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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

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**FORM 8-K**

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**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 10, 2010**

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**MEDICINOVA, INC.**

(Exact name of Registrant as Specified in Its Charter)

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**DELAWARE**  
(State or Other Jurisdiction  
of Incorporation)

**001-33185**  
(Commission File Number)

**33-0927979**  
(IRS Employer  
Identification No.)

**4350 LA JOLLA VILLAGE DRIVE, SUITE 950, SAN DIEGO, CA**  
(Address of Principal Executive Offices)

**92122**  
(Zip Code)

**Registrant's telephone number, including area code: (858) 373-1500**

**Not Applicable**

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

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01. Entry into a Material Definitive Agreement.**

On May 10, 2010, MediciNova, Inc. (“MediciNova”) entered into a loan and security agreement (the “Loan and Security Agreement”) with Oxford Finance Corporation (together with its successors and assigns, the “Lenders”) under which MediciNova borrowed \$15.0 million. The financing will be used to satisfy working capital needs, including the continued clinical development of MN-221.

MediciNova’s obligations under the Loan and Security Agreement are secured by a first priority security interest in substantially all of its assets, other than its intellectual property. MediciNova also has agreed not to pledge or otherwise encumber its intellectual property assets. MediciNova’s obligations under the Loan and Security Agreement are guaranteed on a senior secured basis by its wholly owned subsidiary, Avigen, Inc.

MediciNova is required to pay interest on borrowings on a monthly basis through and including February 1, 2011. Beginning March 1, 2011 through maturity of the loan on August 1, 2013, MediciNova will be required to make payments of outstanding principal and interest in 30 equal monthly installments. The interest rate on the loan is 12.87 percent.

MediciNova has paid the Lenders a facility fee of \$150,000. MediciNova also will pay the Lenders a deferred interest payment equal to \$450,000, payable on June 30, 2011, provided that a pro rata portion of such deferred interest payment shall be paid upon any prepayment of the loan. In addition, if MediciNova repays all or a portion of the loan prior to maturity, it will pay the Lenders a prepayment penalty of three percent of the total amount prepaid if the prepayment occurs prior to May 10, 2011, two percent of the total amount prepaid if the prepayment occurs between May 11, 2011 and May 10, 2012 and one percent of the total amount prepaid if the prepayment occurs on or after May 10, 2012.

The Loan and Security Agreement includes affirmative and restrictive covenants, including: (a) that on or before March 31, 2011 MediciNova shall have either (i) entered into a collaboration, joint venture or partnership with a non-affiliate providing for up-front cash proceeds to MediciNova (with such proceeds received on or before March 31, 2011) of not less than \$15.0 million from either or a combination of an upfront payment(s) or proceeds from the sale or conversion of securities issued by MediciNova in connection therewith or (ii) received positive Phase IIB data on MN-221, as defined in a completed partnership or joint venture agreement relating to MN-221, or had a positive end-of-phase II meeting with the Food and Drug Administration and obtained the approval of the board of directors to proceed to Phase III with MN-221; (b) periodic financial reporting requirements; (c) limitations on the incurrence of additional indebtedness; (d) limitations on liens; (e) limitations on certain merger and licensing transactions; (f) limitations on dispositions of certain assets; (g) limitations on fundamental corporate changes; (h) limitations on investments; and (i) limitations on payments and distributions. Upon the occurrence of an event of default, including payment defaults, breaches of covenants, changes of control and a material adverse change in MediciNova’s business, operations or condition (financial or otherwise) or prospects, the interest rate will be increased by five percentage points and all outstanding obligations will become immediately due and payable.

In connection with the Loan and Security Agreement, MediciNova issued to Oxford Finance Corporation a warrant to purchase 198,020 shares of MediciNova common stock, which represents approximately 1.2% of MediciNova’s outstanding shares of common stock, calculated on a fully diluted basis. This warrant is exercisable, in whole or in part, immediately, has a per share exercise price of \$6.06 and may be exercised on a cashless basis. The warrant will terminate on the earlier of May 10, 2017 and the closing of a merger or consolidation transaction in which MediciNova is not the surviving entity.

The descriptions of the Loan and Security Agreement and warrant contained herein do not purport to be complete and are qualified in their entirety by reference to the Loan and Security Agreement and warrant, attached hereto as Exhibits 10.1 and 4.1, respectively, and incorporated herein by reference.

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

The information set forth in Item 1.01 regarding the Loan and Security Agreement is incorporated by reference into this Item 2.03.

**Item 7.01. Regulation FD Disclosure.**

On May 11, 2010, MediciNova issued a press release (the "Press Release") announcing that it has entered into the Loan and Security Agreement. A copy of the Press Release is attached hereto as Exhibit 99.1.

The information in this Current Report on Form 8-K being provided under this Item 7.01, including Exhibit 99.1 furnished herewith, is being furnished and shall not be deemed "filed" for any purpose of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of such Section. The information in this current report on Form 8-K shall not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

**Item 9.01. Financial Statements and Exhibits.**

(d) *Exhibits.*

4.1 Warrant dated May 10, 2010 issued to Oxford Finance Corporation.

10.1 Loan and Security Agreement dated May 10, 2010 by and among Registrant, Avigen, Inc. and Oxford Finance Corporation.

99.1 Press release dated May 11, 2010.

**SIGNATURES**

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

**MEDICINOVA, INC.**

Date: May 14, 2010

By: /s/ Shintaro Asako  
Name: Shintaro Asako  
Title: Chief Financial Officer

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

### WARRANT TO PURCHASE STOCK

Company: MediciNova, Inc., a Delaware corporation

Number of Shares: 198,020, subject to adjustment

Class of Stock: Common Stock, \$0.001 par value per share

Warrant Price: \$6.06, subject to adjustment

Issue Date: May 10, 2010

Expiration Date: May 10, 2017

Credit Facility: This Warrant is issued in connection with that certain Loan and Security Agreement of even date herewith by and among Oxford Finance Corporation, the Company and Avigen, Inc.

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, OXFORD FINANCE CORPORATION (together with any successor or permitted assignee or transferee of this Warrant or of any Shares issued upon exercise or conversion hereof, "Holder") is entitled to purchase the number of fully paid and non-assessable shares (the "Shares") of the above-stated Class of Stock (the "Class") of the above-named company (the "Company") at the above-stated Warrant Price per Share, all as set forth above and as adjusted pursuant to Article 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

#### ARTICLE 1. EXERCISE.

1.1 Method of Exercise. Holder may exercise this Warrant by delivering the original of this Warrant together with a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Article 1.2, Holder shall also deliver to the Company a check, wire transfer (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Conversion Right. In lieu of exercising this Warrant as specified in Article 1.1, Holder may from time to time convert this Warrant, in whole or in part, by surrendering this Warrant for that number of shares of the Class equal to the quotient obtained by dividing (x) the product of (i) the number of Shares underlying that portion of the Warrant to be surrendered, multiplied by (ii) the positive difference, if any, between the exercise price of such Warrant and the fair market value (as defined below), by (y) the fair market value.

1.3 Fair Market Value. If shares of the Class are then publicly listed or quoted on one or more securities exchanges, inter-dealer quotation systems or over-the-counter markets, the fair market value of a Share shall be the volume-weighted average of the closing prices of a share of the Class reported on the principal such exchange, system or market in the United States (or, if shares of the Class are not then publicly listed or quoted on one or more securities exchanges, inter-dealer quotation systems or over-the-counter markets in the United States, on the principal such non-US exchange, system or market) for the ten (10) consecutive trading days immediately prior to the date on which Holder delivers this Warrant together with its Notice of Exercise to the Company. If shares of the Class are not then publicly listed or quoted on one or more securities exchanges, inter-dealer quotation systems or over-the-counter markets, then the Board of Directors of the Company shall determine the fair market value of a Share in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this Warrant and, if applicable, the Company receives payment of the aggregate Warrant Price, the Company shall deliver to Holder certificates for the Shares acquired and, if this Warrant has not been fully exercised or converted and has not expired, a new warrant of like tenor representing the Shares not so acquired.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation, on surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

## ARTICLE 2. ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on the outstanding shares of the Class payable in additional shares of the Class or other securities, then upon exercise or conversion of this Warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend occurred. If the Company subdivides the outstanding shares of the Class by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares of the Class are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Reorganization, Merger, Etc. In case of any reclassification or reorganization of the Company's Common Stock (other than a change otherwise covered by this Article 2 or that solely affects the par value of the Class), or in the case of any merger or consolidation of the Company into or with another entity (other than a consolidation or merger in which the Company is the successor or surviving entity and that does not result in any reclassification or reorganization of the outstanding shares of the Class), or in the case of any sale or conveyance to another entity of the

assets or other property of the Company as an entirety or substantially as an entirety in connection with which the Company is dissolved and liquidated, the holder of this Warrant shall thereafter have the right to purchase and receive, upon the basis and upon the terms and conditions specified in this Warrant and in lieu of the shares of the Class immediately theretofore purchasable and receivable upon the exercise of the rights represented thereby, the kind and amount of shares of stock or other securities or property (including cash) receivable upon such reclassification, reorganization, merger or consolidation, or upon a dissolution following any such sale or transfer, that the Warrant holder would have received if such Warrant holder had exercised this Warrant immediately prior to such event; and if any such event also results in a change in shares of the Class otherwise covered by Article 2.1, then such adjustment shall be made pursuant to Article 2.1 and this Article 2.2. The provisions of this Article 2.2 shall similarly apply to successive reclassifications, reorganizations, mergers or consolidations, sales or other transfers.

2.3 Merger, Consolidation. In case of any merger or consolidation of the Company into or with another entity (other than a consolidation or merger in which the Company is the successor or surviving entity and that does not result in any reclassification or reorganization of the outstanding shares of the Class), or in the case of any sale or conveyance to another entity of the assets or other property of the Company as an entirety or substantially as an entirety in connection with which the Company is dissolved and liquidated, this Warrant shall expire concurrently with the completion of such transaction unless otherwise provided in the definitive transaction documentation.

2.4 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by the Company, but shall at all times in good faith assist in carrying out of all the provisions of this Article 2 and in taking all such action as may be necessary or appropriate to protect Holder's rights under this Article 2 against impairment; provided, however, that notwithstanding the foregoing, nothing in this Article 2.4 shall restrict or impair the Company's right to effect changes to the rights, preferences, and privileges associated with the Shares with the requisite consent of the stockholders as may be required to amend the Certificate of Incorporation from time to time so long as such amendment affects the rights, preferences, and privileges granted to Holder associated with the Shares in the same manner as the other holders of outstanding shares of the Class.

