent therewith as the Parties (as defined in the Transaction Agreement), acting reasonably, mutually agree in writing, including any revision thereof as may be so agreed between the Parties (as defined in the Transaction Agreement) and, as required, by the Irish Takeover Panel and the Court.

“**Scheme Document**” means the circular to the shareholders of the Guarantor to be issued by the Guarantor setting out the terms of the Scheme and convening the Court-ordered meeting of shareholders of the Guarantor in relation to the Scheme.

“**Security Documents**” means the Debenture and the Share Charge.

“**Share Charge**” means the charge over shares in the Borrower dated on or about the Drawdown Date between the Guarantor and Gurnet.

“**Subsidiary**” means an entity of which a Person has direct or indirect control or owns directly or indirectly more than 50% of the voting capital or similar right of ownership and “**control**” for this purpose means the power to direct the management and the policies of the entity, whether through the ownership of voting capital, by contract or otherwise.

“**Takeover Panel Act**” means the Irish Takeover Panel Act 1997, as amended.

“**Takeover Rules**” means the Irish Takeover Panel Act 1997, Takeover Rules, 2013.

“**Tax**” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

“**Tax Returns**” has the meaning set forth in [Section 3.19\(jj\)](#).

“**Term Loan**” has the meaning set forth in [Section 1.02\(a\)](#).

“**Term Loan Maturity Date**” means December 31, 2017 (such date, the “**Non-Transaction Term Loan Maturity Date**”); provided, however, that if the Transaction has occurred prior to such date, such date shall be automatically extended to the date that is 15 days after the Maturity Date (as defined in the Existing Facility) of the Existing Facility (such date, the “**Transaction Term Loan Maturity Date**”).

“**Total Assets**” means the total consolidated assets of the Group, as shown in the Guarantor’s latest consolidated financial statements.

“**Transaction**” means the acquisition by Gurnet Sub of at least a majority of the Guarantor Shares and/or substantially all of the assets of the Guarantor, the Borrower and their respective Subsidiaries.

“**Transaction Agreement**” means that certain Transaction Agreement, dated April 4, 2017, by and among Gurnet Point, Gurnet Sub and the Guarantor.

“**Transaction Term Loan Maturity Date**” has the meaning set forth in the definition of “Term Loan Maturity Date”.

“**Warrant**” means that certain Warrant to Purchase Ordinary Shares, dated as of the date hereof, issued by the Guarantor.

ARTICLE 1
THE TERM LOAN AND TERMS OF REPAYMENT

1.01 Promise to Pay

The Borrower hereby unconditionally promises to pay Gurnet the outstanding principal amount of the Term Loan and accrued and unpaid interest thereon as and when due in accordance with this Agreement.

1.02 Term Loan

- (a) Availability. Subject to the terms and conditions of this Agreement, Gurnet agrees to make a term loan, available for drawdown by the Borrower during the Drawdown Period, in an aggregate principal amount not to exceed Ten Million Dollars (\$10,000,000) (the “**Term Loan**”).
- (b) Repayment. All outstanding principal and accrued and unpaid interest under the Term Loan, and all other outstanding Obligations with respect to the Term Loan, are due and payable in full in cash on the applicable Term Loan Maturity Date subject to the terms of the Intercreditor Deed. Once repaid, the Term Loan may not be re-borrowed.
- (c) Voluntary Prepayment. The Borrower shall have the option to prepay all or a portion of the Term Loan made by Gurnet under this Agreement; provided Borrower (i) provides written notice to Gurnet of (x) its election to prepay the Term Loan at least five Business Days prior to such prepayment and (y) the amount of such prepayment, and (ii) pays, on the date of such prepayment (A) the principal amount of such prepayment, (B) accrued and unpaid interest on such Term Loan so prepaid, (C) prior to the consummation of the Transaction, the applicable Premium (if any), and (D) all other sums, if any, that shall have become due and payable hereunder, including interest at the Default Rate with respect to any past due amounts. Notwithstanding anything else herein to the contrary, Gurnet may in its sole discretion elect to waive any applicable Premium in whole or in part.
- (d) Mandatory Prepayment/Commitment Termination. In the event that: (i) a Mandatory Prepayment/Commitment Termination Trigger occurs or (ii) the Term Loan is accelerated by Gurnet following the occurrence of an Event of Default, the Borrower shall immediately pay to Gurnet an amount in cash equal to the sum of: (A) all outstanding principal plus accrued interest under the Term Loan, (B) the Premium, if applicable, and (C) all other sums, if any, that shall have become due and payable hereunder, including interest at the Default Rate with respect to any past due amounts; provided, that notwithstanding anything else herein to the contrary, if such Mandatory Prepayment/Commitment Termination Trigger occurs prior to the funding of the Term Loan, the commitments hereunder shall immediately, automatically and permanently terminate and the Borrower shall immediately pay to Gurnet an amount in cash equal to the applicable Premium; provided, further, if such Mandatory Prepayment/Commitment Termination Trigger occurs as a result of the entry into a Innocoll Alternative Proposal (as defined in the Transaction Agreement) prior to the Term Loan Maturity Date, the amounts set forth in this Section 1.02(d) shall be payable on the earlier to occur of the consummation of the corresponding Innocoll Alternative Proposal (as defined in the Transaction Agreement) and December 31, 2017. Notwithstanding anything else herein to the contrary, Gurnet may in its sole discretion elect to waive any applicable Premium in whole or in part.
- (e) Premium.

- (i) The Premium under Section 1.02(c) and (d) shall be in addition to all other amounts which may be due to Gumet from time to time pursuant to the terms of this Agreement and any other Finance Document. The Term Loan shall be subject to the Premium set forth in Section 1.02(c) and (d) and the payment of any Premium on a portion or all of the Term Loan or commitments hereunder shall not excuse or reduce any Premium on any subsequent prepayment or repayment of the Term Loan or termination of the commitments hereunder, as applicable.
- (ii) The Borrower and the Guarantor expressly waive the provisions of any present or future statute or law that prohibits or may prohibit the collection of the foregoing Premium in connection with any acceleration, in each case, to the maximum extent such waiver is permitted under applicable law. The Borrower and the Guarantor expressly agree, to the extent permitted under applicable law, that (A) any applicable Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel, (B) any applicable Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made, (C) there has been a course of conduct between Gumet and the Borrower and the Guarantor giving specific consideration in this transaction for such agreement to pay the applicable Premium, (D) the Borrower and the Guarantor shall be estopped hereafter from claiming differently than as agreed to in Section 1.02(c) and (d), (E) their agreement to pay any applicable Premium is a material inducement to Gumet to make the Term Loan and the commitments hereunder, and (F) any applicable Premium represents a good faith, reasonable estimate and calculation of the lost profits or damages of Gumet and that it would be impractical and extremely difficult to ascertain the actual amount of damages to Gumet or profits lost by Gumet as a result of such event.

1.03 Payment of Interest on the Term Loan

- (a) Interest Rate. Subject to Section 1.03(b) and Section 1.05, the principal amount outstanding under the Term Loan shall (i) until the Term Loan shall be extended until the Transaction Term Loan Maturity Date, accrue interest at a fixed per annum rate equal to fifteen percent (15.00%), which shall be payable on the Non-Transaction Term Loan Maturity Date and (ii) if applicable, once the Transaction has been consummated, accrue interest for each Quarter Date at a fixed per annum rate equal to fifteen percent (15.00%) which accrued interest shall be automatically capitalized and added to the amount of the Term Loan on the last day of such Quarter Date. In the case of clause (ii), (x) such accrued interest shall, after being so capitalized, be treated as part of the principal amount of the Term Loan and shall bear interest in accordance with this Article 1 which shall be payable in accordance with the provisions of this Agreement and (y) all amounts of capitalized interest must be repaid in full on the Transaction Term Loan Maturity Date. Notwithstanding anything herein to the contrary, the principal amount outstanding under the Term Loan shall continue to accrue interest after the Term Loan Maturity Date and such amount shall be payable on demand.
- (b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, the Obligations shall bear interest at a rate per annum which is five percentage points (5.00%) above the rate that is otherwise applicable thereto (the "**Default Rate**") unless Gumet otherwise elects from time to time in its sole discretion to impose a smaller increase. Fees and expenses which are required to be paid by the Borrower pursuant to the Finance Documents but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations (including the Default Rate). Payment or acceptance of the increased interest rate provided in this Section 1.03(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Gumet. All interest accruing pursuant to this Section 1.03(b) shall be payable on demand and in cash.

- (c) Computation: 365-Day Year. In computing interest, the date of the making of the Term Loan shall be included and the date of payment shall be excluded; provided, however, that if the Term Loan is repaid on the same day on which it is made, such day shall be included in computing interest on such Term Loan. Interest shall be computed on the basis of a 365-day year for the actual number of days elapsed.

1.04 Fees

The Borrower shall pay to Gumet the Premium, when due hereunder.

1.05 Payments

All cash payments (including prepayments) to be made by the Borrower under any Finance Document shall be made in immediately available funds in Dollars, without setoff or counterclaim, before 10:00 a.m. New York time on the date when due; provided, that if any demand for payment is made by Gumet after 1:00 p.m. New York time on any Business Day, the Borrower shall make such payment before 10:00 a.m. New York time on the following Business Day. Payments of principal and/or interest received after 10:00 a.m. New York time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.

1.06 Taxes

- (a) **Defined Terms.** For purposes of this Section 1.06, the term “**applicable law**” includes FATCA.
- (b) Except as otherwise provided in this Section 1.06 or as required by any applicable law, each payment by the Borrower under any Finance Document shall be made free and clear of all Indemnified Taxes.
- (c) If any Indemnified Taxes shall be required by any applicable law to be deducted from or in respect of any amount payable under any Finance Document to Lender, (i) such amount shall be increased as necessary to ensure that, after all required deductions for Indemnified Taxes are made (including deductions applicable to any increases to any amount under this Section 1.06), Lender receives the amount it would have received had no such deductions been made, (ii) the Borrower shall make such deductions, (iii) the Borrower shall timely pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable law and (iv) within 30 days after such payment is made, the Borrower shall deliver to Lender an original or certified copy of a receipt evidencing such payment or other evidence of payment reasonably satisfactory to Lender.

- (d) In addition, the Borrower agrees to pay, any Other Taxes. Within 30 days after such payment is made, the Borrower shall deliver to Lender an original or certified copy of a receipt evidencing such payment or other evidence of payment reasonably satisfactory to Lender.
- (e) No Lender shall be entitled to receive any greater payment under this Section 1.06 than the Lender as of the date of this Agreement would have been entitled to receive (assuming the Lender as of the date of this Agreement was a Qualifying Lender if the Lender is a Qualifying Lender), taking into account any change in applicable law that would have been applicable to such Lender.

The Borrower shall reimburse and indemnify, within 30 days after receipt of demand therefor, Lender for Indemnified Taxes (including any Indemnified Taxes on amounts payable under this Section 1.06) paid by Lender and any liabilities arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally asserted. A certificate of Lender claiming any compensation under this clause (f), setting forth the amounts to be paid thereunder and delivered to the Borrower, shall be conclusive, binding and final for all purposes, absent manifest error.

(f) **Status of Lender.**

- (i) To the extent it is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Finance Document, Lender shall deliver to the Borrower, at the time or times reasonably requested by the Borrower, such properly completed and executed documentation reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, Lender, if reasonably requested by the Borrower, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower as will enable the Borrower to determine whether or not Lender is subject to backup withholding or information reporting requirements.
- (ii) Without limiting the generality of Section 1.06(f)(i), the Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower (in such number of copies as shall be requested by the Borrower) on or prior to the date on which Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, if applicable to the Borrower and Lender, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made.
- (iii) Without limiting the generality of Section 1.06(f)(i), Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower (in such number of copies as shall be requested by the Borrower) on or prior to the date on which the Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), if applicable, Forms W-8 or W-9 (establishing that such Lender is entitled to an exemption from U.S. backup withholding tax).

- (iv) Without limiting the generality of Section 1.06(f)(i), if a payment made to Lender under any Finance Document would be subject to U.S. federal withholding Tax imposed by FATCA if the Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), the Lender shall deliver to the Borrower at the time or times prescribed by law and at such time or times reasonably requested by the Borrower such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower as may be necessary for the Borrower to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (iv), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.
- (v) Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification, provide such successor form, or promptly notify the Borrower in writing of its legal inability to do so.

ARTICLE 2
CONDITIONS PRECEDENT

2.01 Conditions Precedent to the Closing Date

The effectiveness of this Agreement and the occurrence of the Closing Date is subject to the following conditions precedent:

- (a) a Rule 2.5 announcement concerning the Transaction shall have occurred;
- (b) this Agreement shall be executed and delivered by each of the parties hereto;
- (c) the Intercreditor Deed and the Warrant shall be entered into by each of the parties party thereto in form and substance satisfactory to Gumet;
- (d) Gumet (or its counsel) shall have received certified copies of (i) the constitutional documents of each of the Borrower and the Guarantor; (ii) resolutions of the board of directors of each of the Borrower and the Guarantor approving and authorizing such Person's execution, delivery and performance of the Finance Documents to which it is party and the transactions contemplated thereby; (iii) signature and incumbency certificates of the officers and/or managers of each of the Borrower and the Guarantor executing any of the Finance Documents, each of which such Person hereby certifies to be true and complete, and in full force and effect without modification, it being understood that Gumet may conclusively rely on each such document and certificate until formally advised by the Borrower or the Guarantor, as applicable, of any changes therein; and (iv) companies registration office, judgment and winding up petitions searches against each of the Borrower and the Guarantor;
- (e) a certificate from the Guarantor confirming that the provisions of Section 239 of the Act do not prohibit the execution by the Guarantor of any of the Finance Documents which it is intended that the Guarantor will execute by reason of the fact that that the Guarantor and the Borrower are members of a Group consisting of a Holding Company and its Subsidiaries for the purpose of Section 243(2) of the Act;

- (f) a legal opinion of Dentons US LLP, legal adviser to the Borrower, addressed to Gurnet in form and substance satisfactory to Gurnet, on the legality, validity and enforceability of this Agreement;
- (g) the Borrower, the Guarantor, Gurnet and EIB shall have entered into the EIB Amendment and Consent in form and substance satisfactory to Gurnet; and
- (h) the Borrower shall certify that (i) the representations and warranties in this Agreement shall be true, accurate, and complete in all material respects on the Closing Date; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and (ii) no Event of Default shall have occurred and be continuing or result from the entering into of this Agreement.

2.02 Conditions Precedent to the Drawdown Date

Gurnet's obligation to make the Term Loan available to the Borrower on the Drawdown Date is subject to the following conditions precedent:

- (a) the Drawdown Date shall have occurred during the Drawdown Period;
- (b) the Borrower shall have complied with Section 2.03;
- (c) the Borrower shall certify that (i) the representations and warranties in this Agreement shall be true, accurate, and complete in all material respects on the Drawdown Date; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and (ii) no Event of Default shall have occurred and be continuing or result from the making of the Term Loan;
- (d) the Borrower shall certify that no default or Event of Default exists under and as defined in the Existing Facility on the Drawdown Date;
- (e) the Debenture and the Share Charge shall each be executed and delivered by each of the parties party thereto;
- (f) a Form C1 in respect of the Debenture shall have been delivered to Gurnet;
- (g) a copy of all notices required to be sent under the Security Documents shall have been delivered;
- (h) a legal opinion of Mathesons, legal adviser to Gurnet, addressed to Gurnet in form and substance satisfactory to Gurnet, on the legality, validity and enforceability of the Security Documents; and

- (i) a legal opinion of William Fry, legal adviser to the Borrower, addressed to Gurnet in form and substance satisfactory to Gurnet, on the valid existence of the Borrower and the Guarantor and the authority and capacity of the Borrower and the Guarantor to enter into the Finance Documents and on the due execution and choice of law of the Finance Documents.

2.03 Procedures for Borrowing

Subject to the prior satisfaction of all other applicable conditions to the making of the Term Loan set forth in this Agreement, to obtain the Term Loan, the Borrower shall notify Gurnet (which notice shall be irrevocable) by electronic mail or facsimile by 10:00 a.m. New York time ten Business Days before the proposed Drawdown Date. Together with any such electronic or facsimile notification, the Borrower shall deliver to Gurnet by electronic mail or facsimile a completed Borrowing Notice executed by an officer of the Borrower or his or her designee.

ARTICLE 3 BORROWER UNDERTAKINGS AND REPRESENTATIONS

The undertakings in this Article 3 remain in force from the date of this Agreement for so long as any amount is outstanding under this Agreement.

A. General undertakings

3.01 Disposal of assets

- (a) Except as provided below, the Borrower shall not, and shall procure that no other member of the Group will, either in a single transaction or in a series of transactions whether related or not and whether voluntarily or involuntarily dispose of all or any part of its business, undertaking or assets, including any Intellectual Property Rights unless:
 - (i) with the prior written consent of Gurnet; or
 - (ii) such disposal is a Permitted Disposal.