2.5 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of the Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of the Warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the fair market value of a full Share.

2.6 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, Class and/or number of Shares, the Company shall promptly notify Holder in writing, and, at the Company's expense, promptly compute such adjustment, and furnish Holder with a certificate of its Chief Financial Officer setting forth such

adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price, Class and number of Shares in effect upon the date thereof and the series of adjustments leading to such Warrant Price, Class and number of Shares.

ARTICLE 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants to, and agrees with, the Holder as follows:

(a) All Shares which may be issued upon the exercise or conversion of this Warrant shall at all times during the term hereof and prior to exercise or conversion in full hereof be duly reserved out of the Company's authorized and unissued capital stock for issuance upon exercise or conversion hereof and shall, upon issuance, be duly and validly issued, fully paid and non-assessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

3.2 Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon the outstanding shares of the Class, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to offer for subscription or sale pro rata to the holders of the outstanding shares of the Class any additional shares of any class or series of the Company's stock; (c) to effect any reclassification, reorganization or recapitalization of the shares of the Class; or (d) to effect an Acquisition or to liquidate, dissolve or wind up; then in each such event the Company shall provide written notice thereof to Holder thereof at the same time and in the same manner as the Company gives notice thereof to the holders of the outstanding shares of the Class.

3.3 [Intentionally Omitted].

3.4 No Shareholder Rights. Without limitation of any provision of this Warrant, Holder agrees that it will not have any rights as a shareholder of the Company until the exercise of this Warrant.

ARTICLE 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER. The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by Holder will be acquired for investment for Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution in violation of applicable securities laws. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.



4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. Holder understands that this Warrant and the Shares issuable upon exercise or conversion hereof have not been registered under the Act in reliance upon one or more exemptions therefrom, which exemptions depend upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise or conversion hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless an exemption from such registration and qualification requirements is otherwise available.

#### ARTICLE 5. MISCELLANEOUS.

5.1 Term: This Warrant is exercisable in whole or in part at any time and from time to time on or before the Expiration Date.

5.2 Legends. This Warrant and the Shares shall be imprinted with a legend in substantially the following form:

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 OF THAT CERTAIN WARRANT TO PURCHASE STOCK ISSUED BY THE COMPANY TO OXFORD FINANCE CORPORATION DATED AS OF MAY 10, 2010, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

5.3 Compliance with Securities Laws on Transfer. This Warrant and/or the Shares issued upon exercise or conversion of this Warrant may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to any affiliate of Holder, provided that such affiliate is an “accredited investor” as defined in Regulation D promulgated under the Act.

5.4 Transfer Procedure. Subject to the provisions of Article 5.3 and upon providing the Company with written notice, Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the securities issuable directly or indirectly, upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable). The foregoing provisions of this Article 5.4 shall not apply to a public sale of any Shares issued on exercise or conversion of this Warrant in reliance on the provisions of Rule 144 promulgated under the Act.

5.5 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid (or on the first business day after transmission by facsimile), at such address as may have been furnished to the Company or Holder, as the case may be, in writing by the Company or such holder from time to time. All notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

Oxford Finance Corporation  
Attn: Mr. John Henderson  
133 North Fairfax Street  
Alexandria, VA 22314  
Facsimile: 703-519-5225

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

MediciNova, Inc.  
Attn: Chief Financial Officer  
4350 La Jolla Village Drive, Suite 950  
San Diego, CA 92122  
Telephone: 858-373-1500  
Facsimile: 858-373-7000

copy to:

David E. Schulman, Esq.  
Dechert LLP

1775 I Street, NW  
Washington, DC 20006-2401  
Telephone: 202-261-3300  
Facsimile: 202-261-3333

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

5.8 Automatic Conversion upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Article 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be converted pursuant to Article 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised or converted, and the Company shall, promptly following Holder's written request therefor, deliver a certificate representing the Shares (or such other securities) issued upon such conversion to Holder.

5.9 Counterparts. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement.

*[Remainder of page left blank intentionally]*

5.10 Governing Law. This Warrant shall be governed by and construed in accordance with (i) to the extent applicable, the General Corporation Law of the State of Delaware, and (ii) otherwise, the laws of the State of New York, without giving effect to its principles regarding conflicts of law.

“COMPANY”

MEDICINOVA, INC.

By: /s/ Shintaro Asako

Name: Shintaro Asako

(Print)

Title: CFO

“HOLDER”

OXFORD FINANCE CORPORATION

By: /s/ T. A. Lex

Name: T.A. Lex

(Print)

Title: COO

NOTICE OF EXERCISE

1. Holder elects to purchase \_\_\_\_\_ shares of the Common/Series \_\_\_\_\_ Preferred [strike one] Stock of \_\_\_\_\_ pursuant to the terms of the attached Warrant, and tenders payment of the purchase price of the shares in full.

[or]

1. Holder elects to convert the attached Warrant into Shares/cash [strike one] in the manner specified in the Warrant. This conversion is exercised for \_\_\_\_\_ of the Shares covered by the Warrant.

[Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing the Shares in the name specified below:

\_\_\_\_\_  
Holders Name

\_\_\_\_\_

\_\_\_\_\_  
(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Article 4 of the Warrant as of the date hereof.

HOLDER:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Date): \_\_\_\_\_

**LOAN AND SECURITY AGREEMENT**

**THIS LOAN AND SECURITY AGREEMENT** (this “**Agreement**”) dated as of May 10, 2010 (the “**Effective Date**”) among **OXFORD FINANCE CORPORATION**, a Delaware corporation with an office located at 133 North Fairfax Street, Alexandria, Virginia 22314 (“**Oxford**”), as collateral agent (in such capacity, the “**Collateral Agent**”) and as a Lender, the Lenders listed on Schedule 1.1 hereof or otherwise a party hereto from time to time (each a “**Lender**” and collectively, the “**Lenders**”), **MEDICINOVA, INC.**, a Delaware corporation with offices located at 4350 La Jolla Village Drive, Suite 950, San Diego, California 92122 (“**Borrower**”), and **AVIGEN, INC.**, a Delaware corporation (“**Guarantor**”), provides the terms on which Lenders shall lend to Borrower and Borrower shall repay Lenders. The parties agree as follows:

**1 ACCOUNTING AND OTHER TERMS**

**1.1** Accounting terms not defined in this Agreement shall be construed in accordance with GAAP. Calculations and determinations must be made in accordance with GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 14. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. All references to “Dollars” or “\$” are United States Dollars, unless otherwise noted.

**2 LOAN AND TERMS OF PAYMENT**

**2.1 Promise to Pay** Borrower hereby unconditionally promises to pay each Lender, the outstanding principal amount of the Term Loan advanced to Borrower by such Lender and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

**2.2 Term Loan.**

(a) **Availability.** Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, on the Effective Date to make term loans to Borrower in the aggregate amount equal to Fifteen Million Dollars (\$15,000,000.00) according to each Lender’s Term Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to individually and collectively, as the “**Term Loan**”). After repayment, the Term Loan may not be re-borrowed.

(b) **Repayment.** Borrower shall make monthly payments of interest only, in arrears, on the Term Loan commencing on the first (1<sup>st</sup>) Payment Date following the Funding Date of the Term Loan, and continuing on the Payment Date of each successive month thereafter through and including February 1, 2011. Commencing on March 1, 2011, and continuing on the Payment Date of each month thereafter, Borrower shall make consecutive equal monthly payments of principal and interest, in arrears, to each Lender, as calculated by Collateral Agent based upon: (1) the amount of such Lender’s Term Loan, (2) the effective rate of interest, as determined in Section 2.3(a), and (3) a repayment schedule equal to thirty (30) months. All unpaid principal and accrued interest with respect to the Term Loan is due and payable in full on the Maturity Date. The Term Loan may only be prepaid in accordance with Sections 2.2(c) and 2.2(d).

(c) **Mandatory Prepayments.** If the Term Loan is accelerated following the occurrence of an Event of Default, Borrower shall immediately pay to Lenders, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) all outstanding principal of the Term Loan plus accrued interest thereon through the prepayment date, (ii) the Deferred Interest Payment, (iii) the Prepayment Fee, plus (iv) all other sums, that shall have become due and payable, including Lenders’ Expenses and interest at the Default Rate with respect to any past due amounts.

(d) **Permitted Prepayment of the Term Loan.** Borrower shall have the option to prepay all or a portion of the Term Loan advanced by the Lenders under this Agreement (provided any partial prepayment shall be in a minimum principal amount of \$5,000,000 and \$1,000,000 increments in excess thereof), provided Borrower

(i) provides written notice to Collateral Agent of its election to prepay the Term Loan at least ten (10) days prior to such prepayment, and (ii) pays to the Lenders on the date of such prepayment, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of (A) the principal amount of the Term Loan being prepaid plus accrued interest thereon through the prepayment date, (B) the Deferred Interest Payment in respect of the principal amount of the Term Loan being prepaid, (C) the Prepayment Fee in respect of the principal amount of the Term Loan being prepaid, plus (D) all other sums, that shall have become due and payable, including Lenders' Expenses, if any, and interest at the Default Rate with respect to any past due amounts.

### 2.3 Payment of Interest on the Credit Extensions.

(a) **Interest Rate.** Subject to Section 2.3(b), the principal amount outstanding under the Term Loan shall accrue interest at a fixed per annum rate (which rate shall be fixed for the duration of the applicable Term Loan) equal to the Basic Rate, determined by Collateral Agent on the Funding Date of the Term Loan, which interest shall be payable monthly, in arrears, in accordance with Sections 2.2(b) and 2.3(e). Interest shall accrue on the Term Loan for the day on which the Term Loan is made, and shall accrue on the Term Loan, or any portion thereof, for the day on which the Term Loan or such portion is paid.

(b) **Default Rate.** Immediately upon the occurrence and during the continuance of an Event of Default, 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**"). Payment or acceptance of the increased interest rate provided in this Section 2.3(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 Collateral Agent.

(c) **Deferred Interest Payment.** Borrower shall pay to Collateral Agent, for payment to each Lender in accordance with its respective Pro Rata Share, a deferred interest payment (the "**Deferred Interest Payment**") equal to three percent (3.00%) of the aggregate original principal amount of the Term Loan. The Deferred Interest Payment is fully earned as of the Effective Date and shall be due and payable on the earliest of (i) of June 30, 2011 or (ii) the prepayment of the Term Loan pursuant to Sections 2.2(c) and 2.2(d).

(d) **360-Day Year.** Interest shall be computed on the basis of a 360-day year consisting of twelve (12) months of thirty (30) days.

(e) **Debit of Accounts.** Collateral Agent and each Lender may debit any of Borrower's deposit accounts, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes the Lenders under the Loan Documents when due. These debits shall not constitute a set-off.

(f) **Payments.** Except as otherwise expressly provided herein, all loan payments by Borrower hereunder shall be made to the respective Lender to which such payments are owed, at such Lender's office in immediately available funds on the date specified herein. Unless otherwise provided, interest is payable monthly on the Payment Date of each month. Payments of principal and/or interest received after 12:00 noon Eastern 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 is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest made hereunder and pursuant to any other Loan Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds.

**2.4 Secured Promissory Notes.** The Term Loan shall be evidenced by a Secured Promissory Note in the form attached as **Exhibit D** hereto (each a "**Secured Promissory Note**"), and shall be repayable as set forth herein. Borrower irrevocably authorizes each Lender to make or cause to be made, on or about the Funding Date of the Term Loan or at the time of receipt of any payment of principal on such Lender's Secured Promissory Note, an appropriate notation on such Lender's Secured Promissory Note Record reflecting the making of such Term Loan or (as the case may be) the receipt of such payment. The outstanding amount of the Term Loan set forth on such

Lender's Secured Promissory Note Record shall be prima facie evidence (absent manifest error) of the principal amount thereof owing and unpaid to such Lender, but the failure to record, or any error in so recording, any such amount on such Lender's Secured Promissory Note Record shall not limit or otherwise affect the obligations of Borrower hereunder or under any Secured Promissory Note to make payments of principal of or interest on any Secured Promissory Note when due. Upon receipt of an affidavit of an officer of a Lender as to the loss, theft, destruction, or mutilation of its Secured Promissory Note, Borrower shall issue, in lieu thereof, a replacement Secured Promissory Note in the same principal amount thereof and of like tenor provided that Lender delivers to Borrower an indemnity agreement in a form reasonably satisfactory to Borrower in the case of loss, theft or destruction.

**2.5 Fees.** Borrower shall pay to Collateral Agent:

(a) Facility Fee. A fully earned, non-refundable facility fee of One Hundred Fifty Thousand Dollars (\$150,000) to be shared between the Lenders pursuant to their respective Commitment Percentages; the Lenders hereby acknowledge and agree that Fifty Thousand Dollars (\$50,000) of the facility fee was paid by Borrower prior to the Effective Date and shall be credited to each Lender as of the Effective Date;

(b) Deferred Interest. The Deferred Interest Payment, when due hereunder, to be shared among the Lenders in accordance with their respective Pro Rata Shares;

(c) Prepayment Fee. The Prepayment Fee, when due hereunder, to be shared among the Lenders in accordance with their respective Pro Rata Shares; and

(d) Lenders' Expenses. All Lenders' Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due (and in the absence of any other due date specified herein, such Lenders' Expenses shall be due within five (5) days of demand therefor).

**3 CONDITIONS OF LOANS**

**3.1 Conditions Precedent.** Each Lender's obligation to make the Term Loan is subject to the condition precedent that Collateral Agent shall consent to or shall have received, in form and substance satisfactory to Collateral Agent, such documents, and completion of such other matters, as Collateral Agent may reasonably deem necessary or appropriate, including, without limitation:

(a) duly executed signatures to the Loan Documents;

(b) duly executed signatures to the Warrant;

(c) duly executed signatures to the Control Agreements;

(d) duly executed original Secured Promissory Notes in favor of each Lender according to its Commitment Percentage;

(e) the Operating Documents of Borrower, Guarantor, the UK Subsidiary and the Japanese Subsidiary, and good standing certificates of Borrower and Guarantor certified by the Secretary of State of the State of Delaware as of a date no earlier than thirty (30) days prior to the Effective Date;

(f) the Perfection Certificates for Borrower, Guarantor, the UK Subsidiary and the Japanese Subsidiary;

(g) Secretary's Certificate with completed Borrowing Resolutions for Borrower;



(h) Secretary's Certificate with completed Resolutions for Guarantor;

(i) Collateral Agent shall have received certified copies, dated as of a recent date, of financing statement searches, as Collateral Agent shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

(j) a landlord's consent executed in favor of Collateral Agent in respect of Borrower's leased locations;

(k) a bailee's consent executed in favor of Collateral Agent in respect of each of the properties at which Borrower's property is located;

(l) a legal opinion of Borrower's counsel dated as of the Effective Date together with the duly executed signatures thereto;

(m) evidence satisfactory to Collateral Agent that the insurance policies required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Collateral Agent, for the ratable benefit of the Lenders;

(n) a copy of any Registration Rights Agreement or any other similar agreement in respect of the capital stock of Borrower; and

(o) payment of the fees and Lenders' Expenses then due as specified in Section 2.5 hereof.

(p) timely receipt by Collateral Agent of an executed Payment/Advance Form in the form of **Exhibit B** attached hereto;

(q) the representations and warranties in Section 5 hereof shall be true, in all material respects on the date of the Payment/Advance Form and on the Funding Date of each Credit Extension; 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 no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in Section 5 hereof are true, accurate and complete in all material respects; 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

(r) in such Lender's sole discretion, there has not been any Material Adverse Change or any material adverse deviation by Borrower from the most recent business plan of Borrower presented to and accepted by Collateral Agent.

Signature pages for the documents required to be delivered pursuant to clauses (a) through (d), (f) through (h) and (j) and (k) above may be delivered to Collateral Agent in electronic form at closing, provided that the originals thereof are delivered to Collateral Agent within five (5) Business Days of closing.

**3.2 Covenant to Deliver.** Borrower agrees to deliver to Collateral Agent each item required to be delivered to Collateral Agent under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Collateral Agent of any such item shall not constitute a waiver by the Lenders of Borrower's obligation to deliver such item, and any such Credit Extension in the absence of a required item shall be made in Collateral Agent's sole discretion.

#### **4 CREATION OF SECURITY INTEREST**

**4.1 Grant of Security Interest.** Borrower and Guarantor each hereby grants Collateral Agent, for the ratable benefit of the Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Collateral Agent, for the ratable benefit of the Lenders, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Borrower and Guarantor each represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to Permitted Liens that are permitted by the terms of this agreement to have priority to Collateral Agent's Lien. If Borrower or Guarantor shall acquire a commercial tort claim (as defined in the Code) in the United States, Borrower or Guarantor, as the case may be, shall promptly notify Collateral Agent in a writing signed by Borrower or Guarantor, as the case may be, of the general details thereof (and further details as may be required by Collateral Agent) and grant to Collateral Agent, for the ratable benefit of the Lenders, in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Collateral Agent.

If this Agreement is terminated, Collateral Agent's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations and at such time as the Lenders' obligation to make Credit Extensions has terminated, Collateral Agent shall, at Borrower's sole cost and expense, release its Liens in the Collateral and all rights therein shall revert to Borrower or Guarantor, as applicable.

In the event a licensee of Borrower requires delivery of a non-disturbance agreement as a condition to such licensee entering into or maintaining a license agreement with Borrower, Collateral Agent agrees to use good faith efforts to reach agreement with the licensee on a form of agreement that is reasonably acceptable to Collateral Agent.

**4.2 Authorization to File Financing Statements.** Each of Borrower and Guarantor hereby authorizes Collateral Agent to file financing statements or take any other action required to perfect Collateral Agent's security interests in the Collateral, without notice to Borrower or Guarantor, as applicable, with all appropriate jurisdictions to perfect or protect Collateral Agent's and each Lender's interest or rights hereunder, including a notice that any disposition of the Collateral, except to the extent permitted by the terms of this Agreement, by either Borrower, Guarantor, or any other Person, shall be deemed to violate the rights of Collateral Agent and Lenders under the Code. Such financing statements may indicate the Collateral as "all assets of the Debtor" or words of similar effect, or as being of an equal or lesser scope, or with greater detail, all in Collateral Agent's discretion, provided that such financing statements shall note the assets excluded from Collateral Agent's security interest as specified on Exhibit A hereto.

#### **5 REPRESENTATIONS AND WARRANTIES**

Borrower and Guarantor represent and warrant to Collateral Agent and the Lenders as follows at all times (unless expressly provided below) until the Obligations have been paid in full and Lenders have no further obligation to extend credit to Borrower:

**5.1 Due Organization, Authorization: Power and Authority.** Borrower and each of its Subsidiaries is duly existing and Borrower is in good standing (to the extent the concept of "good standing" exists under applicable law) in its jurisdiction of organization, and Borrower and each of its Subsidiaries is qualified and licensed to do business and is in good standing (to the extent the concept of "good standing" exists under applicable law) in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business. In connection with this Agreement, Borrower and Guarantor have delivered to Collateral Agent a completed perfection certificate signed by an officer of Borrower and Guarantor, respectively (the "**Perfection Certificates**"). Borrower and Guarantor represent and warrant that (a) Borrower's/Guarantor's exact legal name is that indicated on the Perfection Certificates and on the signature page hereof; (b) Borrower/Guarantor is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificates; (c) the Perfection Certificates accurately set forth Borrower's/Guarantor's organizational identification number or accurately states that Borrower/Guarantor has none; (d) the Perfection Certificates accurately set forth

Borrower's/Guarantor's principal place of business, or, if more than one, its chief executive office as well as Borrower's/Guarantor's mailing address (if different than its chief executive office); (e) Borrower/Guarantor (and each of their respective predecessors) has not, in the past five (5) years, changed its jurisdiction of organization, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificates pertaining to Borrower/Guarantor and each of Borrower's Subsidiaries is accurate and complete in all material respects (it being understood and agreed that Borrower/Guarantor may from time to time update certain information in the Perfection Certificates after the Effective Date to the extent permitted by one or more specific provisions in this Agreement). If Borrower, Guarantor or any Subsidiary is not now a Registered Organization but later becomes one, Borrower shall promptly notify Collateral Agent of such occurrence and provide Collateral Agent with such Person's organizational identification number within five (5) Business Days of receiving such organizational identification number.