For the purposes of this Article 3, “dispose” and “disposal” includes any act effecting sale, transfer, lease or other disposal.

3.02 Compliance with laws

The Borrower and the Guarantor shall comply in all material respects with all laws and regulations to which it is subject. In addition, without limiting the foregoing sentence, each member of the Group shall (a) ensure, and cause each Subsidiary to ensure, that no person who owns a controlling interest in or otherwise controls such member of the Group or any Subsidiary is or shall be listed on any Sanctions List, (b) not use or permit the use of the proceeds of the Term Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, or to the extent such action is prohibited under any applicable Sanctions, and (c) comply, and cause each Subsidiary to comply, with all applicable Bank Secrecy Act (“BSA”) laws and regulations, as amended.

3.03 Hedging

The Borrower shall not, and shall procure that each other member of the Group shall not, enter into any derivative transaction other than in accordance with the Hedging Policy.

3.04 Change in business

The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower or the Group and the Guarantor as a whole from that carried on at the date of this Agreement except as contemplated by the Transaction.

3.05 Merger

The Borrower shall not, and shall ensure that no other member of the Group shall, enter into any amalgamation, demerger, merger or corporate reconstruction unless:

- (a) with the prior written consent of Gumet; or
- (b) such amalgamation, demerger, merger or corporate reconstruction is a Permitted Merger.

3.06 Minimal worth of Borrower

The Borrower shall ensure that at all times:

- (a) gross revenues of the Borrower represent not less than 85% of the consolidated gross revenues of the Group taken as a whole;
- (b) Total Assets of the Borrower and the Guarantor represent not less than 85% of the consolidated total assets of the Group taken as a whole; and
- (c) EBITDA of the Borrower represents not less than 85% of the consolidated EBITDA of the Group,

each as calculated based on the then latest consolidated audited accounts of the Group.

3.07 Expenditure covenant

For the period from 1 January 2016 until 31 December 2020, the Borrower shall ensure that the total expenditure of the Group in respect of clinical trials, internal research and development and CAPEX from 1 January 2015 to the relevant test date shall be no less than 75% of the figure for such expenditure set out in the Business Plan for such period.

3.08 Financial Testing

- (a) The covenant set out in Section 3.06 shall be tested semi-annually on a 12-month rolling consolidated basis with respect to the end of each Financial Year and the end of the second Financial Quarter in each Financial Year.
- (b) The covenant set out in Section 3.07 shall be tested semi-annually on a consolidated basis for the relevant period specified in Section 3.07 ending on 31 December and 30 June in each year.

3.09 Ownership

The Borrower shall promptly notify Gumet in the event of a new entity (including the Guarantor) becoming a majority owned Subsidiary (meaning ownership of 50.1% (fifty point one per cent) or more) through any means, including but not limited to acquisition, creation and spin-off.

3.10 Books and records

The Borrower shall ensure that it has kept and will continue to keep proper books and records of account, in which full and correct entries, in all material respects, shall be made of all financial transactions and the assets and business of that Borrower in accordance with GAAP as in effect from time to time.

3.11 Acquisitions

The Borrower shall not, and shall ensure that no other member of the Group shall invest in or acquire any entity or a business going concern or an undertaking (whether whole or substantially the whole of the assets or business), or any division or operating unit thereof, or any shares or securities of any entity or a business or undertaking (or in each case, any interest in any of them) (or agree to any of the foregoing), unless:

- (a) with the prior written consent of Gumet; or
- (b) such acquisition is a Permitted Acquisition.

3.12 Indebtedness

The Borrower shall not, and shall ensure that no other member of the Group shall incur any Indebtedness, unless:

- (a) with the prior written consent of Gumet; or
- (b) such Indebtedness is Permitted Indebtedness.

3.13 Guarantees

The Borrower shall not, and shall procure that no other member of the Group will issue or allow to remain outstanding any guarantees in respect of any liability or obligation of any Person unless:

- (a) with the prior written consent of Gumet; or
- (b) such guarantees are Permitted Guarantees.

3.14 Permitted Payments; Investments

The Borrower shall not, and shall procure that no other member of the Group shall, declare or distribute dividends, or make any payment in respect of any intercompany loan or the Existing Facility, or return or purchase shares, or directly or indirectly make any Investment, unless:

- (a) with the prior written consent of Gumet;

- (b) such payments are Permitted Payments; or
- (c) the payment is a distribution in the solvent liquidation or reorganisation of any member of the Group which is not a Borrower or the Guarantor so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group.

3.15 Intellectual Property Rights

The Borrower shall, and shall procure that each other member of the Group shall, (i) safeguard and maintain its rights with respect to the Intellectual Property Rights in accordance with this Agreement, including complying in all material respects with all material contractual provisions and (ii) ensure that any Intellectual Property Rights will be owned by or licensed to the Borrower, and where such Intellectual Property Rights which are owned by a member of the Group are capable of registration and it is commercially reasonable to do so, are registered in the name of the Borrower or the Guarantor.

3.16 Maintenance of Status

The Borrower shall, and shall procure that each other member of the Group shall, remain duly incorporated and validly existing as a corporate entity with limited liability under the jurisdiction in which it is incorporated and, other than in respect of the Guarantor's tax domiciliation in Ireland and the business carried out and assets owned by the Borrower in the Federal Republic of Germany, that it will have no centre of main interests, permanent establishment or place of business outside the jurisdiction in which it is incorporated, and that it will continue to have the power to carry on its business as it is now being conducted and continue to own its property and other assets.

3.17 Encumbrance

The Borrower shall not, and shall procure that no other member of the Group shall, create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, except for Permitted Liens, or enter into any agreement, document, instrument or other arrangement with any Person which directly or indirectly prohibits or has the effect of prohibiting the Borrower or any member of the Group from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of the Borrower's or any Subsidiary's Intellectual Property, except as is otherwise permitted in herein.

3.18 Taxes; Pensions

The Borrower shall, and shall procure that each other member of the Group shall, timely file all required Tax Returns and reports and timely pay all foreign, federal, state and local taxes, assessments, deposits and contributions owed by the Borrower and any other member of the Group (unless contested in good faith and with the Borrower or any other member of the Group, as applicable, maintaining reserves with respect thereto in accordance with GAAP), and shall deliver to Gurnet, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

3.19 General Representations and Warranties

The Borrower (or, where the Guarantor is specifically referred to below, the Guarantor) represents and warrants to Gurnet, as of the Closing Date and the Drawdown Date, that:

- (a) the Borrower is duly incorporated and validly existing as a company with limited liability under the laws of Ireland, and the Guarantor is duly incorporated and validly existing as a company with limited liability under the laws of Ireland, and it has power to carry on its business as it is now being conducted and to own its property and other assets;
- (b) it has the power to execute, deliver and perform its obligations under the Finance Documents and all necessary corporate, shareholder and other action has been taken to authorise the execution, delivery and performance of the same by it;
- (c) subject to the Legal Reservations, each Finance Document to which the Borrower and the Guarantor is a party constitutes the legally valid, binding and enforceable obligations of the Borrower or the Guarantor (as applicable);
- (d) the execution and delivery of, the performance of the Borrower's and the Guarantor's obligations under and compliance with the provisions of the Finance Documents to which each of them is a party do not and will not:
 - (i) contravene or conflict in any material respect with any applicable law, statute, rule or regulation, or any judgment, decree or permit to which it is subject in its jurisdiction of incorporation or in any jurisdiction in which it has its centre of main interests or owns any assets;
 - (ii) contravene or conflict with any agreement or other instrument binding upon it which could reasonably be expected to have a material adverse effect on its ability to perform its obligations under such Finance Documents;
 - (iii) contravene or conflict with any provision of its constitutional documents;
- (e) the latest available consolidated audited accounts of the Guarantor and the latest available unaudited accounts of the Borrower have been prepared on a basis consistent with previous years and have been approved by its auditors as representing a true and fair view of the results of its operations for that year and accurately disclose, in accordance with GAAP, or reserve against all the liabilities (actual or contingent) of the Guarantor;
- (f) there has been no Material Adverse Change since the date of the latest audited accounts of the Guarantor;
- (g) no event or circumstance which constitutes an Event of Default has occurred and is continuing unremedied or unwaived;
- (h) no litigation, arbitration, administrative proceedings or investigation is current or to its knowledge is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined (after giving effect to any insurance maintained by the Group) is reasonably likely to result in a Material Adverse Change, nor is there subsisting against it or any of its Subsidiaries any unsatisfied judgment or award (unless contested in good faith and with the Borrower or the Guarantor maintaining, in accordance with GAAP, reserves with respect thereto);

- (i) each of the Borrower and the Guarantor has obtained all Authorisations that are necessary for such Person to lawfully comply with all of its obligations under the Finance Documents to which it is a party, and all such Authorisations are in full force and effect;
- (j) the Borrower and the Guarantor (as applicable) is the sole legal and beneficial owner and has good title to the assets which it charges or purports to charge pursuant to the Security Documents;
- (k) the Borrower has complied in all material respects with all of the covenants and other terms contained in the Existing Facility and no default or Event of Default (as defined thereunder) has occurred and is continuing thereunder;
- (l) to the best of its knowledge and belief (having made due and careful enquiry) no material Environmental Claim has been commenced or is threatened against it not previously disclosed to Gurnet;
- (m) [reserved];
- (n) the Group Structure Chart is true, complete and accurate in all material respects and represents the complete corporate structure of the Group as at the date of this Agreement;
- (o) it is not required to make any deduction for or on account of any Tax from any payment it may make under this Agreement to a Qualifying Lender;
- (p) [reserved];
- (q) [reserved];
- (r) [reserved];
- (s) [reserved];
- (t) [reserved];
- (u) it is not necessary that any Finance Document be filed, recorded or enrolled with any court or other authority in Ireland or that any stamp, registration or similar tax be paid on or in relation to any Finance Document, or the transactions contemplated by any Finance Document;
- (v) any factual information (including the Business Plan) provided by the Borrower or any member of the Group for the purposes of entering into this Agreement and any related documentation was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated; any financial projections contained in the Business Plan have been prepared on the basis of recent historical information and on the basis of reasonable assumptions; nothing has occurred or been omitted from the Business Plan and no information has been given or withheld that results in the information contained in the Business Plan being untrue or misleading in any material respect;
- (w) the Borrower and each other member of the Group has no Indebtedness outstanding other than the Permitted Indebtedness;

- (x) neither it nor the Guarantor, nor any of their respective assets, is entitled to immunity from suit, execution, attachment or other legal process;
- (y) [reserved];
- (z) [reserved];
- (aa) the pension schemes for the time being operated by the Borrower and the Guarantor (if any) are funded in accordance with their rules and to the extent required by law or otherwise comply with the requirements of any law applicable in the jurisdiction in which the relevant pension scheme is maintained;
- (bb) each of the Borrower and the Guarantor is in compliance in all material respects with all applicable European Union legislation and the legislation of its jurisdiction of incorporation, including any applicable anti-corruption legislation;
- (cc) other than as set out in the Group structure chart provided to Gumet prior to the Closing Date (the “**Group Structure Chart**”), the Borrower and the Guarantor own no other equity and/or shares in any other business entity;
- (dd) it has read and understood this Agreement and determined that it is in its best commercial interest and consistent with its purpose of operations to enter into this Agreement;
- (ee) no member of the Group is dormant;
- (ff) it is in compliance with [Section 3.06](#) and [Section 3.07](#);
- (gg) the fair salable value of the Borrower’s assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities, the Borrower is not left with unreasonably small capital after the transactions in this Agreement and the Borrower is able to pay its debts (including trade debts) as they mature;
- (hh) the Borrower shall use the proceeds of the Term Loan solely for working capital purposes;
- (ii) the Borrower is not an “investment company” or a company “controlled” by an “investment company” under the Investment Company Act of 1940, as amended and the Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors);
- (jj) all material returns, reports and statements with respect to material amounts of federal, state, local and foreign income and franchise and other Taxes (collectively, the “**Tax Returns**”) required to be filed by the Borrower, the Guarantor or any of their Subsidiaries have been filed with the appropriate authorities; and
- (kk) all material amounts of Taxes payable by the Borrower, the Guarantor or any of their Subsidiaries or required to be withheld and paid over by any of the Borrower, the Guarantor or any of their Subsidiaries (other than Taxes which are not delinquent) have been paid except those not delinquent by more than 30 days or, if more than 30 days delinquent, those that are being contested in good faith by appropriate proceedings which stay the enforcement of any lien and for which adequate reserves if required have been provided for in accordance with GAAP.

The representations and warranties set out above shall survive the execution of this Agreement and are, with the exception of the representations set out in paragraphs [\(n\)](#), [\(o\)](#), [\(u\)](#) and [\(v\)](#) above, deemed repeated on the Drawdown Date by reference to the facts and circumstances then existing (except if any such representation and warranty relates to an earlier date it shall refer to the facts and circumstances as of such earlier date).

ARTICLE 4
GUARANTY

4.01 Guaranty

- (a) The Guarantor hereby unconditionally and irrevocably, as a primary obligor and not only a surety, guarantees to Gumet and its successors and permitted assigns, the prompt and complete payment and performance by the Borrower of the Obligations when due (whether at the stated maturity, by acceleration or otherwise).
- (b) The guaranty contained in this Article 4 is a guaranty of payment and not of collection and shall remain in full force and effect until all of the Obligations to Gumet under this Agreement shall have been Paid in Full.
- (c) No payment made by Borrower, the Guarantor or any other Person or received or collected by Gumet from the Borrower, the Guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of the Guarantor hereunder which the Guarantor shall, notwithstanding any such payment (other than any payment received or collected from the Guarantor in respect of the Obligations), remain liable for the Obligations until the Obligations to Gumet under the Agreement are Paid in Full. Upon the Obligations to Gumet under this Agreement being Paid in Full, the guaranty under this Agreement shall be terminated automatically without any further action.

4.02 No Subrogation

Notwithstanding any payment made by the Guarantor hereunder or any set-off or application of funds of the Guarantor by Gumet, the Guarantor shall not be entitled to be subrogated to any of the rights of Gumet against the Borrower or right of offset held by Gumet for the payment of the Obligations, nor shall the Guarantor seek or be entitled to seek any contribution or reimbursement from the Borrower in respect of payments made by the Guarantor hereunder, until all of the Obligations to Gumet under this Agreement are Paid in Full. If any amount shall be paid to the Guarantor on account of such subrogation rights at any time when all of the Obligations to Gumet under this Agreement shall not have been Paid in Full, such amount shall be held by the Guarantor in trust for Gumet, segregated from other funds of the Guarantor, and shall, forthwith upon receipt by the Guarantor, be turned over to Gumet in the exact form received by the Guarantor (duly indorsed by the Guarantor to Gumet, if required), to be applied against the Obligations, whether matured or unmatured, in a manner consistent with the provisions of this Agreement.

4.03 Amendments, etc. with respect to the Obligations

- (a) The Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against the Guarantor and without notice to or further assent by the Guarantor, any demand for payment of any of the Obligations made by Gumet may be rescinded by Gumet and any of the Obligations continued, and the Obligations, or the liability of any other Person upon or for any part thereof, or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by Gumet, and this Agreement and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as Gumet may deem advisable from time to time.
- (b) Gumet may, from time to time, in its reasonable discretion and without notice to the Guarantor, take any or all of the following actions: (a) retain or obtain the primary or secondary obligation of any obligor or obligors, in addition to the undersigned, with respect to any of the Obligations, (b) extend or renew any of the Obligations for one or more periods (whether or not longer than the original period), alter or exchange any of the Obligations, or release or compromise any obligation of any of the undersigned hereunder or any obligation of any nature of any other obligor with respect to any of the Obligations, (c) release any guaranty or right of offset, or extend or renew for one or more periods (whether or not longer than the original period), and (d) resort to the undersigned (or any of them) for payment of any of the Obligations when due, whether or not Gumet shall have proceeded against any other of the undersigned or any other obligor primarily or secondarily obligated with respect to any of the Obligations.

4.04 Waivers

- (a) To the extent permitted by applicable law, the Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Obligations and notice of or proof of reliance by Gumet upon the guaranty contained in this Article 4 or acceptance of the guaranty set forth in this Article 4. The Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guaranty contained in this Article 4, and all dealings between Borrower and the Guarantor, on the one hand, and Gumet, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guaranty contained in this Article 4. To the extent permitted by applicable law, the Guarantor waives (a) diligence, presentment, protest, demand for payment and notice of default, dishonor or nonpayment and all other notices whatsoever to or upon the Borrower or the Guarantor with respect to the Obligations, (b) notice of the existence or creation or non-payment of all or any of the Obligations and (c) all diligence in collection or protection of or realization upon any Obligations or guaranty of any Obligations.
- (b) Upon the existence and continuance of an Event of Default, Gumet in its sole discretion, without prior notice to or consent of the Guarantor, may elect to: (i) compromise or adjust the Obligations or any part of it or make any other accommodation with the Borrower or the Guarantor or (ii) exercise any other remedy against the Borrower or the Guarantor. No such action by Gumet shall release or limit the liability of the Guarantor, who shall remain liable under the guaranty set forth in this Agreement after the action, even if the effect of the action is to deprive such Guarantor of any subrogation rights, rights of indemnity, or other rights to collect reimbursement from the Borrower or the Guarantor for any sums paid to Gumet, whether contractual or arising by operation of law or otherwise. The Guarantor expressly agrees that under no circumstances shall it be deemed to have any right, title, interest or claim in or to any real or personal property to be held by Gumet or any third party after any foreclosure or transfer in lieu of foreclosure of any security for the Obligations.