The execution, delivery and performance by Borrower and Guarantor of the Loan Documents to which they are respectively a party have been duly authorized, and do not (i) conflict with any of Borrower's or Guarantor's organizational documents, including the Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower, Guarantor or any of their Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except (a) such Governmental Approvals which have already been obtained or which are in the process of being obtained and are in full force and effect, (b) filings of initial financing statements in the appropriate jurisdictions to perfect the security interest granted herein, and (c) such as may be required under state "blue sky" laws) or are being obtained pursuant to Section 6.1(b), or (v) constitute an event of default under any material agreement by which Borrower or any of its Subsidiaries or their respective properties is bound. Neither Borrower nor Guarantor is in default under any agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a material adverse effect on Borrower's business.

## **5.2 Collateral.**

(a) Borrower and Guarantor have good title to, has rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien or any other security interest under the Loan Documents, free and clear of any and all Liens except Permitted Liens, and, except for (i) the securities account in which the Pledged ARS are held and (ii) the Trust and Escrow Accounts, neither Borrower nor Guarantor has any Deposit Accounts, Securities Accounts, Commodity Accounts or other investment accounts other than the Collateral Accounts or the other investment accounts, if any, described in the Perfection Certificates delivered to Collateral Agent in connection herewith with respect of which Borrower or Guarantor has given Collateral Agent notice and taken such actions as are necessary to give Collateral Agent a perfected security interest therein. The Accounts are bona fide, existing obligations of the Account Debtors.

(b) On the Effective Date, the Collateral is not in the possession of any third party bailee (such as a warehouse), except as disclosed in the Perfection Certificates. None of the components of the Collateral shall be maintained at locations other than as disclosed in the Perfection Certificates on the Effective Date or as permitted pursuant to Section 7.2. In the event that Borrower, after the Effective Date, intends to store or otherwise deliver to a bailee any portion of the Collateral having a value of Fifty Thousand Dollars (\$50,000) or greater, then Borrower or Guarantor, as applicable, will first receive the written consent of Collateral Agent and such bailee must execute and deliver a bailee agreement in form and substance reasonably satisfactory to Collateral Agent.

(c) All Inventory is in all material respects of good and marketable quality, free from material defects.

(d) Borrower and Guarantor are the sole owners of the Intellectual Property each respectively purports to own, except for non-exclusive licenses granted to its customers in the ordinary course of business. Each of Borrower's and Guarantor's Patents is valid and enforceable and no part of Borrower's or Guarantor's Intellectual Property has been judged invalid or unenforceable, in whole or in part, and to the best of Borrower's and Guarantor's knowledge, no claim has been made that the Intellectual Property or any practice by Borrower or Guarantor violates the rights of any third party except to the extent such claim could not reasonably be expected to

have a material adverse effect on Borrower's or Guarantor's business. Except as noted on the Perfection Certificates, neither Borrower nor Guarantor is a party to, nor is bound by, any material license or other agreement with respect to which Borrower or Guarantor is the licensee that (i) prohibits or otherwise restricts Borrower or Guarantor from granting a security interest in Borrower's or Guarantor's interest in such license or agreement or any other property, or (ii) for which a default under or termination of could interfere with Collateral Agent's right to sell any Collateral. Borrower and Guarantor shall provide written notice to Collateral Agent within ten (10) days of entering or becoming bound by any such license or agreement (other than over-the-counter software that is commercially available to the public). Borrower and Guarantor shall take such steps as Collateral Agent requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) all such licenses or agreements to be deemed "Collateral" and for Collateral Agent to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such license or agreement, whether now existing or entered into in the future, and (ii) Collateral Agent shall have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Collateral Agent's rights and remedies under this Agreement and the other Loan Documents.

**5.3 Litigation.** Except as disclosed in the Perfection Certificates, there are no actions, suits, investigations, or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing by or against Borrower, Guarantor or any of their respective Subsidiaries involving more than Two Hundred Fifty Thousand Dollars (\$250,000.00).

**5.4 No Material Deterioration in Financial Condition; Financial Statements.** All consolidated financial statements for Borrower and its Subsidiaries delivered to Collateral Agent fairly present, in all material respects the consolidated financial condition of Borrower and its Subsidiaries and the consolidated results of operations of Borrower and its Subsidiaries. There has not been any material deterioration in the consolidated financial condition of Borrower or its Subsidiaries since the date of the most recent financial statements submitted to Collateral Agent.

**5.5 Solvency.** The fair salable value of Borrower's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature. The fair salable value of Guarantor's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; Guarantor is not left with unreasonably small capital after the transactions in this Agreement; and Guarantor is able to pay its debts (including trade debts) as they mature.

**5.6 Regulatory Compliance.** Borrower is not required to register as an "investment company" under the Investment Company Act of 1940, as amended. 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). Borrower has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Borrower has not violated any laws, ordinances or rules, the violation of which could reasonably be expected to have a material adverse effect on its business. None of Borrower's or any of its Subsidiaries' properties or assets has been used by Borrower or any Subsidiary or, to Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable laws. Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

None of Borrower, Guarantor or their respective Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law, (ii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, or (iii) is a Blocked Person. Neither Borrower, Guarantor nor, to the knowledge of Borrower and Guarantor, any of their Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

**5.7 Subsidiaries; Investments.** Neither Borrower nor Guarantor owns any stock, shares, partnership interests or other equity securities except for Permitted Investments.

**5.8 Tax Returns and Payments; Pension Contributions.** Borrower and its Subsidiaries have timely filed all required tax returns and reports, and Borrower and its Subsidiaries have timely paid all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower and its Subsidiaries in all jurisdictions in which Borrower or its Subsidiaries are subject to taxes, including the United States unless such taxes are being contested in accordance with the following sentence. Borrower and its Subsidiaries may defer payment of any contested taxes, provided that Borrower or Guarantor or such Subsidiary (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Collateral Agent in writing of the commencement of, and any material development in, any proceedings, and (c) posts bonds or takes any other steps required to prevent the governmental authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien". Borrower and Guarantor are unaware of any claims or adjustments proposed for any of Borrower or its Subsidiaries prior tax years which could result in additional taxes becoming due and payable by Borrower or its Subsidiaries. Borrower and its Subsidiaries have paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower and its Subsidiaries have not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower or its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

**5.9 Use of Proceeds.** Borrower shall use the proceeds of the Credit Extensions solely as working capital and to fund its general business requirements in accordance with the provisions of this Agreement, and not for personal, family, household or agricultural purposes.

**5.10 Full Disclosure.** No written representation, warranty or other statement of Borrower in any certificate or written statement given to Collateral Agent or any Lender, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Collateral Agent or any Lender, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

## **6 AFFIRMATIVE COVENANTS**

Borrower shall do all of the following:

### **6.1 Government Compliance.**

(a) Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of organization and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a material adverse effect on Borrower's business or operations in each case to the extent that the applicable jurisdiction recognizes the concept of good standing. Borrower and Guarantor shall comply, and have each Subsidiary comply, with all laws, ordinances and regulations to which it is subject, the noncompliance with which could reasonably be expected to have a material adverse effect on Borrower's business.

(b) Obtain and keep in full force and effect, all of the Governmental Approvals necessary for the performance by Borrower and Guarantor of their obligations under the Loan Documents and the grant of a security interest to Collateral Agent for the ratable benefit of the Lenders, in all of the Collateral. Borrower and Guarantor shall promptly provide copies to Collateral Agent of any material Governmental Approvals obtained by Borrower or Guarantor.

## 6.2 Financial Statements, Reports, Certificates.

(a) Deliver to Collateral Agent: (i) as soon as available, but no later than forty-five (45) days after the last day of each calendar quarter, a company prepared consolidated and consolidating balance sheet and income statement covering the consolidated operations of Borrower and its Subsidiaries for such month certified by a Responsible Officer and in a form reasonably acceptable to Collateral Agent; (ii) as soon as available, but no later than one hundred twenty (120) days after the last day of Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from the Auditor; (iii) as soon as available after approval thereof by Borrower's Board of Directors, but no later than sixty (60) days after the last day of Borrower's fiscal year, Borrower's financial projections for current fiscal year as approved by Borrower's Board of Directors; (iv) within five (5) days of delivery, copies of all statements, reports and notices made available to all of Borrower's security holders or to any holders of Subordinated Debt; (v) Borrower shall provide each Lender with, as soon as available, but no later than five (5) days after filing with the Securities Exchange Commission, Borrower's Reports on Form 10-K, 10-Q, and 8-K; (vi) prompt notice of (A) any material change in the composition of the Intellectual Property, (B) quarterly notice of the registration of any copyright, including any subsequent ownership right of Borrower in or to any copyright, patent or trademark, and (C) prompt notice of Borrower's knowledge of any event that could reasonably be expected to materially and adversely affect the value of the Intellectual Property; and (vii) budgets, sales projections, operating plans and other financial information reasonably requested by Collateral Agent.

Borrower's Reports on Form 10-K, 10-Q, and 8-K required to be delivered pursuant hereto shall be deemed to have been delivered on the date on which Borrower posts such report or provides a link thereto on Borrower's or another website (including [www.sec.gov](http://www.sec.gov)) on the Internet.

(b) Within thirty (30) days after the last day of each month, deliver to Collateral Agent, a duly completed Compliance Certificate signed by a Responsible Officer.

(c) Allow Collateral Agent and Lenders to audit Borrower's and Guarantor's Collateral at Borrower's expense (not to exceed \$850.00 per day, including out-of-pocket expenses), during regular business hours upon reasonable prior notice (except while an Event of Default has occurred and is continuing). Such audits shall be conducted no more often than once every twelve months unless an Event of Default has occurred and is continuing.

**6.3 Inventory; Returns.** Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower, Guarantor and their Account Debtors shall follow Borrower's or Guarantor's customary practices as they exist at the Effective Date. Borrower and Guarantor must promptly notify Collateral Agent of all returns, recoveries, disputes and claims that involve more than One Hundred Thousand Dollars (\$100,000) in the aggregate in any calendar year.

**6.4 Taxes; Pensions.** Timely file and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely file, all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower and its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.8 hereof, and shall deliver to Collateral Agent, 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.