4.05 Payments

The Guarantor hereby guaranties that payments hereunder will be paid to Gumet without set-off or counterclaim in Dollars at the office of Gumet specified in the notice provisions hereof.

ARTICLE 5
INFORMATION CONCERNING THE GROUP

5.01 **[Reserved]**

5.02 **Information concerning the Group**

The Borrower shall:

- (a) deliver to Gurnet:
 - (i) as soon as they become available but in any event within 180 days after the end of each of its financial years the Guarantor's audited consolidated annual report, balance sheet, profit and loss account and auditors report for that financial year, and the Borrower's unaudited annual report, balance sheet, profit and loss account, together with a Compliance Certificate as set out in the Existing Facility signed by two directors confirming compliance by the Borrower with the covenants pursuant to Sections 3.06 and 3.07 and with evidence of such compliance and related calculations;
 - (ii) as soon as they become publicly available but in any event within 90 days after the end of each of the relevant accounting periods the Guarantor's and the Borrower's interim consolidated and unconsolidated semi-annual report, balance sheet and profit and loss account for the first half-year of each of its financial years, together with a Compliance Certificate as set out in the Existing Facility signed by two directors confirming compliance by the Borrower with the covenants pursuant to Sections 3.06 and 3.07 and with evidence of such compliance and related calculations;
 - (iii) as soon as they become publicly available but in any event within 45 days after the end of each of the relevant accounting periods the Guarantor's and the Borrower's interim consolidated and unconsolidated quarterly reports, balance sheet and profit and loss account for the first and the third quarter of each of its financial years;
 - (iv) as soon as they are delivered to the board of directors, the monthly management accounts as delivered to the board of directors on a monthly basis;
 - (v) as soon as they are delivered to the board of directors, the annual budgets delivered to the board of directors on an annual basis; and

- (vi) from time to time, such further information on its general financial situation as Gurnet may reasonably require or such certificates of compliance with the undertakings of Article 3 as Gurnet may deem necessary;

and

- (b) inform Gurnet promptly of:
 - (i) any material alteration to the constitutional documents (as applicable) or shareholding structure of the Borrower or the Guarantor and of any change of ownership of 5% or more of the Borrower or Guarantor shares after the Closing Date;
 - (ii) any fact which obliges it to prepay any financial indebtedness or any European Union funding;
 - (iii) any event or decision that constitutes or may result in a Mandatory Prepayment/Commitment Termination Trigger;
 - (iv) any intention on its part to grant any security over any of its assets in favor of a third party;
 - (v) [reserved];
 - (vi) any fact or event that is reasonably likely to prevent the substantial fulfillment of any obligation of the Borrower under this Agreement;
 - (vii) any event listed in Article 6 having occurred or being threatened or anticipated;
 - (viii) any investigations concerning the integrity of the members of the Borrower's board of directors or managers;
 - (ix) to the extent permitted by law, any material litigation, arbitration, administrative proceedings or investigation carried out by a court, administration or similar public authority, which, to the best of its knowledge and belief, is current, imminent or pending against the Borrower or its controlling entities or members of the Borrower's management bodies in connection with Criminal Offences related to the Term Loan; or
 - (x) any litigation, arbitration or administrative proceedings or investigation which is current, threatened or pending and which might if adversely determined result in a Material Adverse Change.

ARTICLE 6
EVENTS OF DEFAULT

6.01 Right to Demand Repayment

The Borrower shall repay all or part of the Term Loan (as requested by Gurnet) forthwith, together with accrued return under Section 1.03 and all other accrued or outstanding amounts under this Agreement including the Premium, upon written demand being made by Gurnet if any of the following events occur.

6.01A Immediate Demand

Gurnet may make such demand immediately:

- (a) if the Borrower does not pay on the due date any amount payable by it pursuant to this Agreement at the place and in the currency in which it is expressed to be payable, unless (i) its failure to pay is caused by an administrative or technical error or a Disruption Event and (ii) payment is made within three Business Days of its due date;
- (b) if any information or document given to Gurnet by or on behalf of the Borrower or the Guarantor or any representation, warranty or statement made or deemed to be made by the Borrower in or pursuant to this Agreement is or proves to have been incorrect, incomplete or misleading in any material respect;
- (c) if, following any default of the Borrower or the Guarantor or any other member of the Group in relation to any loan, or any obligation arising out of any financial transaction, other than the Term Loan,
 - (i) the Borrower or the Guarantor or any other member of the Group is required or is capable of being required or will, following expiry of any applicable contractual grace period, be required or be capable of being required to prepay, discharge, close out or terminate ahead of maturity such other loan or obligation; or
 - (ii) any financial commitment for such other loan or obligation is cancelled or suspended;
- (d) if the Borrower or the Guarantor or any member of the Group is unable to pay its debts as they fall due, or suspends its debts, or makes or seeks to make a composition with its creditors including a moratorium, or commences negotiations with one or more of its creditors (or, in the case of the Borrower, is unable or admits inability to pay its debts within the meaning of section 570 of the Act) with a view to rescheduling any of its financial indebtedness;
- (e) if any corporate action, legal proceedings or other procedure or step is taken in relation to the suspension of payments, a moratorium of any indebtedness, dissolution, administration, examinership or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) or an order is made or an effective resolution is passed for the winding up of the Borrower or the Guarantor or any member of the Group, or if the Borrower or the Guarantor or any member of the Group takes steps towards a substantial reduction in its capital, is declared insolvent or ceases or resolves to cease to carry on the whole or any substantial part of its business or activities;
- (f) if an encumbrancer takes possession of, or a receiver, liquidator, administrator, administrative receiver, examiner or similar officer is appointed, whether by a court of competent jurisdiction or by any competent administrative authority or by any Person, of or over, any part of the business or assets of the Borrower or the Guarantor or any member of the Group;

- (g) [reserved];
- (h) if any distress, execution, sequestration or other process is levied or enforced upon the property of the Borrower and is not discharged or stayed within 14 days;
- (i) if a Material Adverse Change occurs, as compared with the Borrower's or the Guarantor's condition at the date of this Agreement;
- (j) if it is or becomes unlawful for the Borrower or the Guarantor to perform any of its obligations under this Agreement or the Security Documents or this Agreement or the Security Documents are not effective in accordance with its terms or is alleged by the Borrower or the Guarantor to be ineffective in accordance with its terms;
- (k) if the Borrower or the Guarantor fail to comply with or neglect to perform any obligation or violate any covenant, as applicable, in Sections 3.01, 3.03 to 3.09, 3.11 to 3.14, 3.17 and 5.02;
- (l) if the Borrower or the Guarantor fail or neglect to perform, keep or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Finance Document, and as to any default (other than those specified in this Article 6) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within 30 days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the 30 day period or cannot after diligent attempts by the Borrower or the Guarantor, as applicable, be cured within such ten day period, and such default is likely to be cured within a reasonable time, then the Borrower or the Guarantor, as applicable, shall have an additional period (which shall not in any case exceed 30 days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Term Loan shall be made during such cure period);
- (m) if one or more final judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least \$500,000 (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against the Borrower or the Guarantor and the same are not, within 30 days after the entry thereof, discharged or execution thereof stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that the Term Loan will not be made prior to the discharge, stay, or bonding of such judgment, order, or decree); or
- (n) at any time any material provision of any Security Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or as a result of facts or omissions by Gumet or the satisfaction in full of the all the Obligations, ceases to be in full force and effect; or any member of the Group contests in writing the validity or enforceability of any provision of any Security Document; or any member of the Group denies in writing that it has any further liability or obligations under any Security Document (other than as a result of repayment in full of the Obligations), or purports in writing to revoke or rescind any Security Document, in each case with respect to a material provisions of such Security Document.

6.02 Other rights at law

Section 6.01 shall not restrict any other right of Gumet at law to require prepayment of the Term Loan when such prepayment is otherwise required pursuant to the terms of this Agreement.

6.03 Indemnity

In case of demand under Section 6.01, the Borrower shall pay to Gurnet the amount demanded. Amounts due by the Borrower pursuant to this Section 6.03 shall be payable before 10:00 a.m. New York time on the date of payment specified in Gurnet's demand; provided, that if any demand for payment is made by Gurnet after 1:00 p.m. New York time on any Business Day, the Borrower shall make such payment before 10:00 a.m. New York time on the following Business Day.

6.04 Non-Waiver

No failure or delay or single or partial exercise by Gurnet in exercising any of its rights or remedies under this Agreement shall be construed as a waiver of such right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

**ARTICLE 7
NOTICES**

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Finance Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Gurnet or the Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Article 7.

For Gurnet:

Gurnet Point, L.P.
c/o Waypoint International GP LLC
55 Cambridge Parkway, Suite 401
Cambridge, MA 02142
Attention James Singleton
Email: James.Singleton@waypointcapital.net

with a copy to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attention: Daniel S. Dokos
Email: daniel.dokos@weil.com

For the Borrower:

Innocoll Pharmaceuticals Limited
Unit 9, Block D, Monksland Business Park,
Monksland, Athlone,
County Roscommon, Ireland
Attention: Anthony Zook
Email: TZook@innocoll.com

with a copy to:

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: Jeffrey A. Baumel; Ilan Katz
Email: jeffrey.baumel@dentons.com;
ilan.katz@dentons.com

For Guarantor:

Innocoll Holdings Public Limited Company
Unit 9, Block D, Monksland Business Park,
Monksland, Athlone,
County Roscommon, Ireland
Attention: Anthony Zook
Email: TZook@innocoll.com

with a copy to:

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: Jeffrey A. Baumel; Ilan Katz
Email: jeffrey.baumel@dentons.com;
ilan.katz@dentons.com

ARTICLE 8
CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER

This Agreement shall be governed by and construed in accordance with New York law. The Borrower and each Lender submit to the exclusive jurisdiction of the State and Federal courts in New York, New York; provided, however, that nothing in this Agreement shall be deemed to operate to preclude any Lender from bringing suit or taking other legal action in any other jurisdiction to enforce a judgment or other court order in favor of such Lender. The Borrower and each Lender expressly submit and consent in advance to such jurisdiction in any action or suit commenced in any such court, and the Borrower and each Lender hereby waive any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. The Borrower and each Lender hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to the address set forth in Article 7 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of the Borrower's or each Lender's, as the case may be, actual receipt thereof or three days after deposit in the U.S. mails, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER AND GURNET EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE FINANCE DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

ARTICLE 9
GENERAL PROVISIONS

9.01 Successors and Assigns

This Agreement binds and is for the benefit of the successors and permitted assigns of each party. The Borrower may not assign this Agreement or any rights or obligations under it without Gumet's prior written consent (which may be granted or withheld in Gumet's discretion). Gumet has the right (with the consent of the Borrower (not to be unreasonably withheld, delayed or conditioned), unless (i) an Event of Default has occurred and is continuing or (ii) the applicable Term Loan Maturity Date has occurred or (iii) the sale, transfer, assignment or participation is by Gumet to an Affiliate of Gumet Point, where in each such case no such consent shall be required), to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Gumet's obligations, rights, and benefits under this Agreement, the other Finance Documents and the Warrant. Without limiting the forgoing, prior to any Term Loan being made, Gumet may nominate any Affiliate of Gumet Point to replace Gumet as lender under this Agreement and each other Finance Document and the Borrower and the Guarantor agree to sign any amendment or other documentation necessary to give effect to such replacement.

9.02 Register and Participants

- (a) Each Lender shall provide, and Gumet Point shall maintain at its offices, a copy of each agreement pursuant to which any Lender purports to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, such Lender's obligations, rights, and benefits under this Agreement and the other Finance Documents. Gumet Point shall maintain at its offices a register for the recordation of the names and addresses of the Lenders, and the commitments of, and principal amounts (and stated interest) owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and Gumet Point and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender and the owner of the amounts owing to it under the Finance Documents as reflected in the Register for all purposes of the Finance Documents. The Register shall be available for inspection by any Lender, at any reasonable time and from time to time upon reasonable prior notice. No sale, transfer, assignment or negotiation of all or any part of, or any interest in, such a Lender's obligations, rights, and benefits under this Agreement and the other Finance Documents shall be permitted or effective unless it is recorded on the Register.
- (b) Any Lender may at any time grant participations to any Person (other than a natural Person, or a Holding Company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement and other Finance Documents; provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement. The Borrower agrees that each Participant shall be entitled to the benefits of Section 1.06 (subject to the requirements and limitations therein, including the requirements under Section 1.06(f) (it being understood that the documentation required under Section 1.06(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.01; provided that such Participant shall not be entitled to receive any greater payment under Section 1.06(f) with respect to any participation, than its participating Lender would have been entitled to receive. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Term Loan or other obligations under the Finance Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Finance Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations, or is otherwise required thereunder. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. No grant of a participation to any Person shall be permitted or effective unless it is recorded on the Participant Register.

9.03 Indemnification; Expenses

- (a) Indemnification. The Borrower agrees to indemnify, defend and hold Gumet and its directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Gumet (each, an “**Indemnified Person**”) harmless against: (i) all obligations, demands, claims, and liabilities (collectively, “**Claims**”) claimed or asserted by any other party in connection with the transactions contemplated by the Finance Documents and (ii) all losses or expenses in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions between Gumet and the Borrower contemplated by the Finance Documents (including reasonable attorneys’ fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person’s gross negligence, bad faith, willful misconduct or a material breach of such Indemnified Person’s obligations under this Agreement.
- (b) Expenses. Gumet agrees to reimburse the Borrower on the Drawdown Date for any fees paid by the Borrower, the Guarantor or any of their respective Subsidiaries to EIB (the “**EIB Fees**”) in connection with the EIB Amendment and Consent. The Borrower agrees to pay (i) all reasonable and documented expenses incurred by Gumet and its Affiliates (including the reasonable fees and disbursements of counsel to Gumet, in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the Finance Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated)); provided, that the Borrower shall not be responsible for any such expenses in excess of \$135,000 in the aggregate, (ii) all reasonable and documented expenses incurred by Gumet (including the reasonable fees and disbursements of counsel to Gumet, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the Finance Documents, including its rights under this Section 9.03(b) or (B) in connection with the Obligations, including all such expenses incurred during any workout, restructuring or negotiations in respect of the Obligations), (iii) all reasonable and documented costs and expenses incurred by Gumet (and/or any third party employed by Gumet) in exercising its rights under this Agreement and (iv) any EIB Fees with respect to which Gumet has reimbursed the Borrower, the Guarantor or any of their respective Subsidiaries in connection with the EIB Amendment and Consent. The foregoing amounts incurred after the Closing Date shall be due and payable within 30 days after invoice date; provided, however, that the amounts set forth in this Section 9.03(b) may be capitalized and added to the amount of the Term Loan that is paid on the Term Loan Maturity Date; provided, further, however, that if an Event of Default shall have occurred and be continuing, the amounts set forth in this Section 9.03(b) are due and payable on demand.

9.04 Time of Essence

Time is of the essence for the performance of all Obligations in this Agreement.

9.05 Severability of Provisions

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

9.06 Amendments in Writing; Waiver; Integration

No purported amendment or modification of any Finance Document, or waiver, discharge or termination of any obligation under any Finance Document, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by each party hereto and made in accordance with Section 4 of the Intercreditor Deed. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Finance Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Finance Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Finance Documents merge into the Finance Documents.

9.07 Counterparts

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

9.08 Survival

All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been Paid in Full. The obligation of the Borrower in Section 9.03(a) to indemnify Gurnet shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

9.09 Confidentiality

In handling any confidential information, each Lender shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to each Lender's Subsidiaries or Affiliates; (b) to prospective transferees or purchasers of any interest in the Term Loan (provided, however, each Lender shall use its best efforts to obtain any prospective transferee's or purchaser's agreement to the terms of this provision); (c) as required by law, regulation, subpoena, or other order; and (d) as each Lender considers appropriate in exercising remedies under the Finance Documents. Confidential information does not include information that is either: (i) in the public domain or in a Lender's possession when disclosed to such Lender, or becomes part of the public domain after disclosure to such Lender; or (ii) disclosed to a Lender by a third party if such Lender does not know that the third party is prohibited from disclosing the information.

9.10 Electronic Execution of Documents

The words "**execution**," "**signed**," "**signature**" and words of like import in any Finance Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

9.11 Captions

The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

9.12 Construction of Agreement

The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

9.13 Relationship

The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

9.14 Third Parties

- (a) Except as set forth in Section 9.14(b), nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any Persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any Person not an express party to this Agreement; or (c) give any Person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.
- (b) The parties to this Agreement hereby designate EIB as a third-party beneficiary of Sections 9.06 (to the extent of any violation of Section 4 of the Intercreditor Deed) and 9.15 of this Agreement, having the right to enforce Sections 9.06 and 9.15 of this Agreement.

9.15 Intercreditor Deed

Notwithstanding anything herein to the contrary, the exercise of any right or remedy by Gumet hereunder is subject to the provisions of the Intercreditor Deed. If there is a conflict between the terms of the Intercreditor Deed and this Agreement, the terms of the Intercreditor Deed will control.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

SIGNED for and on behalf of **INNOCOLL PHARMACEUTICALS LIMITED**, as Borrower, by its lawfully appointed attorney:

/s/ Anthony Zook
(Attorney Name)

Anthony Zook

in the presence of:-

/s/ Patrick Hutchison
(Witness' Signature)
3803 West Chester Pike
Newtown Square, PA 19073
(Witness' Address)

Interim CFO
(Witness' Occupation)

Signature Page to Loan Agreement

SIGNED for and on behalf of **INNOCOLL HOLDINGS PUBLIC LIMITED COMPANY**, as Guarantor, by its lawfully appointed attorney:

/s/ Anthony Zook
(Attorney Name)

Anthony Zook

in the presence of:-

/s/ Patrick Hutchison
(Witness' Signature)
3803 West Chester Pike
Newtown Square, PA 19073
(Witness' Address)

Interim CFO
(Witness' Occupation)

Signature Page to Loan Agreement

GURNET POINT L.P., as Lender

By: Waypoint International GP LLC, its general partner

By: /s/ James Singleton

Name: James Singleton

Title: General Counsel and manager

Signature Page to Loan Agreement

Exhibit A

[FORM OF] BORROWING NOTICE

[●], 2017

Reference is made to the Loan and Guaranty Agreement, dated as of May 9, 2017 (as it may be amended, amended and restated, extended, refinanced, replaced, supplemented or otherwise modified from time to time, the “**Agreement**”; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among INNOCOLL PHARMACEUTICALS LIMITED, an Irish private limited company incorporated and having its registered office at Unit 9, Block D, Monksland Business Park, Monksland, Athlone, County Roscommon, Ireland (“**Borrower**”), INNOCOLL HOLDINGS PUBLIC LIMITED COMPANY, an Irish public limited company (registration number 544604) and having its registered office at Unit 9, Block D, Monksland Business Park, Monksland, Athlone, County Roscommon, Ireland (the “**Guarantor**”) and GURNET POINT L.P., a Delaware limited partnership acting through its general partner, Waypoint International GP LLC (“**Gurnet**”).

Pursuant to Section 2.03 of the Agreement, the undersigned hereby requests that Gurnet make a Term Loan to the Borrower in accordance with the terms and conditions of the Agreement on [], 2017 (the “**Drawdown Date**”), which shall be on a Business Day during the Drawdown Period, in the amount of \$10,000,000.

The account of the Borrower to which the proceeds of the Term Loan requested on the Drawdown Date are to be made available by the Gurnet to the Borrower in accordance with the wire instructions is set forth below:

[INSERT ACCOUNT INFORMATION]

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned has caused this Borrowing Notice to be duly executed and delivered as of the date and at the place first written above.

INNOCOLL PHARMACEUTICALS LIMITED, as Borrower

By:

Director / Attorney

Signature Page to Borrowing Notice

Dated 5 May 2017

EUROPEAN INVESTMENT BANK
as Bank

INNOCOLL PHARMACEUTICALS LIMITED
as Borrower

and

INNOCOLL HOLDINGS PLC
as Guarantor

AMENDMENT AND WAIVER AGREEMENT

relating to a Finance Contract originally
dated 27 March 2015

 NORTON ROSE FULBRIGHT

THIS DEED is dated May 5, 2017 and made between:

- (1) THE EUROPEAN INVESTMENT BANK having its seat at 100 boulevard Konrad Adenauer, L-2950 Luxembourg, Luxembourg, represented by Aleksander Skornik and Thomas Lugez (the "Bank");
- (2) INNOCOLL PHARMACEUTICALS LIMITED, a company incorporated in Ireland, having its registered office at Unit 9, Block D, Monksland Business Park, Monksland, Athlone, Ireland (the "Borrower"); and
- (3) INNOCOLL HOLDINGS PLC, a company incorporated in Ireland, having its registered office at Unit 9, Block D, Monksland Business Park, Monksland, Athlone, Ireland (the "Guarantor"),

each a Party and together the Parties.

RECITALS

- (A) By a finance contract dated 27 March 2015 entered into between the Bank, the Borrower and Innocoll AG as the original guarantor (which merged with the Guarantor on 14 March 2016), as amended pursuant to a letter dated 19 February 2016 from the Bank addressed to the Borrower, Innocoll AG and the Guarantor the Bank agreed to make a loan facility of up to EUR25,000,000 (twenty five million euros) available to the Borrower (the "Original Finance Contract").
- (B) The Bank, the Borrower, the Guarantor and Gurnet (as defined below) have been in discussions regarding the provision of a loan from the Subordinated Creditor (as defined below) to the Borrower in an amount of USD10,000,000 (ten million dollars).
- (C) It is a condition to the Subordinated Creditor providing such loan under the Subordinated Loan Agreement (as defined below) that the Original Finance Contract be amended as per the provisions of this Deed.
- (D) The Bank, the Subordinated Creditor, the Guarantor and the Borrower will enter into an intercreditor deed on or about the date of this Deed under which any amounts owed to the Subordinated Creditor under the Subordinated Loan Agreement will be subordinated to the Amended Finance Contract (as defined below) subject to the terms thereof (the "Intercreditor Deed").
- (E) The Parties have agreed with effect from the Effective Date (as defined below), to amend the Original Finance Contract on the terms of this Deed.

IT IS AGREED as follows:

1 Definitions and interpretation

- 1.1 In this Deed (including the recitals hereto), except to the extent that the context requires otherwise or as separately defined in this Deed, terms defined in the Amended Finance Contract (as if the Effective Date had occurred) have the same meaning in this Deed and:

“**Amended Finance Contract**” has the meaning given to that term in clause 2 (*Amendment*)

“**Effective Date**” means the date on which the Bank notifies the Borrower in writing that the documents and evidence set out in Schedule 1 (*Conditions precedent*) to this Deed have been delivered to the Bank in a form and in substance satisfactory to the Bank.

“**Gurnet**” means Gurnet Point L.P., a Delaware limited partnership (with registered number 5495845), acting through its general partner, Waypoint International GP LLC (notwithstanding any assignment transfers or disposal of any of the Subordinated Creditor’s right or obligations under any Subordinated Agreements or the Intercreditor Deed).

“**Subordinated Creditor**” means Gurnet or any Relevant Affiliate of Gurnet that accedes to the Intercreditor Deed as a Subordinated Creditor.

“**Subordinated Loan Agreement**” means the USD10,000,000 loan and guaranty agreement dated on or about the date of this Deed between the Subordinated Creditor as lender and the Borrower as borrower.

“**Subordinated Security Documents**” has the meaning given to that term in the Intercreditor Deed.

- 1.2 Section (a) (*Interpretation*) of the Amended Finance Contract shall be deemed to be incorporated in this Deed in full, save that references therein to “this Contract” shall be deemed to be references to this Deed.
- 1.3 A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.
- 1.4 The Parties designate this Deed as a “Finance Document” for the purposes of the Amended Finance Contract and the Subordinated Loan Agreement (in each case, as defined therein).

2 Amendment

The Parties agree that with effect from the Effective Date, the Original Finance Contract shall be amended as set out below (the “**Amended Finance Contract**”):

2.1 The following definitions shall be added to Section (b) (*Definitions*) of the Original Finance Contract:

“**Agreement**” means any legally binding written, oral or other agreement, amendment, contract, subcontract, lease, understanding, instrument, note, debenture, indenture, warrant, option, warranty, purchase order, license, sublicense, insurance policy or other similar legally binding commitment or undertaking of any nature.

“**Backstop Date**” means 31 December 2017.

“**Gurnet**” means Gurnet Point L.P., a Delaware limited partnership (with registered number 5495845), acting through its general partner, Waypoint International GP LLC (notwithstanding any assignment transfers or disposal of any of the Subordinated Creditor’s right or obligations under any Subordinated Agreements or the Intercreditor Deed).

“**Gurnet Acquirer**” means the Subordinated Creditor or any Relevant Affiliate or a group of persons (which group includes Gurnet or any Relevant Affiliate of Gurnet) acting in concert (for which purpose, “acting in concert” means acting together pursuant to an agreement or understanding (whether formal or informal)) (provided that, in each case, the Bank has satisfactorily completed all of its applicable “know your customer” and anti-money laundering procedures in respect of any such Relevant Affiliate).

“**Gurnet Acquisition**” means the circumstance where a Gurnet Acquirer:

- (a) becomes, or becomes subject to any requirement (pursuant to any applicable law, rule or regulation, including without limitation any listing rules applicable to the Guarantor and any of the shares in the Guarantor) to become, the direct beneficial and legal owner of a majority of the issued ordinary shares in the Guarantor; and
- (b) acquires, or becomes subject to any requirement (pursuant to any applicable law, rule or regulation, including without limitation any listing rules applicable to the Guarantor and any of the shares in the Guarantor) to acquire, the power to direct the management and policies of the Guarantor, whether through the ownership of voting capital, by contract or otherwise.

“**Intercreditor Deed**” means the intercreditor deed dated [*insert date*] 2017 between the Borrower, the Subordinated Creditor, the Bank and the Guarantor.

“**Liabilities**” means all money, obligations and liabilities from now or in the future due, including any payment or repayment of money, whether actual or contingent and whether as principal or surety.

“Relevant Affiliate” means, in relation to any person, another person that, directly or indirectly, is controlled by such first person (as used in this definition, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a person, whether through the ownership of securities or partnership or other ownership interests, by Agreement or otherwise).

“Subordinated Agreements” means the Subordinated Loan Agreement and the Subordinated Security Documents.

“Subordinated Creditor” means Gumet or any Relevant Affiliate of Gumet that accedes to the Intercreditor Deed as a Subordinated Creditor.

“Subordinated Floating Charge” means a second-ranking floating charge dated on or after the date of the Intercreditor Deed, in identical form to the Floating Charge (save for the fact that it is second-ranking and secures the Subordinated Liabilities, and it will expressly state that it is subject to the terms of the Intercreditor Deed), over all of the assets of the Borrower granted by the Borrower in favour of the Subordinated Creditor.

“Subordinated Liabilities” means all Liabilities owing or incurred (whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently, and whether as principal, surety or otherwise) by the Borrower to the Subordinated Creditor from time to time, pursuant to the Subordinated Agreements.

“Subordinated Loan Agreement” means the USD10,000,000 loan agreement dated on or after the date of the Intercreditor Deed between the Subordinated Creditor as lender and the Borrower as borrower.

“Subordinated Security Documents” means the Subordinated Floating Charge and the Subordinated Share Charge.

“Subordinated Share Charge” means a second-ranking fixed charge dated on or after the date of the Intercreditor Deed, in identical form to the Share Charge (save for the fact that it is second-ranking and secures the Subordinated Liabilities, and it will expressly state that it is subject to the terms of the Intercreditor Deed), over all the shares in the Borrower granted by the Guarantor in favour of the Subordinated Creditor.

- 2.2 The definition of “Finance Documents” in Section (b) (*Definitions*) of the Original Finance Contract shall be amended by (i) deleting the word “and” at the end of paragraph (c), (ii) deleting the full stop at the end of paragraph (d) and adding the word “and” and (iii) adding a new paragraph (e) after the existing paragraph (d) with the following wording:

“(e) the Intercreditor Deed.”

2.3 The definition of “Permitted Guarantee” in Section (b) (*Definitions*) of the Original Finance Contract shall be amended by (i) deleting the word “or” at the end of paragraph (d), (ii) deleting the full stop at the end of paragraph (e) and adding the word “or” and (iii) adding a new paragraph (f) after the existing paragraph (e) with the following wording:

“(f) under any of the Subordinated Agreements.”

2.4 The definition of “Permitted Indebtedness” in Section (b) (*Definitions*) of the Original Finance Contract shall be amended by (i) deleting the word “or” at the end of paragraph (g), (ii) deleting the full stop at the end of paragraph (h) and adding the word “or” and (iii) adding a new paragraph (i) after the existing paragraph (h) with the following wording:

“(i) under any of the Subordinated Agreements.”

2.5 The definition of “Indemnifiable Prepayment Event” in Section (b) (*Definitions*) of the Original Finance Contract shall be amended by deleting the definition in its entirety and replacing it with the following wording:

“Indemnifiable Prepayment Event means Prepayment Event other than as specified in paragraphs 4.03A(3) (*Pari Passu to Non-EIB Financing*), 4.03A(6) (*Gurnet Acquisition*) and 4.03A(5) (*Illegality*).”

2.6 Article 4.03A(3) (*Pari Passu to Non-EIB Financing*) shall be amended by deleting the third paragraph of that Article in its entirety and replacing it with the following wording:

“For the purposes of this Article, “Non-EIB Financing” includes (i) the loan provided to the Borrower pursuant to the Subordinated Loan Agreement and (ii) any loan (save for the Loan and any other direct loans from the Bank to the Borrower (or any other member of the Group) or the Guarantor), credit bond or other form of financial indebtedness or any obligation for the payment or repayment of money originally granted to the Borrower (or any other member of the Group) or the Guarantor) for a term of more than 3 (three) years.”

2.7 The following wording shall be added as a new Article 4.03A(6) after Article 4.03A(5):

“4.03A(6) GURNET ACQUISITION

If as at the Backstop Date (i) the Gurnet Acquisition has not occurred and (ii) the Extension Conditions (as defined in the Intercreditor Deed) have not been satisfied, the Bank may (subject to the terms of the Intercreditor Deed), by notice to the Borrower, suspend or cancel the undisbursed portion of the Credit and demand prepayment of the Loan, together with any accrued return under Article 3.01 and all other amounts accrued or outstanding under this Contract on the date indicated by the Bank in its notice of demand to the Borrower.”

2.8 Article 7.02(b) of the Original Finance Contract shall be amended by (i) deleting the word “and” at the end of Article 7.02(b)(ix), (ii) deleting the full stop at the end of Article 7.02(b)(x) and adding the word “and” and (iii) adding a new paragraph Article 7.02(b)(xi) after the existing Article 7.02(b)(x) with the following wording:

“(xi) any Security entered into pursuant to the Subordinated Loan Agreement or the under the Subordinated Agreements so long as such Security is subordinated under the terms of the Intercreditor Deed.”

2.9 Article 10.01A(j) of the Original Finance Contract shall be amended by adding the following wording before the full stop:

“or if it is or becomes unlawful for any party (other than the Bank) to perform any of its obligations under the Intercreditor Deed or the Intercreditor Deed is not effective in accordance with its terms or is alleged by a party (other than the Bank) to be ineffective in accordance with its terms”

2.10 Article 10.01B(a) of the Original Finance Contract shall be amended by adding the words “or the Intercreditor Deed” after the words “the Security Documents”.

3 Waiver

3.1 From the Effective Date:

- (a) the Bank consents to the Gumet Acquisition and waives any Event of Default and breach of any Finance Document that would otherwise be constituted by the Gumet Acquisition; and
- (b) the Bank confirms that, no Change-of-Control Event under Article 4.03A(2) (Change of Control) of the Amended Finance Contract shall occur as a result of the Gumet Acquisition (as defined in the Amended Finance Contract) occurring and the Bank waives any right to exercise any of its rights under Article 4.03A(2) (Change of Control) of the Finance Contract as a result of the Gumet Acquisition.

4 Representations and warranties

4.1 The Borrower makes the representations and warranties set out in Article 6.20 (General representations and warranties) of the Amended Finance Contract (other than those set out in paragraphs (n), (o), (u), (v) and (gg) of Article 6.20) on each of (i) the Effective Date, and (ii) if applicable, the date of which the Gumet Acquisition occurs.

4.2 The Guarantor makes the representations and warranties set out in Article 5.01 (*Representations and Warranties*) of the Guarantee on each of (i) the Effective Date, and (ii) if applicable, the date of which the Gurnet Acquisition occurs.

5 Fees and Expenses

5.1 The Borrower shall pay to the Bank, promptly and in any event within 10 (ten) Business Days from the date of this Deed a waiver fee of EUR 60,000.

5.2 The Borrower shall pay to the Bank, promptly on demand, all fees and expenses of external legal counsel incurred by the Bank in connection with the negotiation, preparation and execution of this Deed (subject to an aggregate cap of EUR 60,000 which includes the first EUR 10,000 budgeted as per the cost recovery letter between the Bank and the Borrower dated 10 March 2017).