**6.5 Insurance.** Keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location and as Collateral Agent may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Collateral Agent. All property policies shall have a lender's loss payable endorsement showing Collateral Agent as lender loss payee and waive subrogation against Collateral Agent, and all liability policies shall show, or have endorsements showing, Collateral Agent, as an additional insured. All policies (or the loss payable and additional insured endorsements) shall provide that the insurer shall endeavor to give Collateral Agent at least thirty (30) days notice before canceling, amending or declining to renew its policy. At Collateral Agent's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Collateral Agent's option, be payable to Collateral Agent on behalf of the Lenders on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the

option of applying the proceeds of any casualty policy up to \$250,000 with respect to any loss, but not exceeding \$500,000, in the aggregate for all losses under all casualty policies in any one year, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Collateral Agent has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Collateral Agent, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. If Borrower fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons and Collateral Agent, Collateral Agent may make all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Collateral Agent deems prudent.

#### **6.6 Operating Accounts.**

(a) As of the Effective Date, Borrower and Guarantor shall maintain all of their and all of their Subsidiaries' primary United States operating and other deposit accounts and securities accounts in the United States in accounts which are subject to a Control Agreement in favor of Collateral Agent or otherwise subject to a first priority perfected Lien under applicable law in favor of Collateral Agent (other than (i) the securities account in which the Pledged ARS are held, provided that the assets maintained in such securities account consist solely of the Pledged ARS, (ii) account # 2879372 at UBS (but only for so long as the Pledged ARS are pledged pursuant to the ARS Credit Facility) and (iii) the Trust and Escrow Accounts).

(b) Borrower shall provide Collateral Agent five (5) days' prior written notice before establishing any Collateral Account in the United States at or with any bank or financial institution not referred to in paragraph (a) of this Section 6.6. In addition, for each Collateral Account that Borrower or Guarantor at any time maintains in the United States, Borrower shall cause the applicable bank or financial institution at or with which such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Collateral Agent's Lien in such Collateral Account in accordance with the terms hereunder, which Control Agreement may not be terminated without prior written consent of Collateral Agent. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's employees and identified to Collateral Agent by Borrower or Guarantor as such.

**6.7 Protection of Intellectual Property Rights.** Borrower and Guarantor each shall: (a) take commercially reasonable measures to protect, defend and maintain the validity and enforceability of its Intellectual Property that is material to Borrower's business; (b) promptly advise Collateral Agent in writing of material infringement by a third party of its Intellectual Property; and (c) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Collateral Agent's written consent.

**6.8 Litigation Cooperation.** From the date hereof and continuing through the termination of this Agreement, make available to Collateral Agent, without expense to Collateral Agent, Borrower and its officers, employees and agents and Borrower's Books, to the extent that Collateral Agent may reasonably deem them necessary to prosecute or defend any third-party suit or proceeding instituted by or against Collateral Agent with respect to any Collateral or relating to Borrower.

**6.9 Notices of Litigation and Default.** Borrower will give prompt written notice to Collateral Agent of any litigation or governmental proceedings pending or threatened (in writing) against Borrower, Guarantor or any of their Subsidiaries which could reasonably be expected to result in damages or costs to Borrower, Guarantor or any of their Subsidiaries of Two Hundred Fifty Thousand Dollars (\$250,000) or more or which could reasonably be expected to have a material adverse effect with respect to Borrower's business. Without limiting or contradicting any other more specific provision of this Agreement, promptly (and in any event within three (3) Business Days) upon Borrower becoming aware of the existence of any Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, Borrower shall give written notice to Collateral Agent of such occurrence, which such notice shall include a reasonably detailed description of such Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default.

**6.10 Exercise of ARS Rights and Repayment of ARS Credit Facility.** On or before July 31, 2010, (i) Borrower shall exercise its “put” rights under the ARS Rights, (ii) UBS AG shall repurchase from Borrower the Pledged ARS at a purchase price equal to the par amount of such Pledged ARS plus interest, and (iii) Borrower shall repay in full all of Borrower’s Indebtedness under the ARS Credit Facility. Borrower shall not amend the ARS Credit Facility without the prior written consent of Collateral Agent.

**6.11 Existing Subsidiaries.** The UK Subsidiary and the Japanese Subsidiary, will not, as of the Effective Date, be required by Lenders to provide a guaranty of the Borrower’s obligations under the Loan Documents. In the event, however, that either the UK Subsidiary or the Japanese Subsidiary at any time has aggregate total assets in excess of \$500,000, Borrower shall cause the applicable entity to provide to Collateral Agent (1) a 100% guaranty of the Borrower’s obligations under the Loan Documents, (2) if requested by Collateral Agent, such appropriate security agreements, financing statements and/or control agreements, all in form and substance reasonably satisfactory to Collateral Agent sufficient to grant Collateral Agent a first priority Lien (subject to Permitted Liens) in and to the assets of such entity, and (3) all other documentation in form and substance satisfactory to Collateral Agent, including one or more opinions of counsel satisfactory to Collateral Agent, which in Collateral Agent’s opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above. Borrower shall not permit the UK Subsidiary or the Japanese Subsidiary to incur any Indebtedness (other than ordinary course trade debt) or to subject their respective assets to any lien (other than liens in favor of Collateral Agent). Borrower may make additional Investments after the Effective Date (i) in the UK Subsidiary in an amount not to exceed \$10,000 per year and (ii) in the Japanese Subsidiary in an amount not to exceed \$1,500,000 per year.

**6.12 Conditions Subsequent.** On or before March 31, 2011, Borrower shall have either:

(a) entered into a collaboration, joint venture or partnership with a non-Affiliate providing for up-front cash proceeds to Borrower (received by Borrower on or before March 31, 2011) of not less than \$15,000,000 from either or a combination of an upfront payment(s) or proceeds from the sale or conversion of securities issued by Borrower or any Affiliate of Borrower in connection therewith; or

(b) received Positive Phase IIB data on MN-221 (as defined in a completed partnership or joint venture agreement relating to MN-221) or had a positive end-of-phase II meeting with the FDA and obtained the approval of Borrower’s board of directors to proceed to Phase III with MN-221.

**6.13 Creation/Acquisition of Subsidiaries.** In the event Borrower, Guarantor or any Subsidiary creates or acquires any Subsidiary, Borrower, Guarantor and such Subsidiary shall promptly notify Collateral Agent of the creation or acquisition of such new Subsidiary and take all such action as may be reasonably required by Collateral Agent to cause each such domestic Subsidiary to become a co-Borrower hereunder or to guarantee the Obligations of Borrower under the Loan Documents and, in each case, grant a continuing pledge and security interest in and to the assets of such Subsidiary (substantially as described on Exhibit A hereto); and Borrower and/or Guarantor shall grant and pledge to Collateral Agent, for the ratable benefit of the Lenders, a perfected security interest in the stock, units or other evidence of ownership of each Subsidiary; provided, in the case of a Foreign Subsidiary, such pledge shall not exceed sixty-five percent (65%) of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Borrower or Guarantor of the Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter.

**6.14 Further Assurances.**

(a) Execute any further instruments and take further action as Collateral Agent reasonably requests to perfect or continue Collateral Agent’s Lien in the Collateral or to effect the purposes of this Agreement.

(b) Deliver to Collateral Agent, within five (5) days after the same are sent or received, copies of all material correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to have a material adverse effect on any of the Governmental Approvals material to Borrower’s business or otherwise on the operations of Borrower or any of its Subsidiaries.



## 7 NEGATIVE COVENANTS

Neither Borrower nor Guarantor shall do any of the following without the prior written consent of the Required Lenders:

**7.1 Dispositions.** Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, “**Transfer**”), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out or obsolete Equipment; and (c) in connection with Permitted Liens and Permitted Investments; (d) of non-exclusive licenses for the use of the property of Borrower, Guarantor or their Subsidiaries in the ordinary course of business in connection with joint ventures and corporate collaborations, (e) exclusive licenses which (i) are approved by Borrower’s Board of Directors, (ii) will not increase the projected net losses associated with Borrower’s Cash Burn (after giving pro forma effect for such transaction), and (iii) with respect to which, Borrower receives adequate consideration in a form consistent with industry practice (such as rights to royalty payments, upfront or milestone payments or distribution rights) or (f) Transfers of the Parkinson’s Product Candidate (as defined in the CPR Agreement) pursuant to a Parkinson’s Product Sale (as defined in the CPR Agreement).

**7.2 Changes in Business, Management, Ownership, or Business Locations.** (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses engaged in by Borrower as of the Effective Date or reasonably related thereto; (b) liquidate or dissolve; or (c) (i) any Key Person shall cease to be actively engaged in the management of Borrower unless a replacement for such Key Person is approved by the Borrower’s Board of Directors within ninety (90) days, or (ii) permit or suffer any Change in Control. Neither Borrower nor Guarantor shall, without at least ten (10) days prior written notice to Collateral Agent: (A) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Fifty Thousand Dollars (\$50,000) in Borrower’s or Guarantor’s assets or property), (B) change its jurisdiction of organization, (C) change its organizational structure or type, (D) change its legal name, or (E) change any organizational number (if any) assigned by its jurisdiction of organization.

**7.3 Mergers or Acquisitions.** Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock, shares or property of another Person, except for Permitted Acquisitions. A Subsidiary may merge or consolidate into another Subsidiary (provided such surviving Subsidiary is a “co-Borrower” hereunder or has provided a secured guaranty of Borrower’s Obligations hereunder) or into Borrower provided Borrower is the surviving legal entity, and as long as no Event of Default is occurring prior thereto or arises as a result therefrom.

**7.4 Indebtedness.** Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

**7.5 Encumbrance.** Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein (except for Permitted Liens that are permitted by the terms of this agreement to have priority to Collateral Agent’s Lien), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Collateral Agent) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower, Guarantor or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower’s, Guarantor’s or any Subsidiary’s Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of “Permitted Liens” herein.

**7.6 Maintenance of Collateral Accounts.** Maintain any Collateral Account except pursuant to the terms of Section 6.6 hereof.

**7.7 Distributions; Investments.** (a) Pay any dividends (other than dividends payable solely in capital stock) or make any distribution or payment or redeem, retire or purchase any capital stock (other than repurchases pursuant to the terms of employee stock purchase plans, employee restricted stock agreements, stockholder rights plans, director or consultant stock option plans, or similar plans) or (b) directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so.