6 Miscellaneous Counterparts

6.1 This Deed may be executed in any number of counterparts and by the different parties on separate counterparts, each of which when so executed and delivered shall be an original but all counterparts shall together constitute one and the same instrument.

Entire Agreement

This Deed constitutes the entire agreement between the Parties in relation to the matters herein and supersedes any previous agreement, whether express or implied, on the same matter.

Partial invalidity

6.2 If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision in any other respect or under the law of any other jurisdiction will be affected or impaired in any way.

Notices

6.3 The provisions of Article 12.01 (*Notices to either party*) and Article 12.02 (*Form of notice*) of the Amended Finance Contract (as if the Effective Date had occurred) shall be deemed to be incorporated in this Deed in full, save that any reference therein to “this Contract” shall be deemed to be a reference to this Deed.

Guarantee

6.4 The Guarantor hereby confirms that the Guarantee shall continue in full force and effect, notwithstanding the provisions of this Deed.

Security

6.5 Each of the Borrower and the Guarantor hereby confirms that the Security Documents and the Security created pursuant to the Security Documents shall continue in full force and effect, notwithstanding the provisions of this Deed (including, without limitation, the waivers and amendments to the Finance Documents made by this Deed).

Conditions subsequent

6.6 The Borrower shall provide the Bank with the following documents (in form and substance satisfactory to the Bank):

- (a) on, or within three Business Days after, the Effective Date (but not before the Effective Date):
 - (i) a certified copy of the Subordinated Loan Agreement, in the form approved in writing by the Bank prior to the date of this Deed, duly executed by all parties thereto; and
 - (ii) a certificate of an authorised signatory of the Borrower certifying that the copy of the Subordinated Loan Agreement is correct, complete and in full force and effect as at a date falling no earlier than the Effective Date; and
- (b) on, or within one Business Day after, the date of execution of each Subordinated Security Document:
 - (i) a certified copy of that Subordinated Security Document, in each case in the form approved in writing by the Bank prior to the date of this Deed, duly executed by all parties thereto; and
 - (ii) a certificate of an authorised signatory of the Borrower (in the case of the case of the Subordinated Floating Charge) or the Guarantor (in the case of the Subordinated Share Charge) certifying that the copy of that Subordinated Security Document is correct, complete and in full force and effect as at a date falling no earlier than the date of that Subordinated Security Document.

7 Governing law and jurisdiction

7.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of England and Wales.

7.2 The provisions of Article 11.02 (*Jurisdiction*) and Article 11.03 (*Agent of Service*) of the Amended Finance Contract (as if the Effective Date had occurred) shall be deemed to be incorporated into this Deed in full, save that any reference therein to “this Contract” shall be deemed to be a reference to this Deed

This Deed has been executed and delivered as a deed on the date stated at the beginning of this Deed.

Schedule 1
Conditions precedent

1 Corporate Authorisations

- (a) A certified copy of the resolution of the board of directors and/or general meeting of shareholders of the Borrower and the Guarantor approving the execution of this Deed, each Subordinated Agreement and the Intercreditor Deed (in each case, if it is a party to such document) duly authorising the person or persons signing this Deed, each Subordinated Agreement and the Intercreditor Deed on behalf of the Borrower and the Guarantor together with the specimen signature of each such person or persons; and
- (b) a certificate of an authorised signatory of each of the Borrower and the Guarantor certifying, amongst other things, that each copy document relating to it specified in this Schedule is correct, complete and in full force and effect as at a date no earlier than the date of this Deed.

2 Key documents

This Deed and the Intercreditor Deed duly executed by all parties thereto.

3 Legal opinions

- (a) A legal opinion of Norton Rose Fulbright LLP, legal advisers to the Bank, addressed to the Bank in form and substance satisfactory to the Bank, on the legality, validity and enforceability of this Deed and the Intercreditor Deed;
- (b) a legal opinion of William Fry, Irish law legal adviser to the Borrower, addressed to the Bank in form and substance satisfactory to the Bank, on the authority and capacity of the Borrower and the Guarantor to enter into this Deed and the Intercreditor Deed and any other matters required by the Bank including the valid choice of English law, submission to the jurisdiction of the courts of England and Wales and the enforcement of foreign judgments in Ireland;
- (c) advice of Norton Rose Fulbright US LLP, US legal advisers to the Bank, addressed to the Bank in form and substance satisfactory to the Bank, on the legality under US law of this Deed and the Intercreditor Deed; and
- (d) a legal opinion of Weil, Gotschal & Manges LLP, legal advisers to Gurnet, addressed to the Bank in form and substance satisfactory to the Bank, on the authority and capacity of the Subordinated Creditor to enter into the Intercreditor Deed.

4 Miscellaneous

- (a) Evidence of the appointment of the process agent referred to in (i) article 11.03 of the Amended Finance Contract by the Borrower and the Guarantor in relation to this Deed and (ii) clause 12.2 of the Intercreditor Deed by the Borrower, the Guarantor and the Subordinated Creditor;
- (b) a copy of any other document, authorisation opinion or assurance which the Bank considers to be necessary (if it has notified the Borrower and the Guarantor accordingly) in connection with the entry into and performance of this Deed; and
- (c) evidence of payment of all the fees and expenses as required by this Deed.

The Bank

Executed and delivered as a deed for and on behalf of

THE EUROPEAN INVESTMENT BANK

By: /s/ Aleksander Skomik

Name: Aleksander Skomik

Title: Head of Division

By: /s/ Thomas Lugez

Name: Thomas Lugez

Title: Legal Counsel

The Borrower

SIGNED and **DELIVERED** as a **DEED** for and on behalf of

INNOCOLL PHARMACEUTICALS LIMITED by its lawfully appointed attorney

In the presence of:

/s/ Anthony Zook
Attorney (Signature)

Anthony Zook
Attorney (Name)

/s/ Patrick Hutchison
Witness (Signature)

Patrick Hutchison
Print Name
3803 West Chester Pike
Newtown Square, PA 19073
Print Address

Interim CFO
Witness Occupation

The Guarantor

SIGNED and **DELIVERED** as a **DEED** for and on behalf of
INNOCOLL HOLDINGS PLC by its lawfully appointed attorney

In the presence of:

/s/ Anthony Zook
Attorney (Signature)

Anthony Zook
Attorney (Name)

/s/ Patrick Hutchison
Witness (Signature)

Patrick Hutchison
Print Name
3803 West Chester Pike
Newtown Square, PA 19073
Print Address

Interim CFO
Witness Occupation

Dated 5 May 2017

INNOCOLL PHARMACEUTICALS LIMITED

and

INNOCOLL HOLDINGS PLC

and

THE EUROPEAN INVESTMENT BANK

and

GURNET POINT L.P.

INTERCREDITOR DEED

 **NORTON ROSE FULBRIGHT**

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THIS DEED is dated 2017 and made

BETWEEN:

- (1) **Innocoll Pharmaceuticals Limited**, a company incorporated in Ireland, having its registered office at Unit 9, Block D, Monksland Business Park, Monksland, Athlone, Ireland (the **Borrower**);
- (2) **Innocoll Holdings Plc**, a company incorporated in Ireland, having its registered office at Unit 9, Block D, Monksland Business Park, Monksland, Athlone, Ireland (the **Guarantor**);
- (3) **The European Investment Bank** having its seat at 100 boulevard Konrad Adenauer, L-2950 Luxembourg (the **Senior Creditor**); and
- (4) **Gurnet Point L.P.**, a Delaware limited partnership (with registered number 5495845), acting through its general partner, Waypoint International GP LLC (**Gurnet Point**).

WITNESSES as follows:

1 Definitions

1.1 In this Deed:

Acceleration Event means the Senior Creditor exercising any of its rights under article 10.01 (*Right to demand repayment*) of the Senior Finance Contract

Affiliate means, in relation to any person, another person that, directly or indirectly, is controlled by such first person (as used in this definition, “**control**” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a person, whether through the ownership of securities or partnership or other ownership interests, by Agreement or otherwise)

Agreement means any legally binding written, oral or other agreement, amendment, contract, subcontract, lease, understanding, instrument, note, debenture, indenture, warrant, option, warranty, purchase order, license, sublicense, insurance policy or other similar legally binding commitment or undertaking of any nature

Backstop Date means 31 December 2017

Business Day has the meaning given to that term in the Senior Finance Contract

Cash means, at any time, cash denominated in Euro or US Dollars credited to an account of the Borrower for so long as:

- (a) repayment of that cash is not contingent on the prior discharge of any other indebtedness of the Borrower or of any other person whatsoever or on the satisfaction of any other condition (unless such contingency is imposed by a Senior Finance Document);
- (b) there is no Security over that cash except for any Transaction Security or any Security permitted pursuant to the terms of article 7.02 (*Negative pledge*) of the Senior Finance Contract; and
- (c) the cash is freely and immediately available to be applied in repayment or prepayment of the Senior Liabilities

Charged Property means all of the assets which from time to time are, or are expressed to be, the subject of the Transaction Security

Collateral Instruments means notes, bills of exchange, certificates of deposit and other negotiable and non-negotiable instruments, guarantees, indemnities and other assurances against financial loss and any other documents or instruments which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for, any Liabilities of any Debtor or any other person liable

Creditor Liabilities means the Senior Liabilities and the Subordinated Liabilities

Creditors means the Senior Creditor and the Subordinated Creditor

Debt Documents means the Senior Finance Documents and the Subordinated Agreements

Debtor means any of the Borrower and the Guarantor

Debtor Liabilities means any Liabilities of the Subordinated Creditor to any Debtor

Delegate means any delegate, agent, attorney or co-trustee appointed by the Senior Creditor

Distress Event means any of:

- (a) an Acceleration Event; or
- (b) the enforcement of any Transaction Security

Distribution means any payment by or distribution of assets of any Debtor, whether in cash, property, securities or otherwise

Early Repayment Conditions has the meaning given to that term in Clause 3.3

EIB Preserved Rights has the meaning given to that term in Clause 5.1

Equity Issue means the immediate shareholder or shareholders in the Borrower paying cash to the Borrower in consideration for an issue of shares in the Borrower to such shareholder or shareholders, provided that:

- (a) such issue of shares does not constitute a Change-of-Control Event (as defined in article 4.03A(2) (*Change of Control*) of the Senior Finance Contract); and
- (b) such shares are immediately made subject to Security in form and substance satisfactory to the Senior Creditor to secure the Senior Liabilities (including, where applicable, pursuant to the Senior Share Charge)

Event of Default has the meaning given to that term in the Senior Finance Contract

Extension Conditions has the meaning given to that term in Clause 5.1

Guarantee means the guarantee dated 15 December 2015 between Innocoll AG as the original guarantor (now the Guarantor) and the Senior Creditor

Gurnet means Gurnet Point (notwithstanding any assignment transfers or disposal of any of the Subordinated Creditor's right or obligations under any Subordinated Agreements or this Deed)

Gurnet Acquirer means the Subordinated Creditor or any Affiliate of Gurnet or a group of persons (which group includes Gurnet or any Affiliate of Gurnet) acting in concert (for which purpose, "acting in concert" means acting together pursuant to an agreement or understanding (whether formal or informal))

Gurnet Acquisition means the circumstance where a Gurnet Acquirer:

- (a) becomes, or becomes subject to any requirement (pursuant to any applicable law, rule or regulation, including without limitation any listing rules applicable to the Guarantor and any of the shares in the Guarantor) to become, the direct beneficial and legal owner of a majority of the issued ordinary shares in the Guarantor; and
- (b) acquires, or becomes subject to any requirement (pursuant to any applicable law, rule or regulation, including without limitation any listing rules applicable to the Guarantor and any of the shares in the Guarantor) to acquire, the power to direct the management and policies of the Guarantor, whether through the ownership of voting capital, by contract or otherwise

Insolvency Event means, in relation to a person, any corporate action that has been taken or is pending or other steps that have been taken or legal proceedings that have been commenced or are pending or are threatened for:

- (a) the suspension of payments, a moratorium of any of its indebtedness or its winding-up, dissolution, administration, examinership or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise), whether by court action or otherwise, other than its solvent liquidation or reorganisation;
- (b) a composition, compromise, assignment or arrangement with its creditors or any class of them;
- (c) the appointment of a liquidator (other than in respect of a solvent liquidation), provisional liquidator, administrator, administrative receiver, receiver, receiver or manager, compulsory or interim manager, nominee, supervisor, conservator, guardian, trustee, custodian, examiner or other similar official in respect of it or the whole or any part of its undertaking or assets; or
- (d) enforcement of any security interest over any of its assets, or any analogous procedure or step is taken in any applicable jurisdiction

Liabilities means all money, obligations and liabilities from now or in the future due, including any payment or repayment of money, whether actual or contingent and whether as principal or surety

Licensing Transaction means any transaction pursuant to which the Borrower (as licensor) receives a single cash payment at the start of the transaction in consideration for granting a licence of intellectual property rights to a person which is not a Subsidiary of the Borrower (as licensee)

Non-Cash Consideration means consideration in a form other than cash

Obligations, in relation to a person, means all obligations or liabilities of any kind of that person from time to time, whether they are:

- (a) to pay money or to perform (or not to perform) any other act;
- (b) express or implied;
- (c) present, future or contingent;
- (d) joint or several;
- (e) incurred as a principal or surety or in any other manner; or
- (f) originally owing to the person claiming performance or acquired by that person from someone else

Parties means the parties to this Deed

Receiver means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property

Security means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect

Security Documents means the Senior Security Documents and the Subordinated Security Documents

Senior Discharge Date means the first date on which all Senior Liabilities have been fully and finally discharged to the satisfaction of the Senior Creditor, whether or not as the result of an enforcement, and the Senior Creditor is under no further obligation to provide financial accommodation to any Debtor under the Senior Finance Documents

Senior Finance Contract means the finance contract dated 27 March 2015 between the Senior Creditor, the Borrower and Innocoll AG as the original guarantor (now the Guarantor) as amended pursuant to a letter dated 19 February 2016 and as amended pursuant to an amendment and waiver agreement dated on or about the date of this Deed

Senior Finance Documents means each of:

- (a) this Deed;
- (b) the Senior Finance Contract;
- (c) the Senior Security Documents; and
- (d) the other Finance Documents (as defined in the Senior Finance Contract)

Senior Floating Charge has the meaning given to the term “Floating Charge” in the Senior Finance Contract

Senior Liabilities means all sums now or hereafter due, owing or incurred by a Debtor to the Senior Creditor under the terms of the Senior Finance Documents

Senior Security Documents means the Senior Floating Charge and the Senior Share Charge

Senior Share Charge has the meaning given to the term “Share Charge” in the Senior Finance Contract

Shareholder Loan means any loan from an immediate shareholder of the Borrower (as lender) to the Borrower (as borrower) provided that such loan is subordinated to the Senior Liabilities pursuant to a deed of subordination in form and substance satisfactory to the Senior Creditor

Subordinated Agreements means the Subordinated Loan Agreement and the Subordinated Security Documents and the other Finance Documents (as defined in the Subordinated Loan Agreement) (but excluding any Senior Finance Documents, other than this Deed)

Subordinated Creditor means Gurnet Point and any person that accedes to this Deed as a Subordinated Creditor in accordance with Clause 3.1.4

Subordinated Floating Charge means a second-ranking floating charge dated on or after the date of this Deed, in identical form to the Senior Floating Charge (save for the fact that it is second-ranking and secures the Subordinated Liabilities), over all of the assets of the Borrower granted by the Borrower in favour of the Subordinated Creditor

Subordinated Liabilities means all Liabilities owing or incurred (whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently, and whether as principal, surety or otherwise) by a Debtor to the Subordinated Creditor from time to time, pursuant to the Subordinated Agreements

Subordinated Loan Agreement means the USD10,000,000 loan and guaranty agreement dated on or after the date of this Deed between the Subordinated Creditor as lender and the Borrower as borrower

Subordinated Security Documents means the Subordinated Floating Charge and the Subordinated Share Charge

Subordinated Share Charge means a second-ranking fixed charge dated on or after the date of this Deed, in identical form to the Senior Share Charge (save for the fact that it is second-ranking and secures the Subordinated Liabilities), over all the shares in the Borrower granted by the Guarantor in favour of the Subordinated Creditor

Subsidiary has the meaning given to that term in the Senior Finance Contract

Taxes means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same)

Third Parties Act means the Contracts (Rights of Third Parties) Act 1999

Third Party Acquirer means any person (other than the Subordinated Creditor or any Affiliate of the Subordinated Creditor) or group of persons (which group does not include the Subordinated Creditor or any Affiliate of the Subordinated Creditor) acting in concert (for which purpose, "acting in concert" means acting together pursuant to an agreement or understanding (whether formal or informal))

Third Party Acquisition Date means any date on which a Third Party Acquirer:

- (a) becomes the direct beneficial and legal owner of a majority of the issued ordinary shares in the Guarantor; and
- (b) acquires the power to direct the management and policies of the Guarantor, whether through the ownership of voting capital, by contract or otherwise

Transaction Security means the Security created or evidence or expressed to be created or evidenced under or pursuant to the Security Documents

Transfer Documentation has the meaning given to that term in Clause 3.1.4(d)

Transferee has the meaning given to that term in Clause 3.1.4(a)

USD means the lawful currency of the United States of America

1.2 Unless a contrary indication appears:

1.2.1 a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality); and

1.2.2 a reference in this Deed to a **Senior Finance Document**, a **Subordinated Agreement** or any other agreement or instrument is a reference to that Senior Finance Document, Subordinated Agreement or other agreement or instrument as amended, novated, assigned, supplemented, extended or restated as permitted by this Deed.