**7.8 Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person.

**7.9 Subordinated Debt.** (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to Obligations owed to the Lenders.

**7.10 Compliance.** Become required to register as an "investment company" under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a material adverse effect on Borrower's business, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan, if any, which could reasonably be expected to result in any liability of Borrower or Guarantor, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

**7.11 Compliance with Anti-Terrorism Laws.** Collateral Agent hereby notifies Borrower and Guarantor that pursuant to the requirements of Anti-Terrorism Laws, and Collateral Agent's policies and practices, Collateral Agent is required to obtain, verify and record certain information and documentation that identifies Borrower and Guarantor and their principals, which information includes the name and address of Borrower and Guarantor and their principals and such other information that will allow Collateral Agent to identify such party in accordance with Anti-Terrorism Laws. Neither Borrower nor Guarantor will, nor will Borrower or Guarantor permit any Subsidiary or Affiliate to, directly or indirectly, knowingly enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Borrower and Guarantor shall immediately notify Collateral Agent if Borrower or Guarantor has knowledge that Borrower, Guarantor or any Subsidiary or Affiliate is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Neither Borrower nor Guarantor will, nor will Borrower or Guarantor permit any Subsidiary or Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

**7.12 Trust and Escrow Accounts.** Make any deposit or other Investment in the Trust and Escrow Accounts on or after the Effective Date, other than (i) reinvestment of investment income received in respect of amounts on deposit in the Trust and Escrow Accounts, (ii) transfers from one Trust and Escrow Account to another Trust and Escrow Account, and (iii) deposits of proceeds of Additional Assets (as defined in the Escrow Agreement) to the extent required by Section 3(b) of the Escrow Agreement.

**7.13 UBS Account.** Permit the amount on deposit in account # 2879372 at UBS at any time to exceed \$100,000.

## **8 EVENTS OF DEFAULT**

Any one of the following shall constitute an event of default (an “**Event of Default**”) under this Agreement:

**8.1 Payment Default.** Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 9.1 (a) hereof). During the cure period, the failure to cure the payment default is not an Event of Default (but no Credit Extension will be made during the cure period);

### **8.2 Covenant Default.**

(a) Borrower or Guarantor fails or neglects to perform any obligation in Sections 6.2, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.10, 6.11, 6.12 or 6.13 or violates any covenant in Section 7; or

(b) Borrower, Guarantor or any of their Subsidiaries fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within twenty (20) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the twenty (20) day period or cannot after diligent attempts by Borrower be cured within such twenty (20) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (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 Credit Extensions shall be made during such cure period). Grace periods provided under this Section shall not apply, among other things, to financial covenants or any other covenants set forth in subsection (a) above;

**8.3 Material Adverse Change.** A Material Adverse Change occurs;

### **8.4 Attachment; Levy; Restraint on Business.**

(a)(i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or Guarantor or of any entity under control of Borrower or Guarantor (including a Subsidiary) on deposit with any Lender or any Lender’s Affiliate or any bank or other institution at which Borrower or Guarantor maintains a Collateral Account, or (ii) a notice of lien, levy, or assessment is filed against any of Borrower’s or Guarantor’s assets by any government agency, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; and

(b)(i) any material portion of Borrower’s or Guarantor’s assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower or Guarantor from conducting any material part of its business;

**8.5 Insolvency** (a) Borrower or Guarantor is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower or Guarantor begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or Guarantor and not dismissed or stayed within sixty (60) days (but no Credit Extensions shall be made while any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

**8.6 Other Agreements.** There is a default in any agreement to which Borrower is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of Two Hundred Fifty Thousand Dollars (\$250,000) or that could have a material adverse effect on Borrower’s business.

**8.7 Judgments.** Other than the settlement of the Avigen litigation described in the Perfection Certificate, one or more judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Two Hundred Fifty Thousand Dollars (\$250,000) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower or Guarantor or any of their Subsidiaries and shall remain unsatisfied, unvacated, or unstayed for a period of ten (10) days after the entry thereof (provided that no Credit Extensions will be made prior to the satisfaction, vacation, or stay of such judgment, order or decree);

**8.8 Misrepresentations.** Borrower or any Person acting for Borrower makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Collateral Agent and/or Lenders or to induce Collateral Agent and/or the Lenders to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made;

**8.9 Subordinated Debt.** A default or breach occurs under any agreement between Borrower and any creditor of Borrower that signed a subordination, intercreditor, or other similar agreement with Collateral Agent or the Lenders, or any creditor that has signed such an agreement with Collateral Agent or the Lenders breaches any terms of such agreement;

**8.10 Governmental Approvals.** Any material Governmental Approval shall have been revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term;

**8.11 Lien Priority.** Except as permitted by Collateral Agent, any Lien created hereunder or by any other Loan Document shall at any time fail to constitute a valid and perfected Lien on any of the Collateral purported to be secured thereby, subject to no prior or equal Lien, other than Permitted Liens; or

**8.12 ARS Credit Facility.** There is any default under the ARS Credit Facility or Borrower's obligations under the ARS Credit Facility become due and payable, whether upon demand or otherwise, for any reason other than by means of the exercise of the ARS rights described in Section 6.10 hereof.

## **9 RIGHTS AND REMEDIES**

### **9.1 Rights and Remedies.**

(a) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent may, and at the written direction of any Lender shall, without notice or demand, do any or all of the following: (i) deliver notice of the Event of Default to Borrower, (ii) by notice to Borrower declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations shall be immediately due and payable without any action by Collateral Agent or the Lenders) or (iii) by notice to Borrower suspend or terminate the obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders (but if an Event of Default described in Section 8.5 occurs all obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders shall be immediately terminated without any action by Collateral Agent or the Lenders).

(b) Without limiting the rights of the Collateral Agent and the Lenders set forth in Section 9.1(a) above, upon the occurrence and during the continuance of an Event of Default Collateral Agent shall have the right, at the written direction of the Required Lenders, without notice or demand, to do any or all of the following:

(i) foreclose upon and/or sell or otherwise liquidate, the Collateral;

(ii) apply to the Obligations any (a) balances and deposits of Borrower that Collateral Agent or any Lender holds or controls, or (b) any amount held or controlled by Collateral Agent or any Lender owing to or for the credit or the account of Borrower; and/or

(iii) commence and prosecute an Insolvency Proceeding or consent to the Borrower commencing any Insolvency Proceeding.

(c) Without limiting the rights of the Collateral Agent and the Lenders set forth in Sections 9.1(a) and (b) above, upon the occurrence and during the continuance of an Event of Default Collateral Agent shall have the right, without notice or demand, to do any or all of the following:

(i) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent considers advisable, notify any Person owing Borrower money of Collateral Agent's security interest in such funds, and verify the amount of such account;

(ii) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Collateral Agent requests and make it available in a location as Collateral Agent reasonably designates. Collateral Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Collateral Agent a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's rights or remedies;

(iii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, the Collateral. Collateral Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Collateral Agent's exercise of its rights under this Section 9.1, Borrower's rights under all licenses and all franchise agreements inure to Collateral Agent for the benefit of the Lenders;

(iv) place a "hold" on any account maintained with Collateral Agent or the Lenders and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(v) demand and receive possession of Borrower's Books;

(vi) appoint a receiver to cease, manage and realize any of the Collateral, and such receiver shall have any right and authority as any competent court will grant or authorize in accordance with any applicable law, including any power or authority to manage the business of Borrower; and

(vii) Subject to clauses 9.1(a) and (b), exercise all rights and remedies available to Collateral Agent under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

Notwithstanding any provision of this Section 9.1 to the contrary, upon the occurrence of any Event of Default, Collateral Agent shall have the right to exercise any and all remedies referenced in this Section 9.1 without the written consent of Required Lenders following the occurrence of an Exigent Circumstance. As used in the immediately preceding sentence, "Exigent Circumstance" means any event or circumstance that, in the reasonable judgment of Collateral Agent, imminently threatens the ability of Collateral Agent to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Borrower after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Collateral Agent, could reasonably be expected to result in a material diminution in value of the Collateral.

**9.2 Power of Attorney.** Borrower hereby irrevocably appoints Collateral Agent as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's name on any checks or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Collateral Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer

the Collateral into the name of Collateral Agent or a third party as the Code or any applicable law permits. Borrower hereby appoints Collateral Agent as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Collateral Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations have been satisfied in full and Collateral Agent and the Lenders are under no further obligation to make Credit Extensions hereunder. Collateral Agent's foregoing appointment as Borrower's attorney in fact, and all of Collateral Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed and Collateral Agent's and the Lenders' obligation to provide Credit Extensions terminates.

**9.3 Protective Payments.** If Borrower fails to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document, Collateral Agent may obtain such insurance or make such payment, and all amounts so paid by Collateral Agent are Lenders' Expenses and immediately due and payable, bearing interest at the highest applicable rate, and secured by the Collateral. Collateral Agent will make reasonable efforts to provide Borrower with notice of Collateral Agent obtaining such insurance or making such payment at the time it is obtained or paid or within a reasonable time thereafter. No such payments by Collateral Agent are deemed an agreement to make similar payments in the future or Collateral Agent's waiver of any Event of Default.