1.3 The Borrower, the Guarantor and the Senior Creditor hereby designate this Deed as a “Finance Document” for the purposes of the Senior Finance Documents and the Subordinated Agreements (each as defined therein).

1.4 No term of this Deed is enforceable under the Third Parties Act by anyone who is not a party to this Deed.

1.5 The parties to this Deed may terminate this Deed or vary any of its terms without the consent of any third party.

2 Ranking

- 2.1 Subject to the other provisions of this Deed, the Subordinated Creditor recognises and shall ensure that any Senior Liabilities shall rank senior in right and priority of payment to all other present and future obligations, debts and liabilities due, owing or incurred under or in connection with any Subordinated Agreement (whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently, and whether as principal, surety or otherwise).
- 2.2 The Debtors enter into this Deed to acknowledge the arrangements between the Creditors and to give certain undertakings to the Creditors.
- 2.3 The Senior Creditor hereby consents to the Debtors granting the Security created under the Subordinated Security Documents to the Subordinated Creditor subject to the terms of this Deed.
- 2.4 The Subordinated Creditor shall not lend, and the Borrower shall not borrow, any amounts under the Subordinated Loan Agreement unless and until they have delivered to the Senior Creditor in a form and in substance satisfactory to the Senior Creditor:
- 2.4.1 (where Gurnet Point will be the Subordinated Creditor when such loan is made) a legal opinion of a firm of legal advisers to the Subordinated Creditor or the Borrower (and acceptable to the Senior Creditor, acting reasonably), addressed to the Senior Creditor, on the authority and capacity of the Subordinated Creditor to enter into the Subordinated Loan Agreement and the valid choice of the governing law of the Intercreditor Deed and the Subordinated Loan Agreement, submission to the jurisdiction of the courts specified in the Intercreditor Deed and the Subordinated Loan Agreement and the enforcement of foreign judgments in Delaware; or
- 2.4.2 (where a Transferee will be the Subordinated Creditor when such loan is made) a legal opinion of a firm of legal advisers to the Subordinated Creditor or the Borrower (and acceptable to the Senior Creditor, acting reasonably), addressed to the Senior Creditor, on the authority and capacity of the Transferee to enter into the Subordinated Loan Agreement (if signed by the Transferee) and the Transfer Documentation and the valid choice of the governing law of the Subordinated Loan Agreement (if signed by the Transferee) and the Transfer Documentation, submission to the jurisdiction of the courts specified in the Subordinated Loan Agreement (if signed by the Transferee) and the Transfer Documentation and the enforcement of foreign judgments in the jurisdiction of incorporation of the Subordinated Creditor.

3 Deferral Undertakings

- 3.1 Subject to Clauses 3.3 and 3.4, the Subordinated Creditor hereby undertakes with the Senior Creditor and the Debtors that, notwithstanding any provision of the Subordinated Agreements, for so long as any Senior Liabilities remain outstanding, it will not, without the prior written consent of the Senior Creditor, directly or indirectly:
- 3.1.1 demand or accept payment or repayment, in whole or part, from any Debtor or any other person liable, of any of the Subordinated Liabilities;
 - 3.1.2 accelerate any of the Subordinated Liabilities or declare that any Subordinated Liabilities are prematurely due and payable or are payable on demand;
 - 3.1.3 take, accept, receive or permit to exist any Security to secure the payment and/or repayment of any of the Subordinated Liabilities (other than pursuant to the Subordinated Security Documents);
 - 3.1.4 assign, transfer, create any Security over or otherwise dispose of, any of the Subordinated Liabilities other than an assignment, transfer, disposal or, prior to any loan being made under the Subordinated Loan Agreement, replacement of the Subordinated Creditor by amendment to the Subordinated Agreements where:
 - (a) the assignee, transferee or acquirer of the Subordinated Liabilities or replacement lender, as applicable (the **Transferee**) is (i) an Affiliate of Gumet as at the date of this Deed or (ii) becomes a newly incorporated Affiliate of Gumet after the date of this Deed and the Senior Creditor has satisfactorily completed all of its applicable “know your customer” and anti-money laundering procedures in respect of such Affiliate, and (in each case) the Transferee remains an Affiliate of Gumet;
 - (b) the Transferee accedes to this Deed as a Subordinated Creditor, pursuant to documentation in form and substance satisfactory to the Senior Creditor (acting reasonably);
 - (c) the Transferee acquires all the Subordinated Liabilities and all rights and obligations of the transferring Subordinated Creditor under all Subordinated Agreements, pursuant to documentation in form and substance satisfactory to the Senior Creditor (acting reasonably);
 - (d) the transferring Subordinated Creditor has delivered to the Senior Creditor a legal opinion (in form and substance satisfactory to the Senior Creditor) of firm of legal advisers to the Subordinated Creditor or the Borrower (and acceptable to the Senior Creditor, acting reasonably), addressed to the Senior Creditor, on the authority and capacity of the Transferee to enter into any documentation referred to in this Clause 3.1.4 (**Transfer Documentation**) and the valid choice of the governing law of such documentation, submission to the jurisdiction of the courts specified in such documentation and the enforcement of foreign judgments in the jurisdiction of incorporation of the Transferee; and

- (e) the transferring Subordinated Creditor has delivered to the Senior Creditor evidence of the appointment of the process agent referred to in Clause 12.2 by the Transferee;
- 3.1.5 (save only to the extent it may be required to do so under any applicable law) set-off any of the Subordinated Liabilities against any Debtor Liabilities;
- 3.1.6 commence any proceedings against any Debtor or take any action for or in respect of the recovery of any of the Subordinated Liabilities or any part thereof, including, without limitation:
- (a) suing for, commencing or joining any legal or arbitration proceedings against any Debtor to recover, or in respect of, any Subordinated Liabilities;
 - (b) petitioning, applying or voting for, or taking any steps (including the appointment of a receiver, liquidator, administrator, examiner or other similar officer) in relation to, the winding-up, dissolution, administration, examination or reorganisation of any Debtor or any suspension of payment or moratorium of any indebtedness of any Debtor, or any analogous procedure or step in any jurisdiction; or
 - (c) entering into any composition, assignment or arrangement with any Debtor, provided that (i) (except where either (A) the Early Repayment Conditions have not been met and a Third Party Acquisition Date has not occurred or (B) the Gurnet Acquisition has occurred) the Subordinated Creditor shall be entitled (1) to take any action falling within Clause 3.1.6(b) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of the Subordinated Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods, (2) to bring legal proceedings against any person solely for the purpose of (A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Subordinated Agreements to which it is a party, (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages or (C) requesting judicial interpretation of any provision of any Subordinated Agreements to which it is party with no claim for damages and (ii) the Subordinated Creditor may take any action permitted by Clause 4.1.3;

- 3.1.7 take any steps to enforce or require the enforcement of the Security created or evidenced, or expressed to be created or evidenced, by the Subordinated Floating Charge or the Subordinated Share Charge (including, in each case, the crystallisation of any floating charge forming part of such Security), except:
- (a) where 180 days have elapsed since the earlier of (i) the date on which enforcement is permitted under the Subordinated Loan Agreement (in accordance with its original terms) and (ii) the Maturity Date under and as defined in the Senior Finance Contract; or
 - (b) to the extent that the Senior Creditor has already taken the same steps in respect of, respectively, the Senior Floating Charge or the Senior Share Charge;
- 3.1.8 take any steps to register the Security created or evidenced, or expressed to be created or evidenced, by the Subordinated Floating Charge (unless the Senior Creditor has promptly confirmed in writing that it has already effected such registration in respect of the Security created or evidenced, or expressed to be created or evidenced, by the Senior Floating Charge);
- 3.1.9 enter into any transaction, whether by way of borrowing or otherwise, constituting, or otherwise suffer to arise any Debtor Liabilities; or
- 3.1.10 take, accept or receive any Distribution unless expressly permitted by the Senior Finance Contract.
- 3.2 Subject to Clauses 3.3 and 3.4, the Debtors hereby undertake with the Senior Creditor and the Subordinated Creditor that, notwithstanding any provision of the Subordinated Agreements, for so long as any Senior Liabilities remain outstanding, they will not, without the prior written consent of the Senior Creditor directly or indirectly:
- 3.2.1 pay or repay or otherwise seek to reduce, in whole or part, any of the Subordinated Liabilities;
 - 3.2.2 create or permit to exist any Security to secure the payment and/or repayment of any of the Subordinated Liabilities (other than pursuant to the Subordinated Security Documents);

- 3.2.3 (save only to the extent it may be required to do so under any applicable law) set-off any Subordinated Liabilities against any Debtor Liabilities; or
- 3.2.4 enter into any transaction, whether by the lending of money or otherwise, constituting, or otherwise suffer to arise, any Debtor Liability or to acquire any Subordinated Liabilities.
- 3.3 If (i) at least thirty days or any shorter period if agreed by the Senior Creditor, have elapsed after a Third Party Acquisition Date or (ii) if no Gumet Acquisition has occurred as at the Backstop Date and the Extension Conditions have not been met (the “**Early Repayment Conditions**”):
- 3.3.1 subject to Clause 3.3.2, (i) the Subordinated Creditor shall be entitled (A) to demand or accept payment or repayment, in whole or part, from the Borrower of any of the Subordinated Liabilities, (B) to set off any of the Subordinated Liabilities against any Debtor Liabilities and (C) to accelerate any of the Subordinated Liabilities or declare that any Subordinated Liabilities are prematurely due and payable or are payable on demand and (ii) the Borrower shall be entitled to make such payment or repayment; and
- 3.3.2 provided that at least 90 days have elapsed since the date on which the Senior Liabilities become due and payable in full as a result of the Early Repayment Conditions being met, the Subordinated Creditor shall be entitled to:
- (a) sue for, commence or join any legal or arbitration proceedings against the Borrower to recover, or in respect of, any Subordinated Liabilities; or
- (b) petition, apply or vote for, or take any steps (including the appointment of a receiver, liquidator, administrator, examiner or other similar officer) in relation to, the winding-up, dissolution, administration, examination or reorganisation of the Borrower or any suspension of payment or moratorium of any indebtedness of the Borrower, or any analogous procedure or step in any jurisdiction, subject, in all cases, to Clause 6.
- 3.4 If (i) the Gumet Acquisition has not occurred as at the Backstop Date, (ii) the Third Party Acquisition Date has not occurred as at the Backstop Date and (iii) the Extension Conditions have been met:
- 3.4.1 the Senior Creditor agrees to the Subordinated Liabilities being repaid in full on the Backstop Date and undertakes that it will be bound by the provisions of Clause 5;
- 3.4.2 the Subordinated Creditor shall be entitled (i) to demand or accept payment or repayment, in whole or part, from the Borrower of any of the Subordinated Liabilities, (ii) to set off any of the Subordinated Liabilities against any Debtor Liabilities and (iii) to accelerate any of the Subordinated Liabilities or declare that any Subordinated Liabilities are prematurely due and payable or are payable on demand; and

3.4.3 the Borrower shall be entitled to make such payment or repayment, subject, in the case of the exercise of an EIB Preserved Right, to Clause 6.

3.5 The Subordinated Creditor and the Debtors hereby agree to notify the Senior Creditor, on demand, of the amounts from time to time of any of the Subordinated Liabilities and of any Debtor Liabilities (other than those incurred under the Subordinated Agreements by way of a commitment to lend to a Debtor).

4 Amendments and waivers in relation to Subordinated Agreements

4.1 Prior to the Senior Discharge Date, the Subordinated Creditor and the Debtors may not amend or waive the terms of any Subordinated Agreement other than:

4.1.1 any amendment to the Subordinated Agreements to replace the Subordinated Creditor with an Affiliate of Gumet prior to a loan being made under the Subordinated Loan Agreement in accordance with Clause 3.1.4; or

4.1.2 any amendment or waiver that is not detrimental to the Senior Creditor or any of the Debtors; or

4.1.3 any amendment or waiver that confirms that the Subordinated Liabilities are fully and finally discharged in consideration for an issue of shares in the Borrower or an Affiliate of the Borrower to the Subordinated Creditor, provided that:

(a) such issue of shares does not constitute a Change-of-Control Event (as defined in article 4.03A(2) of the Senior Finance Contract); and

(b) such shares are immediately made subject to Security in form and substance satisfactory to the Senior Creditor to secure the Senior Liabilities; or

4.1.4 an amendment or waiver where the prior written consent of the Senior Creditor is obtained.

5 Undertaking by Senior Creditor

5.1 Where:

5.1.1 after the date of this Deed but prior to 15 December 2017, the Borrower has received cash in an aggregate amount at least equal to USD 25,000,000 by way of all or any of one or more Equity Issues, one or more Shareholder Loans and one or more Licensing Transactions; and

- 5.1.2 the Debtors have demonstrated to the satisfaction of the Senior Creditor that, as at 30 December 2017, the Borrower has Cash of at least USD 25,000,000, (together, the **Extension Conditions**), the Senior Creditor:
- (a) consents to the Borrower receiving cash in an aggregate amount at least equal to USD 25,000,000 by way of all or any of one or more Equity Issues, Shareholder Loans and Licensing Transactions in connection with the satisfaction of Clause 5.1.1, and waives any Event of Default and any breach of any Finance Document that would otherwise be constituted by the occurrence of any such Equity Issue, Shareholder Loan or Licensing Transaction or any other action taken under Clause 5.1.2; and
 - (b) agrees to the Subordinated Liabilities being repaid in full on the Backstop Date and undertakes that it will not demand or accept payment or repayment, in whole or part, from any Debtor of any of the Senior Liabilities pursuant to any provision of the Senior Finance Documents which allows it to do so, in each case, without prejudice to its rights to demand or accept payment or repayment, in whole or part, from any Debtor of any of the Senior Liabilities pursuant to any other provision of the Senior Finance Contract, including, without limitation, any other mandatory prepayment provisions or as a result of any Event of Default (other than an Event of Default constituted solely by the fact that the Subordinated Creditor has demanded or accepted payment or repayment, in whole or part, from the Borrower of any of the Subordinated Liabilities in accordance with Clause 3.4.1 and this Clause 5 or other than an Event of Default constituted solely by any action taken as described under Clauses 5.1.1 or 5.1.2) (such rights being the “**EIB Preserved Rights**”).

6 Sharing among Creditors

- 6.1 Where (i) any Subordinated Liabilities are due and payable pursuant to action taken by the Subordinated Creditor in accordance with Clause 3.3 or (in the case of the exercise of an EIB Preserved Right) Clause 3.4 and (ii) any Senior Liabilities are due and payable, then the Parties agree that the provisions of this Clause 6 shall apply.
- 6.2 Subject to Clause 8, the Borrower shall pay the Creditor Liabilities on a pro rata and pari passu basis among the Subordinated Liabilities and Senior Liabilities which are then due and payable.