**9.4 Application of Payments and Proceeds.** Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Collateral Agent from or on behalf of Borrower of all or any part of the Obligations, and, as between Borrower on the one hand and Collateral Agent and Lenders on the other, Collateral Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Collateral Agent may deem advisable notwithstanding any previous application by Collateral Agent, and (b) the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: first, to the Lenders Expenses; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); third, to the principal amount of the Obligations outstanding; and fourth, to any other indebtedness or obligations of Borrower owing to Collateral Agent or any Lender under the Loan Documents. Any balance remaining shall be delivered to Borrower or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category. Any reference in this Agreement to an allocation between or sharing by the Lenders of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to Pro Rata Share unless expressly provided otherwise. Collateral Agent, or if applicable, each Lender, shall promptly remit to the other Lenders such sums as may be necessary to ensure the ratable repayment of each Lender's portion of any Term Loan and the ratable distribution of interest, fees and reimbursements paid or made by Borrower. Notwithstanding the foregoing, a Lender receiving a scheduled payment shall not be responsible for determining whether the other Lenders also received their scheduled payment on such date; provided, however, if it is later determined that a Lender received more than its ratable share of scheduled payments made on any date or dates, then such Lender shall remit to Collateral Agent or other Lenders such sums as may be necessary to ensure the ratable payment of such scheduled payments, as instructed by Collateral Agent. If any payment or distribution of any kind or character, whether in cash, properties or securities, shall be received by a Lender in excess of its ratable share, then the portion of such payment or distribution in excess of such Lender's ratable share shall be received by such Lender in trust for, and shall be promptly paid over to, the other Lender for application to the payments of amounts due on the other Lender's claims. To the extent any payment for the account of Borrower is required to be returned as a voidable transfer or otherwise, the Lenders shall contribute to one another as is necessary to ensure that such return of payment is on a pro rata basis. If any Lender shall obtain possession of any Collateral, it shall hold such Collateral for itself and as agent and bailee for Collateral Agent and other Lenders for purposes of perfecting Collateral Agent's security interest therein. Notwithstanding anything to the contrary herein, any warrants issued to the Lenders by Borrower, the stock issuable thereunder, any equity securities purchased by Lenders, any amounts paid thereunder, any dividends, and any other rights in connection therewith shall not be subject to the terms and conditions of this Agreement. Nothing herein shall affect any Lender's rights under any such warrants, stock, or other equity securities to administer, manage, transfer, assign, or exercise such warrants, stock, or other equity securities for its own account.

**9.5 Liability for Collateral.** So long as Collateral Agent and the Lenders comply with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Collateral Agent and the Lenders, Collateral Agent and the Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

**9.6 No Waiver; Remedies Cumulative.** Collateral Agent's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Collateral Agent thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Collateral Agent and then is only effective for the specific instance and purpose for which it is given. Collateral Agent's rights and remedies under this Agreement and the other Loan Documents are cumulative. Collateral Agent has all rights and remedies provided under the Code, any applicable law, by law, or in equity. Collateral Agent's exercise of one right or remedy is not an election, and Collateral Agent's waiver of any Event of Default is not a continuing waiver. Collateral Agent's delay in exercising any remedy is not a waiver, election, or acquiescence.

**9.7 Demand Waiver.** Borrower waives, to the fullest extent permitted by law, demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Collateral Agent on which Borrower is liable.

## **10 NOTICES**

All notices, consents, requests, approvals, demands, or other communication (collectively, "**Communication**") by any party to this Agreement or any other Loan 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 (3) 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 (if an email address is specified herein) or facsimile transmission; (c) one (1) 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. Any of Collateral Agent, Lender or 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 Section 10.

If to Borrower/Guarantor: MediciNova, Inc./Avigen, Inc.  
4350 La Jolla Village Drive, Suite 950  
San Diego, CA 92122  
Attn: Shintaro Asako  
Fax: (858) 373-7000  
Email: Asako@medicinova.com

with a copy to: Dechert LLP  
1775 I Street, N.W.  
Washington, D.C 20006-2401  
Attn: David E. Schulman  
Fax: (202) 261 3334  
Email: David.schulman@dechert.com

If to Collateral Agent: Oxford Finance Corporation  
133 North Fairfax Street  
Alexandria, Virginia 22314  
Attention: General Counsel  
Fax: (703) 519-5225

with a copy to: Riemer & Braunstein LLP  
Three Center Plaza  
Boston, Massachusetts 02108  
Attn: David A. Ephraim, Esquire  
Fax: (617) 880-3456  
Email: dephraim@riemerlaw.com

#### **11 CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER**

The Loan Documents shall be governed by the internal laws of the State of New York without regard to principles of conflicts of law. Borrower, Lenders and Collateral Agent each submit to the exclusive jurisdiction of the State and Federal courts in the City of New York, Borough of Manhattan. NOTWITHSTANDING THE FOREGOING, COLLATERAL AGENT AND LENDERS SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION WHICH COLLATERAL AGENT AND LENDERS (IN ACCORDANCE WITH THE PROVISIONS OF SECTION 9.1) DEEM NECESSARY OR APPROPRIATE TO REALIZE ON THE COLLATERAL OR TO OTHERWISE ENFORCE COLLATERAL AGENT'S AND LENDERS' RIGHTS AGAINST BORROWER OR ITS PROPERTY. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives 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. Borrower 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 Borrower at the address set forth in Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, first class, registered or certified mail return receipt requested, proper postage prepaid.

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



## 12 GENERAL PROVISIONS

**12.1 Successors and Assigns.** This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Collateral Agent's prior written consent (which may be granted or withheld in Collateral Agent's discretion, subject to Section 12.6). The Lenders have the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, the Lenders' obligations, rights, and benefits under this Agreement and the other Loan Documents *provided, however*, that any such sale, assignment, negotiation or grant of a participation by any Lender (other than a sale or assignment to an Eligible Assignee) of its obligations, rights, and benefits under this Agreement and the other Loan Documents shall require the prior written consent of the Required Lenders (such approved assignee, an "**Approved Lender**"). Borrower and Collateral Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned until Collateral Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee or Approved Lender as Collateral Agent reasonably shall require.

**12.2 Indemnification.** Borrower agrees to indemnify, defend and hold Collateral Agent and the Lenders and their respective directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Collateral Agent or the Lenders (each, an "**Indemnified Person**") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "**Claims**") asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (b) all losses or Lenders' Expenses incurred, or paid by Indemnified Person from, following, or arising from transactions between Collateral Agent, and/or the Lenders and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct. Borrower hereby further indemnifies, defends and holds each Indemnified Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnified Person) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnified Person shall be designated a party thereto and including any such proceeding initiated by or on behalf of Borrower, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Collateral Agent or Lenders) asserting any right to payment for the transactions contemplated hereby which may be imposed on, incurred by or asserted against such Indemnified Person as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the loan proceeds.

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

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

**12.5 Correction of Loan Documents.** Collateral Agent and the Lenders may, with notice to Borrower, correct patent errors and fill in any blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties.

**12.6 Amendments in Writing; Integration.** (a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, or any consent to any departure by Borrower or Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by Borrower, Guarantor, Collateral Agent and the Required Lenders provided that

(i) no such amendment, waiver or other modification that would have the effect of increasing or reducing a Lender's Term Loan Commitment or Commitment Percentage shall be effective as to such Lender without such Lender's written consent;

(ii) no such amendment, waiver or modification that would affect the rights and duties of Collateral Agent shall be effective without Collateral Agent's written consent or signature;

(iii) no such amendment, waiver or other modification shall, unless signed by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Term Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Term Loan (B) postpone the date fixed for, or waive, any payment of principal of any Term Loan or of interest on any Term Loan (other than default interest) or any fees provided for hereunder (other than late charges or for any termination of any commitment); (C) change the definition of the term "Required Lenders" or the percentage of Lenders which shall be required for Lenders to take any action hereunder; (D) release all or substantially all or any material portion of the Collateral, authorize Borrower to sell or otherwise dispose of all or substantially all or any material portion of the Collateral or release any Guarantor of all or any portion of the Obligations or its guaranty obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be expressly permitted under this Agreement or the other Loan Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 12.6 or the definitions of the terms used in this Section 12.6 insofar as the definitions affect the substance of this Section 12.6; (F) consent to the assignment, delegation or other transfer by Borrower or Guarantor of any of its rights and obligations under any Loan Document or release Borrower or Guarantor of its payment obligations under any Loan Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; (G) amend any of the provisions of Section 9.4 or amend any of the definitions Pro Rata Share, Term Loan Commitment, Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder; (H) subordinate the Liens granted in favor of Collateral Agent securing the Obligations; or (I) amend any of the provisions of Section 12.10. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F), (G) and (H) of the preceding sentence;

(iv) the provisions of the foregoing clauses (i), (ii) and (iii) are subject to the provisions of any interlender or agency agreement among the Lenders and Collateral Agent pursuant to which any Lender may agree to give its consent in connection with any amendment, waiver or modification of the Loan Documents only in the event of the unanimous agreement of all Lenders.

(b) Other than as expressly provided for in Section 12.6(a)(i)-(iii), Collateral Agent may, if requested by the Required Lenders, from time to time designate covenants in this Agreement less restrictive by notification to a representative of the Borrower.

(c) This Agreement and the Loan 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 this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

**12.7 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.

**12.8 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 satisfied. The obligation of Borrower in Section 12.2 to indemnify each Lender and Collateral Agent shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

**12.9 Confidentiality.** In handling any confidential information of Borrower, the Lenders and Collateral Agent shall exercise the same degree of care that it exercises for their own proprietary information, but disclosure of information may be made: (a) to the Lenders' and Collateral Agent's Subsidiaries or Affiliates; (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, the Lenders and Collateral Agent shall use

commercially reasonable efforts to obtain such prospective transferee's or purchaser's agreement to the terms of this provision); (c) as required by law, regulation, subpoena, or other order; (d) to Lenders' or Collateral Agent's regulators or as otherwise required in connection with an examination or audit; (e) as Collateral Agent considers appropriate in exercising remedies under the Loan Documents; and (f) to third party service providers of the Lenders and/or Collateral Agent so long as such service providers have executed a confidentiality agreement with the Lenders and Collateral Agent with terms no less restrictive than those contained herein. Confidential information does not include information that either: (i) is in the public domain or in the Lenders' and/or Collateral Agent's possession when disclosed to the Lenders and/or Collateral Agent, or becomes part of the public domain after disclosure to the Lenders and/or Collateral Agent; or (ii) is disclosed to the Lenders and/or Collateral Agent by a third party, if the Lenders and/or Collateral Agent does not know that the third party is prohibited from disclosing the information.

**12.10 Right of Set Off.** Borrower hereby grants to Collateral Agent and to each Lender, a lien, security interest and right of set off as security for all Obligations to Collateral Agent and each Lender hereunder, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Collateral Agent or the Lenders or any entity under the control of Collateral Agent or the Lenders (including a Collateral Agent affiliate) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Collateral Agent or the Lenders may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE COLLATERAL AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

### **13 COLLATERAL AGENT**

**13.1 Appointment and Authorization of Collateral Agent.** Each Lender hereby irrevocably appoints, designates and authorizes Collateral Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Collateral Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the other Loan Documents with reference to Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

**13.2 Delegation of Duties.** Collateral Agent may execute any of its duties under this Agreement or any other Loan Document by or through its, or its Affiliates', agents, employees or attorneys-in-fact and shall be entitled to obtain and rely upon the advice of counsel and other consultants or experts concerning all matters pertaining to such duties. Collateral Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

**13.3 Liability of Collateral Agent.** Except as otherwise provided herein, no Collateral Agent-Related Person shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Lender or participant for any recital, statement, representation or warranty made by Borrower or any officer thereof, contained herein or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Collateral Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of Borrower or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Collateral Agent-Related

Person shall be under any obligation to any Lender or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of Borrower or any Affiliate thereof.