- 6.3 If a Creditor (a **Recovering Creditor**) receives or recovers any amount from the Borrower other than in accordance with Clause 6.2 and applies that amount to a payment due under the Debt Documents then:
- 6.3.1 the Recovering Creditor shall, within three Business Days, notify details of the receipt or recovery to the other Creditor (the **Sharing Creditor**); and
 - 6.3.2 the Recovering Creditor shall, within fifteen Business Days of demand by the Sharing Creditor, pay to the Sharing Creditor such amount (the **Sharing Payment**) as will result in the Creditor Liabilities having been reduced as if both Creditors had received or recovered amounts from the Borrower in accordance with Clause 6.2.
- 6.4 On a payment by the Recovering Creditor under Clause 6.3:
- 6.4.1 as between the Debtors and the Recovering Creditor, an amount of the Creditor Liabilities owed to the Recovering Creditor equal to the Sharing Payment will be treated as not having been paid by the Borrower to the Recovering Creditor; and
 - 6.4.2 as between the Debtors and the Sharing Creditor, an amount of the Creditor Liabilities owed to the Sharing Creditor equal to the Sharing Payment will be treated as having been paid by the Borrower to the Sharing Creditor.
- 6.5 If any part of the Sharing Payment received or recovered by the Recovering Creditor becomes repayable and is repaid by the Recovering Creditor, then:
- 6.5.1 the Sharing Creditor shall, upon request of the Recovering Creditor, pay to the Recovering Creditor an amount equal to the Sharing Payment (together with an amount as is necessary to reimburse the Recovering Creditor for its proportion of any interest on the Sharing Payment which the Recovering Creditor is required to pay) (the **Redistributed Amount**); and
 - 6.5.2 as between the Borrower and the Sharing Creditor, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by the Borrower.
- 6.6 This Clause 6 shall not apply to the extent that the Recovering Creditor would not, after making any payment pursuant to this clause, have a valid and enforceable claim against the Borrower.
- 6.7 The Recovering Creditor is not obliged to share with the Sharing Creditor any amount which the Recovering Creditor has received or recovered as a result of taking legal or arbitration proceedings, if:
- 6.7.1 the Recovering Creditor notified the Sharing Creditor of the legal or arbitration proceedings;

- 6.7.2 the Recovering Creditor was permitted to take such legal or arbitration in accordance with the terms of this Deed; and
- 6.7.3 the Sharing Creditor had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

7 Subordination

- 7.1 Subject to Clause 3.3, upon an Insolvency Event occurring in respect of any Debtor:
 - 7.1.1 the claims of the Subordinated Creditor in respect of any Subordinated Liabilities shall be postponed and subordinated in all respects to the Senior Liabilities; and
 - 7.1.2 where either (i) the Early Repayment Conditions have not been met or (ii) the Gumet Acquisition has occurred:
 - (a) the Subordinated Creditor shall not, unless otherwise directed by the Senior Creditor, prove for the Subordinated Liabilities until the Senior Liabilities have first been paid or discharged in full (and for all purposes any Distribution received by the Senior Creditor shall only be taken to discharge the Senior Liabilities to the extent of the actual amount received); and
 - (b) if the Subordinated Creditor is directed by the Senior Creditor to prove for the Subordinated Liabilities then it shall (to the extent lawfully able to do so) act in accordance with such directions and shall procure that any resultant Distributions shall be made by the liquidator of the Borrower, or any other person making the Distribution, to the Senior Creditor to the extent necessary to repay all the Senior Liabilities in full.
- 7.2 In the event of:
 - 7.2.1 any payment or other Distribution being made to, or a right of set-off of any of the Debtor Liabilities against any of the Subordinated Liabilities being exercised by, the Subordinated Creditor or any Debtor contrary to the provisions of this Deed;
 - 7.2.2 any Distribution being made by a liquidator or other person to the Subordinated Creditor (prior to the Senior Discharge Date), rather than to the Senior Creditor, as required by Clause 7.1; or
 - 7.2.3 the Subordinated Creditor or any Debtor being required to exercise rights of set-off of the Debtor Liabilities against the Subordinated Liabilities under applicable law (as contemplated in Clause 3.1.5 or Clause 3.2.3), the Subordinated Creditor shall forthwith pay to the Senior Creditor an amount equal to the Distributions which shall have been so received by it from the relevant Debtor or the liquidator of that Debtor or such other person up to an aggregate amount equal to the Senior Liabilities or, as the case may be, in the case of set-off, an amount equal to the sum set-off up to an aggregate amount equal to the Senior Liabilities and, until such payment to the Senior Creditor, the Subordinated Creditor will hold such sums on trust for the Senior Creditor and any such sums so paid to the Senior Creditor shall be applied in or toward discharge of the Senior Liabilities in accordance with the terms of this Deed.

8 Application of proceeds

- 8.1 Subject to Clause 8.2, all amounts from time to time received or recovered by the Senior Creditor (i) in connection with the realisation or enforcement of all or any part of the Transaction Security or (ii) pursuant to the Guarantee (all such amounts being, for the purposes of this Clause 8, the **Recoveries**) shall be held by the Senior Creditor on trust to apply them at any time as the Senior Creditor (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 8), in the following order of priority:
- 8.1.1 in discharging any sums owing to the Senior Creditor, any Receiver or any Delegate;
 - 8.1.2 in discharging all costs and expenses incurred by the Senior Creditor in connection with any realisation or enforcement of the Transaction Security;
 - 8.1.3 in discharging any sums outstanding under the Senior Finance Documents (including, without limitation, any principal, interest, default interest, breakage costs, prepayment indemnities or indemnities) in such order as it sees fit;
 - 8.1.4 if the Debtors are under no further actual or contingent liability under any Senior Finance Document, in payment or distribution to the Subordinated Creditor or any person to whom the Senior Creditor is obliged to pay or distribute in priority to the relevant Debtor; and
 - 8.1.5 the balance, if any, in payment or distribution to the relevant Debtor.
- 8.2 Following a Distress Event the Senior Creditor may, in its discretion:
- 8.2.1 hold any amount of the Recoveries which is in the form of cash, and any cash which is generated by holding, managing, exploiting, collecting, realising or disposing of any Non-Cash Consideration, in one or more interest bearing suspense or impersonal accounts in the name of the Senior Creditor with such financial institution (including itself) as the Senior Creditor shall think fit (the interest being credited to the relevant account); and

- 8.2.2 hold, manage, exploit, collect and realise any amount of the Recoveries which is in the form of Non-Cash Consideration, in each case for so long as the Senior Creditor shall think fit for later application under Clause 8.1 in respect of:
- (i) any sum to any Senior Creditor, any Receiver or any Delegate; and
 - (ii) any part of the Senior Liabilities, that the Senior Creditor considers, in each case, might become due or owing at any time in the future.
- 8.3 Prior to the application of the Recoveries in accordance with clause 8.1 the Senior Creditor may, in its discretion, hold all or part of any Recoveries in one or more interest bearing suspense or impersonal accounts in the name of the Senior Creditor with such financial institution (including itself) and for so long as the Senior Creditor shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Senior Creditor's discretion in accordance with the provisions of this Clause 8.
- 8.4 For the purpose of, or pending the discharge of, any of the Creditor Liabilities the Senior Creditor may:
- 8.4.1 convert any moneys received or recovered by the Senior Creditor from one currency to another, at such rate as it may select (acting reasonably); and
 - 8.4.2 notionally convert the valuation provided in any opinion or valuation from one currency to another, at such rate as it may select (acting reasonably).
- 8.5 The obligations of any Debtor to pay in the due currency shall only be satisfied:
- 8.5.1 in the case of Clause 8.4.1 above, to the extent of the amount of the due currency purchased after deducting the costs of conversion; and
 - 8.5.2 in the case of Clause 8.4.2 above, to the extent of the amount of the due currency which results from the notional conversion referred to in that Clause.
- 8.6 The Senior Creditor shall be entitled, in its discretion, (a) to set aside by way of reserve amounts required to meet and (b) to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any law or regulation to make from any distribution or payment made by it under this Deed, and to pay all Taxes which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties or exercising its rights, powers, authorities and discretions, or by virtue of its capacity as Senior Creditor under any of the Senior Finance Documents or otherwise.

- 8.7 The Senior Creditor is under no obligation to make the payments to the Subordinated Creditor under Clause 8.1 in the same currency as that in which the Subordinated Liabilities are denominated pursuant to the relevant Subordinated Agreement.
- 8.8 For the purpose of calculating any person's share of any amount payable to or by it, the Senior Creditor shall be entitled to notionally convert the Liabilities owed to any person into a common base currency (decided in its discretion by the Senior Creditor), that notional conversion to be made at the spot rate at which the Senior Creditor is able to purchase the notional base currency with the actual currency of the Liabilities owed to that person at the time at which that calculation is to be made.

9 Continuing obligations

9.1 The obligations of the Debtors and of the Subordinated Creditor hereunder shall be continuing obligations and shall be and remain fully effective until the irrevocable discharge in full of the Senior Liabilities notwithstanding that the Debtors may have no liability to the Senior Creditor at the time of execution of this Deed and notwithstanding any intermediate reduction or settlement of the Senior Liabilities or any part of it and notwithstanding any increase in or variation of the Senior Liabilities or any variation, extension or supplement to the Senior Finance Documents.

9.2 The Guarantor hereby confirms that the Guarantee shall continue in full force and effect, notwithstanding the provisions of this Deed.

10 Benefit of this Deed

10.1 This Deed shall be binding upon the Subordinated Creditor and the Debtors and their respective successors in title and shall enure for the benefit of the Senior Creditor and its successors, assignees and transferees notwithstanding any change in the constitution of the Senior Creditor or its absorption in, or amalgamation with, or the acquisition of all or part of its undertaking or assets by any other person, or any reconstruction or reorganisation of any kind.

10.2 The Subordinated Creditor and the Debtors may not assign or transfer any of their respective rights or obligations under this Deed.

11 Notices and other matters

11.1 Notices and other communications given under this Deed addressed to any party to this Deed shall be made to the address or facsimile number as set out below, or to such other address or facsimile number as a party previously notifies to the other in writing:

For the Senior Creditor	Attention: Aleksander Skornik 100 boulevard Konrad Adenauer L-2950 Luxembourg Facsimile no: +352 4379 55209
For the Borrower	Attention: Corporate Controller Unit 9, Block D Monksland Business Park Monksland Athlone Co. Roscommon Ireland Facsimile no.: +353 (0) 90 6486835
For the Guarantor	Attention: Corporate Controller Unit 9, Block D Monksland Business Park Monksland Athlone Co. Roscommon Ireland Facsimile no.: +353 (0) 90 6486835
For the Subordinated Creditor	Gumet Point L.P. Attention: James Singleton c/o Waypoint International GP LLC 55 Cambridge Parkway, Suite 401 Cambridge, MA 02142 Email: James.Singleton@waypointcapital.net

with a copy to:

Weil, Gotshal & Manges LLP 767 Fifth Avenue
New York, NY 10153
Attention: Daniel S. Dokos Email: daniel.dokos@weil.com

11.2 No failure or delay on the part of any Party to exercise any power, right or remedy under this Deed shall operate as a waiver thereof, nor shall any single or partial exercise by such Party of any power, right or remedy preclude any other or further exercise thereof or the exercise of any other power, right or remedy. The remedies provided in this Deed are cumulative and are not exclusive of any remedies provided by law.

- 11.3 Each Party agrees to be bound by this Deed notwithstanding that any other person intended to execute or to be bound by any Collateral Instrument under or pursuant to any Senior Finance Document may not do so or may not be effectually bound and notwithstanding that such other Collateral Instrument may be determined or be or become invalid or unenforceable against any other person, whether or not the deficiency is known to the Senior Creditor.
- 11.4 Each of the provisions of this Deed is severable and distinct from one another and if at any time one or more of such provisions is or becomes illegal invalid or unenforceable under any applicable law the validity legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

12 Law and jurisdiction

- 12.1 This Deed and any non-contractual obligations connected with it are governed by and shall be construed in accordance with English law.
- 12.2 Each Party agrees that any legal action or proceedings arising out of or in connection with this Deed or any non-contractual obligations connected with it or the transactions contemplated hereby against that Party or any of its assets may be brought in the courts of England, and irrevocably and unconditionally submits to the jurisdiction of the courts of England and irrevocably designates, appoints and empowers (in the case of each Party other than the Senior Creditor) The Law Debenture Corporation at present of Fifth Floor, 100 Wood Street, London EC2V 7EX and (in the case of the Senior Creditor) The Securities Management Trust Limited of 8 Lothbury, London EC2 7HH to receive for it and on its behalf, service of process issued out of the courts of England in any such legal action or proceedings. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Senior Creditor to take proceedings against the Subordinated Creditor and any Debtor or any of them in whatsoever jurisdictions which shall to it seem fit, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

IN WITNESS whereof this Deed has been executed by each party hereto the day and year first above written.

Execution pages

The Senior Creditor

Executed and delivered as a deed for and on behalf of

THE EUROPEAN INVESTMENT BANK

By: /s/ Aleksander Skornik

Name: Aleksander Skornik

Title: Head of Division

By: /s/ Thomas Lugez

Name: Thomas Lugez

Title: Legal Counsel

The Borrower

SIGNED and **DELIVERED** as a **DEED** for and on behalf of

INNOCOLL PHARMACEUTICALS LIMITED by its lawfully appointed attorney

In the presence of:

/s/ Anthony Zook

Attorney (Signature)

Anthony Zook

Attorney (Name)

/s/ Patrick Hutchison

Witness (Signature)

Patrick Hutchison

Print Name

3803 West Chester Pike

Newtown Square, PA 19073

Print Address

Interim CFO

Witness Occupation

The Guarantor

SIGNED and **DELIVERED** as a **DEED** for and on behalf of
INNOCOLL HOLDINGS PLC by its lawfully appointed attorney

In the presence of:

/s/ Anthony Zook
Attorney (Signature)

Anthony Zook
Attorney (Name)

/s/ Patrick Hutchison
Witness (Signature)

Patrick Hutchison
Print Name
3803 West Chester Pike
Newtown Square, PA 19073
Print Address

Interim CFO
Witness Occupation

The Subordinated Creditor

Executed and delivered as a deed for and on behalf of **GURNET POINT L.P.**

By: Waypoint International GP LLC, its general partner

By: /s/ James B. Singleton

Name: James B. Singleton

Title: General Counsel and Manager

In the presence of

Name of witness: /s/ Linda Papaargjir

Title/occupation of witness: Legal Assistant

Address of witness:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "ACT") OR ANY STATE SECURITIES OR "BLUE SKY" LAWS, AND MAY NOT BE OFFERED, SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED ABSENT AN EFFECTIVE REGISTRATION THEREOF UNDER THE ACT OR COMPLIANCE WITH RULE 144 PROMULGATED UNDER THE ACT, OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL, REASONABLY SATISFACTORY TO THE COMPANY, THAT SUCH REGISTRATION IS NOT REQUIRED.

SUBJECT TO THE TERMS OF THIS WARRANT, THIS WARRANT SHALL BE VOID AFTER 5:00 P.M. EASTERN TIME ON DECEMBER 31, 2018.

No. 001

Original Issue Date: May 9, 2017

INNOCOLL HOLDINGS PLC

WARRANT TO SUBSCRIBE FOR ORDINARY SHARES

For GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED subject to the provisions of this WARRANT TO SUBSCRIBE FOR ORDINARY SHARES (this "Warrant"), Lough Ree Technologies Limited or its registered assign ("Warrantholder") is entitled to subscribe for, and to have allotted and issued to it by Innocoll Holdings plc, an Irish public limited company (the "Company"), at any time during the period commencing on the Commencement Date (as defined below) and ending at the Expiration Time (as defined below), a number of Warrant Shares (as defined below) up to the Warrant Share Number (as defined below) at an exercise price per Warrant Share equal to \$0.01 (subject to appropriate adjustment pursuant to Section 8, the "Warrant Price"). This Warrant was originally issued on the Original Issue Date specified in the caption above.

(a) "Commencement Date" shall mean December 31, 2017 (the "Maturity Date"), provided that the Company has not repaid in full all outstanding principal and accrued and unpaid interest under the Term Loan (as defined in the Loan Agreement) and all other outstanding Obligations (as defined in the Loan Agreement) with respect to the Term Loan on or prior to the Maturity Date.

(b) "Expiration Time" shall mean 5:00 P.M., Eastern Time, on December 31, 2018.

(c) "Warrant Share(s)" shall mean any ordinary shares, par value \$0.01 per share, of the Company ("Ordinary Shares") issuable pursuant to the terms of this Warrant.

(d) “Warrant Share Number” shall mean a number of Warrant Shares equal to the product of (x) 0.05 and (y) the total number of Ordinary Shares (inclusive of any Ordinary Shares issuable upon conversion of other shares of capital stock of the Company convertible into Ordinary Shares) issued and outstanding as of the Maturity Date. The Warrant Share Number shall be subject to adjustment from time to time as described herein.

Section 1. Registration. The Company shall maintain books for the transfer and registration of the Warrant. Upon the initial issuance of this Warrant, the Company shall issue and register the Warrant in the name of the Warrantholder. This Warrant was originally issued in connection with a loan to be made to the Company pursuant to that certain Loan and Guaranty Agreement, dated May 9, 2017, by and among the Company, Innocoll Pharmaceuticals Limited, an Irish private limited company and wholly-owned subsidiary of the Company, and Gurnet Point L.P., a Delaware limited partnership and the direct parent of the Warrantholder, acting through its general partner, Waypoint International GP LLC (as such agreement may be amended, supplemented, assigned, replaced or otherwise modified from time to time in accordance with its terms, the “Loan Agreement”).

Section 2. Transfers. As provided herein, this Warrant may be transferred only pursuant to a registration statement filed under the Securities Act of 1933, as amended (the “Securities Act”), or an exemption from such registration. Subject to such restrictions, the Company shall transfer this Warrant from time to time upon the books to be maintained by the Company for that purpose, upon surrender thereof for transfer properly endorsed or accompanied by appropriate instructions for transfer and such other documents as may be reasonably required by the Company to establish that such transfer is being made in accordance with the terms hereof, and a new Warrant shall be issued to the transferee and the surrendered Warrant shall be canceled by the Company.

Section 3. Exercise of Warrant; Acceleration; Notice of Certain Events.

(a) Subject to the provisions hereof, the Warrantholder may exercise this Warrant, in whole or in part, at any time and from time to time, on or after the Commencement Date and prior to the Expiration Time, provided that, in each case, the Warrantholder has: (X) surrendered this Warrant to the Company (if required, as provided below) or evidence of loss, theft or destruction thereof (together with security or indemnity) has been provided to the Company; (Y) delivered a duly executed Warrant exercise agreement in the form attached hereto as Appendix A (the “Exercise Agreement”), the delivery of which Exercise Agreement may be made by hand, mail, courier, fax or email to the Company’s notice address provided below; and (Z) paid the aggregate Warrant Price for that number of Warrant Shares then being subscribed for to the Company, by cash, certified check or wire transfer of funds. The conditions of clauses (X), (Y) and (Z) of the immediately preceding sentence, each to the extent relevant to a particular exercise are referred to as the “Exercise Conditions.” The Exercise Agreement shall indicate the number and type of Warrant Shares then being subscribed for pursuant to such exercise and the manner of payment of the Warrant Price. The date on which all of the Exercise Conditions, to the extent applicable, have been satisfied is the “Exercise Date.” Any exercise of this Warrant shall be for not less than 1,000 Warrant Shares, or such lesser amount as may then remain unexercised. The Warrant Shares so subscribed for shall be issued by the Company to the Warrantholder or the Warrantholder’s designee, as the record owner of such Warrant Shares, as of the close of business on the date on which the last of the Exercise Conditions has been satisfied. The Company shall provide certificates for the Warrant Shares so issued (or have such Warrant Shares credited by book entry to an account designated by such Warrantholder), representing the aggregate number of Warrant Shares specified in the Exercise Agreement, to be delivered to the Warrantholder as provided in Section 3(c). The certificates so delivered shall be in such denominations as may be requested by the Warrantholder and shall be registered in the name of the Warrantholder or such other name as shall be designated by the Warrantholder. If the exercise referred to in an Exercise Agreement represents the full exercise of the outstanding balance of the Warrant, the Warrantholder shall tender this Warrant to the Company within five (5) Trading Days thereafter. If this Warrant shall have been exercised only in part, the Warrantholder shall tender this Warrant to the Company (which tender shall be deemed to apply only to the portion of the Warrant exercised to the date of such tender and not to the entire Warrant), then, unless this Warrant has expired, the Company shall, at its expense, within two (2) business days of such tender, deliver to the Warrantholder a new Warrant of the same tenor (including, but not limited to, reference to the Original Issue Date specified in the caption of this Warrant) representing the number of Warrant Shares with respect to which this Warrant shall not then have been exercised; provided, however, that even before the Warrantholder receives such replacement Warrant, the Warrantholder may nevertheless exercise, in whole or in part and from time to time, the remaining portion of this Warrant in accordance with its terms, and, in the case of a full exercise of the balance of this Warrant, any obligation to deliver the Warrant to the Company shall be deemed satisfied.

(b) For purposes of this Warrant, the following terms have the meanings indicated:

“business day” means a day, other than a Saturday or Sunday, on which banks in New York City are open for the general transaction of business.

“Principal Trading Market” means the Trading Market on which the Ordinary Shares are principally traded at the relevant time.

“Trading Day” means (a) any day on which the Principal Trading Market shall be open for business or (b) if the Ordinary Shares are not then listed or quoted and traded on any such market, then any business day.

“Trading Market” means The NASDAQ Stock Market or any of the following markets or national securities exchanges on which the Ordinary Shares are listed or quoted for trading on the date in question: the OTC Bulletin Board, The NASDAQ Global Market, The NASDAQ Global Select Market, The NASDAQ Capital Market, the New York Stock Exchange, NYSE Arca, the NYSE MKT, or the OTCQX Marketplace or the OTCQB Marketplace operated by OTC Markets Group Inc. (or any successor to any of the foregoing).

(c) Upon the appropriate payment of the Warrant Price for the Warrant Shares issued, together with the surrender of this Warrant, the Warrantholder shall be entitled to receive a certificate or certificates for the Warrant Shares so issued or to have such Warrant Shares credited by book entry to an account designated by the Warrantholder. The Company shall deliver such certificates representing the Warrant Shares, or credit such Warrant Shares by book entry, in accordance with the instructions of the Warrantholder as provided in the Exercise Agreement (such certificates or such credit by book entry, referred to herein as the “Warrant Share Certificates”) within three (3) Trading Days (such third Trading Day, a “Share Delivery Date”) of the Exercise Date.

(d) The Warrantholder shall be deemed to be the holder of the shares issuable to it in accordance with the provisions of this Section 3 on the Exercise Date.

Section 4. Compliance with the Securities Act of 1933. So long as is required by applicable securities laws, the Company may cause the first paragraph legend set forth on the first page of this Warrant (beginning with the phrase “The Securities represented hereby ...”) to be set forth on each Warrant.

Section 5. Payment of Taxes. The Company will pay (or procure the payment of) any documentary stamp taxes attributable to the initial issuance of Warrant Shares issuable upon the exercise of this Warrant; provided, however, that the Company shall not be required to pay any tax or taxes which may be payable in respect of any transfer involved in the issuance or delivery of any certificates for Warrant Shares in a name other than that of the Warrantholder in respect of which such shares are issued, and in such case, the Company shall not be required to issue or deliver any certificate for Warrant Shares or any Warrant until the person requesting the same has paid to the Company the amount of such tax or has established to the Company’s reasonable satisfaction that such tax has been paid. The Warrantholder shall be responsible for income taxes due under federal, state or other law, if any such tax is due.

Section 6. Mutilated or Missing Warrants. In case this Warrant shall be mutilated, lost, stolen, or destroyed, the Company shall issue in exchange and substitution of and upon cancellation of the mutilated Warrant, or in lieu of and substitution for the Warrant lost, stolen or destroyed, a new Warrant of like tenor (including, but not limited to, reference to the Original Issue Date specified in the caption of this Warrant) and for the subscription for a like number of Warrant Shares, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction of the Warrant, and with respect to a lost, stolen or destroyed Warrant, reasonable indemnity or bond with respect thereto, if requested by the Company.

Section 7. Reservation of Ordinary Shares. The Company hereby represents and warrants that there have been reserved, and the Company shall at all times keep reserved and available, solely for issuance and delivery upon exercise of the Warrant, out of the Company's authorized and unissued Ordinary Shares, such number of Ordinary Shares as from time to time shall be issuable upon the exercise of the rights of subscription represented by this Warrant. If, at any time while this Warrant is outstanding, the Company has a transfer agent for its Ordinary Shares, the Company will provide irrevocable written instructions to such transfer agent to reserve the number of shares contemplated to be reserved pursuant to and for the purposes contemplated by the immediately preceding sentence. The Company agrees that all Warrant Shares issued upon due exercise of the Warrant shall be, at the time of delivery of the certificates for such Warrant Shares (or at the time the Warrant Shares are credited by book entry), duly authorized, validly issued, fully paid and non-assessable Ordinary Shares.

Section 8. Adjustments. Subject and pursuant to the provisions of this Section 8, unless waived in a particular case by the Warranholder, the Warrant Price and number of Warrant Shares subject to this Warrant shall be subject to adjustment from time to time as set forth hereinafter.

(a) If the Company shall, at any time or from time to time while this Warrant is outstanding, pay a dividend or make a distribution on its Ordinary Shares in shares of its capital stock, subdivide its outstanding Ordinary Shares into a greater number of shares or combine its outstanding Ordinary Shares into a smaller number of shares or issue by reclassification of its outstanding Ordinary Shares any shares of its capital stock (including any such reclassification in connection with a scheme of arrangement, consolidation or merger in which the Company is the continuing corporation), then the number of Warrant Shares purchasable upon exercise of this Warrant and the Warrant Price in effect immediately prior to the date upon which such change shall become effective, shall be adjusted by the Company so that the Warranholder thereafter exercising the Warrant shall be entitled to receive the number of Ordinary Shares or other capital stock which the Warranholder would have received if the Warrant had been exercised immediately prior to such event upon payment of a Warrant Price that has been adjusted to reflect a fair allocation of the economics of such event to the Warranholder. Such adjustments shall be made successively whenever any event listed above shall occur.

(b) If any capital reorganization or reclassification of the capital stock of the Company shall be effected, then, as a condition of such reorganization or reclassification, lawful and adequate provision shall be made whereby each Warranholder shall, following such reorganization or reclassification, thereafter have the right to receive upon exercise hereof the kind and amount of securities, cash or other property which the Warranholder would have been entitled to receive pursuant to such reorganization or reclassification if such exercise had taken place immediately prior to such reorganization or reclassification. In any such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Company) shall be made in the application of the provisions set forth herein with respect to the rights and interests thereafter of the Warranholder, to the end that the provisions set forth in this Section 8 (including provisions with respect to changes in and other adjustments of the Warrant Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities, cash or other property thereafter deliverable upon the exercise of this Warrant. The provisions of this paragraph (b) shall similarly apply to successive reorganizations, reclassifications, schemes of arrangement, consolidations, mergers, sales, transfers or other dispositions.

(c) In the event that, as a result of an adjustment made pursuant to this Section 8, the Warrantholder shall become entitled to receive any shares of capital stock of the Company other than Ordinary Shares, the number of such other shares so receivable upon exercise of this Warrant shall be subject thereafter to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Warrant Shares contained in this Warrant.

Section 9. Fractional Interest. The Company shall not be required to issue fractions of Warrant Shares upon the exercise of this Warrant. If any fractional Ordinary Shares would, except for the provisions of the first sentence of this Section 9, be deliverable upon such exercise, the Company, in lieu of delivering such fractional share, shall pay to the Warrantholder an amount in cash equal to the Market Price of such fractional Ordinary Share on the date of exercise. The term "Market Price" shall mean the price determined by the first of the following clauses that applies: (a) if the Ordinary Shares are then listed or quoted on a Trading Market or any other national securities exchange, the closing bid price per Ordinary Share for such date (or the nearest preceding date) on the Principal Trading Market; (b) if prices for Ordinary Shares are then reported in the "Pink Sheets" published by OTC Markets Group Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per Ordinary Share so reported; or (c) in all other cases, the fair market value of an Ordinary Share as determined by an independent appraiser selected in good faith by the Warrantholder.

Section 10. Benefits. Nothing in this Warrant shall be construed to give any person, firm or corporation (other than the Company and the Warrantholder) any legal or equitable right, remedy or claim, it being agreed that this Warrant shall be for the sole and exclusive benefit of the Company and the Warrantholder.

Section 11. Notices to Warrantholder. Upon the happening of any event requiring an adjustment of the Warrant Price, the Company shall promptly give written notice thereof to the Warrantholder in accordance with the notice provisions set forth in Section 12, stating the adjusted Warrant Price and the adjusted number of Warrant Shares resulting from such event and setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based. Failure to give such notice to the Warrantholder or any defect therein shall not affect the legality or validity of the subject adjustment.

Section 12. Notices. Unless otherwise provided, any notice required or permitted under this Warrant shall be given in writing and shall be deemed effectively given as hereinafter described (i) if given by personal delivery, then such notice shall be deemed given upon such delivery, (ii) if given by telex or facsimile, then such notice shall be deemed given upon receipt of confirmation of complete transmittal, (iii) if given by e-mail, then such notice shall be deemed given at the time of sending of the e-mail (provided that the sender does not receive any notice of a delivery failure or “bounceback” message), (iv) if given by mail, then such notice shall be deemed given upon the earlier of (A) receipt of such notice by the recipient or (B) three days after such notice is deposited in first class mail, postage prepaid, and (v) if given by an internationally recognized overnight air courier, then such notice shall be deemed given one business day after delivery to such carrier. All notices shall be addressed as follows (or at such other address as the Warrant holder or the Company may designate by ten days’ advance written notice to the other):

If to the Warrant holder:

Lough Ree Technologies Limited
c/o Waypoint International GP LLC
55 Cambridge Parkway, Suite 401
Cambridge, MA 02142
United States
Attention: James Singleton
Facsimile: (617) 588-4901

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

Weil, Gotshal & Manges LLP
767 5th Avenue
New York, NY 10153
United States
Attention: Michael J. Aiello; and Daniel S. Dokos
E-mail: michael.aiello@weil.com; daniel.dokos@weil.com
Fax: (212) 310-8007

If to the Company:

Innocoll Holdings plc
Unit 9, Block D, Monksland Business Park,
Monksland, Athlone,
County Roscommon,
Ireland
Attention: Anthony Zook
Email: TZook@innocoll.com

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

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020
United States
Attention: Jeffrey A. Baumel; Ilan Katz
Email: jeffrey.baumel@dentons.com; and ilan.katz@dentons.com

Section 13. Successors. All the covenants and provisions hereof by or for the benefit of the Warrantholder shall bind and inure to the benefit of its respective successors and assigns hereunder.

Section 14. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Warrant shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without reference to the choice of law provisions thereof. The Company and, by accepting this Warrant, the Warrantholder, each irrevocably agrees and submits to the exclusive jurisdiction of the Delaware Court of Chancery for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Warrant and the transactions contemplated hereby (provided, however, that if the Delaware Court of Chancery does not have jurisdiction over such suit, action, proceeding or judgment, such suit, action, proceeding or judgment shall be settled exclusively in, and the parties irrevocably agree and submit to the jurisdiction of, the United States District Court for the District of Delaware and the appellate courts therefrom). Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Warrant. The Company and, by accepting this Warrant, the Warrantholder, each irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. The Company and, by accepting this Warrant, the Warrantholder, each irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. EACH OF THE COMPANY AND, BY ITS ACCEPTANCE HEREOF, THE WARRANTHOLDER HEREBY WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS WARRANT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.

Section 15. No Rights as Stockholder. Prior to the exercise of this Warrant, the Warrantholder shall not have or exercise any rights as a stockholder of the Company by virtue of its ownership of this Warrant.

Section 16. Amendment; Waiver. Any term of this Warrant may be amended or waived only with the written consent of both the Company and the Warrantholder.

Section 17. Section Headings. The section headings in this Warrant are for the convenience of the Company and the Warrantholder and in no way alter, modify, amend, limit or restrict the provisions hereof.

[Signature page follows]

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed, as of the 9th day of May 2017.

INNOCOLL HOLDINGS PLC

By: /s/ Anthony Zook

Name: Anthony Zook

Title: Chief Executive Officer

[Signature Page To Warrant]

APPENDIX A
INNOCOLL HOLDINGS PLC
WARRANT EXERCISE FORM

To: Innocoll Holdings plc (the "Company")
Attn: Corporate Secretary
Fax: () -

The undersigned (the "Warrantholder") hereby irrevocably elects to exercise the right of subscription represented by the Warrant No. ____, dated as of _____, 20__, issued by the Company (the "Warrant") for, and to subscribe thereunder by the payment of the aggregate Warrant Price as indicated below, for _____ ordinary shares, par value \$0.01 per share, of the Company ("Exercise Shares") as provided for therein, and requests that certificates for the Exercise Shares be issued as follows:

Name

Address

Federal Tax ID or Social Security No.

and delivered by the Company to the above address or to _____

- This Exercise Shares represents the full exercise of the outstanding balance of the Warrant Shares. The Warrantholder either
- has previously surrendered the Warrant to the Company; or
 - will surrender (or cause to be surrendered) the Warrant to the Company at the address indicated above by express courier within five (5) Trading Days after delivery or facsimile transmission of this Exercise Agreement.
- The Exercise Shares represent less than the outstanding balance of the Warrant Shares.
- The Warrantholder is tendering the Warrant to the Company, subject to the provisions of Section 3 of the Warrant regarding such tender. As contemplated by such section, that the Company shall issue a new Warrant for the balance of the Warrant Shares purchasable upon exercise of this Warrant be registered in the name of the undersigned Warrantholder or the undersigned's Assignee as below indicated and delivered to the address stated below.

Payment of Warrant Price is being tendered in cash as follows:

CASH: \$ _____ = (Warrant Price x Exercise Shares)

Payment is being made by:

- enclosed check
- wire transfer
- other

As contemplated by the Warrant, this Exercise Agreement is being sent by facsimile, email, mail or courier to the telecopier/fax number, email address or mail address and officer indicated above. This Warrant Exercise Form is subject to the terms of the Warrant and any capitalized terms used in this Warrant Exercise Form and not defined herein shall have the meaning ascribed to such terms in the Warrant. To the extent there is a conflict between this Warrant Exercise Form and the Warrant the terms of the Warrant shall govern.

Dated: _____, ____

Note: The signature must correspond with the name of the Warrantholder as written on the first page of the Warrant in every particular, without alteration or enlargement or any change whatever, unless the Warrant has been assigned.

WARRANTHOLDER NAME: _____

Warrantholder Signature: By: _____

Name (please print): _____

Assignee: _____