**13.4 Reliance by Collateral Agent.** Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrower), independent accountants and other experts selected by Collateral Agent. Collateral Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of all Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of all Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

**13.5 Notice of Default.** Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any default and/or Event of Default, unless Collateral Agent shall have received written notice from a Lender or Borrower, describing such default or Event of Default. Collateral Agent will notify the Lenders of its receipt of any such notice. Collateral Agent shall take such action with respect to an Event of Default as may be directed in writing by the Required Lenders in accordance with Article 9(a); provided, however, that while an Event of Default has occurred and is continuing, Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as Collateral Agent shall deem advisable or in the best interest of the Lenders, including without limitation, satisfaction of other security interests, liens or encumbrances on the Collateral not permitted under the Loan Documents, payment of taxes on behalf of Borrower, payments to landlords, warehouseman, bailees and other persons in possession of the Collateral and other actions to protect and safeguard the Collateral, and actions with respect to insurance claims for casualty events affecting Borrower and/or the Collateral.

**13.6 Credit Decision; Disclosure of Information by Collateral Agent.** Each Lender acknowledges that no Collateral Agent-Related Person has made any representation or warranty to it, and that no act by Collateral Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of Borrower or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Collateral Agent-Related Person to any Lender as to any matter, including whether Collateral Agent-Related Persons have disclosed material information in their possession. Each Lender represents to Collateral Agent that it has, independently and without reliance upon any Collateral Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower and its Subsidiaries, and all applicable bank or other regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon any Collateral Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower. Except for notices, reports and other documents expressly required to be furnished to the Lenders by Collateral Agent herein, Collateral Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Borrower or any of its Affiliates which may come into the possession of any Collateral Agent-Related Person.

**13.7 Indemnification of Collateral Agent.** Whether or not the transactions contemplated hereby are consummated, each Lender shall, severally and pro rata based on its respective Pro Rata Share, indemnify upon demand each Collateral Agent-Related Person (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), and hold harmless each Collateral Agent-Related Person from and against any and all Claims (which shall not include legal expenses of Collateral Agent incurred in connection with the closing of the transactions contemplated by this Agreement) incurred by it; provided, however, that no Lender shall be liable for the payment to any

Collateral Agent-Related Person of any portion of such Indemnified Liabilities to the extent determined in a judgment by a court of competent jurisdiction to have resulted from such Collateral Agent-Related Person's own gross negligence or willful misconduct; provided, however, that no action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 13.7. Without limitation of the foregoing, each Lender shall, severally and pro rata based on its respective Pro Rata Share, reimburse Collateral Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Lenders' Expenses incurred after the closing of the transactions contemplated by this Agreement) incurred by Collateral Agent (in its capacity as Collateral Agent, and not as a Lender) in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Collateral Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section 13.7 shall survive the payment in full of the Obligations, the termination of this Agreement and the resignation of Collateral Agent.

**13.8 Collateral Agent in its Individual Capacity.** With respect to its Credit Extensions, Oxford shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not Collateral Agent, and the terms "Lender" and "Lenders" include Oxford in its individual capacity.

**13.9 Successor Collateral Agent.** Collateral Agent may resign as Collateral Agent upon ten (10) days' notice to the Lenders. If Collateral Agent resigns under this Agreement, all Lenders shall appoint from among the Lenders (or the affiliates thereof) a successor Collateral Agent for the Lenders, which successor Collateral Agent shall (unless an Event of Default has occurred and is continuing) be subject to the approval of Borrower (which approval shall not be unreasonably withheld or delayed). If no successor Collateral Agent is appointed prior to the effective date of the resignation of Collateral Agent, Collateral Agent may appoint, after consulting with the Lenders, a successor Collateral Agent from among the Lenders (or the affiliates thereof). Upon the acceptance of its appointment as successor Collateral Agent hereunder, the Person acting as such successor Collateral Agent shall succeed to all the rights, powers and duties of the retiring Collateral Agent and the respective term "Collateral Agent" means such successor Collateral Agent and the retiring Collateral Agent's appointment, powers and duties in such capacities shall be terminated without any other further act or deed on its behalf. After any retiring Collateral Agent's resignation hereunder as Collateral Agent, the provisions of this Article 13 and Sections 2.3(d) and 12.2 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Collateral Agent under this Agreement. If no successor Collateral Agent has accepted appointment as Collateral Agent by the date ten (10) days following a retiring Collateral Agent's notice of resignation, the retiring Collateral Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Collateral Agent hereunder until such time, if any, as the Lenders appoint a successor agent as provided for above.

**13.10 Collateral Agent May File Proofs of Claim.** In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to Borrower, Collateral Agent (irrespective of whether the principal of any Loan, shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Collateral Agent shall have made any demand on Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Credit Extensions and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and Collateral Agent and their respective agents and counsel and all other amounts due the Lenders and Collateral Agent allowed in such judicial proceeding); and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Collateral Agent and, in the event that Collateral Agent shall consent to the making of such payments directly to the Lenders, to pay to Collateral Agent any amount due for the reasonable

compensation, expenses, disbursements and advances of Collateral Agent and its agents and counsel, and any other amounts due Collateral Agent under Section 2.3(d). To the extent that Collateral Agent fails timely to do so, each Lender may file a claim relating to such Lender's claim.

**13.11 Collateral and Guaranty Matters.** The Lenders irrevocably authorize Collateral Agent, at its option and in its discretion, to release any guarantor and any Lien on any Collateral granted to or held by Collateral Agent under any Loan Document (i) upon the date that all Obligations due hereunder have been fully and indefeasibly paid in full and no Term Loan Commitments or other obligations of any Lender to provide funds to Borrower under this Agreement remain outstanding, (ii) that is transferred or to be transferred as part of or in connection with any Transfer permitted hereunder or under any other Loan Document, or (iii) as approved in accordance with Section 12.6. Upon request by Collateral Agent at any time, all Lenders will confirm in writing Collateral Agent's authority to release its interest in particular types or items of Property, pursuant to this Section 13.11.

**13.12 Cooperation of Borrower.** If necessary, Borrower agrees to (i) execute any documents (including new Secured Promissory Notes) reasonably required to effectuate and acknowledge each assignment of a Term Loan Commitment or Loan to an assignee in accordance with Section 12.1, (ii) make Borrower's management available to meet with Collateral Agent and prospective participants and assignees of Term Loan Commitments or Credit Extensions and (iii) assist Collateral Agent or the Lenders in the preparation of information relating to the financial affairs of Borrower as any prospective participant or assignee of a Term Loan Commitment or Term Loan reasonably may request. Subject to the provisions of Section 12.9 Borrower authorizes each Lender to disclose to any prospective participant or assignee of a Term Loan Commitment, any and all information in such Lender's possession concerning Borrower and its financial affairs which has been delivered to such Lender by or on behalf of Borrower pursuant to this Agreement, or which has been delivered to such Lender by or on behalf of Borrower in connection with such Lender's credit evaluation of Borrower prior to entering into this Agreement.

## **14 DEFINITIONS**

**14.1 Definitions.** As used in this Agreement, the following terms have the following meanings:

**"Account"** is any "account" as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

**"Account Debtor"** is any "account debtor" as defined in the Code with such additions to such term as may hereafter be made.

**"Affiliate"** of any Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

**"Agreement"** is defined in the preamble hereof.

**"Anti-Terrorism Laws"** means any laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

**"Approved Fund"** means any (i) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business or (ii) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (i) and that, with respect to each of the preceding clauses (i) and (ii), is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

“**Approved Lender**” has the meaning given it in Section 12.1.

“**ARS Credit Facility**” means the credit facility provided to Borrower by UBS Bank USA pursuant to a Credit Line Agreement dated January 14, 2009 and which is secured by a Lien on Borrower’s Pledged ARS.

“**ARS Rights**” means the right of Borrower to sell the Pledged ARS to UBS AG at a purchase price equal to the par amount thereof plus interest during a two year period commencing on June 30, 2010.

“**Auditor**” is an independent certified public accounting firm of Borrower acceptable to Collateral Agent in its reasonable discretion.

“**Basic Rate**” means with respect to a Term Loan, the per annum rate of interest (based on a year of 360 days) equal to the greater of (i) 12.75% and (ii) the sum of (a) the three-month U.S. LIBOR rate reported in the Wall Street Journal three (3) Business Days prior to the Funding Date of such Term Loan, plus (b) 12.50%.

“**Blocked Person**” means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224, or (e) a Person that is named a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list.

“**Borrower**” is defined in the preamble hereof.

“**Borrower’s Books**” are all Borrower’s and Guarantor’s books and records including ledgers, federal, and state tax returns, records regarding Borrower’s and/or Guarantor’s assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“**Borrowing Resolutions**” are, with respect to any Person, those resolutions adopted by such Person’s Board of Directors and delivered by such Person to Collateral Agent approving the Loan Documents to which such Person is a party and the transactions contemplated thereby, together with a certificate executed by its secretary on behalf of such Person certifying that (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party, (b) that attached as an exhibit to such certificate is a true, correct, and complete copy of the resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Loan Documents on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) that Collateral Agent and the Lenders may conclusively rely on such certificate regarding the authorized officers of such Person unless and until such Person shall have delivered to Collateral Agent a further certificate canceling or amending such prior certificate regarding the authorized officers of such Person.

“**Business Day**” is any day that is not a Saturday, Sunday or a day on which Collateral Agent is closed.

“**Cash Burn**” is equal to the sum of the forecasted monthly net income/losses of the Borrower for each of the twenty-four (24) months following the date of determination.

“**Cash Equivalents**” are (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc., and (c) certificates of deposit issued maturing no more than one (1) year after issue. For the avoidance of doubt, the direct purchase by Borrower, Guarantor, or any of their Subsidiaries of any Auction Rate Securities, or purchasing participations in, or entering

into any type of swap or other derivative transaction, or otherwise holding or engaging in any ownership interest in any type of Auction Rate Security by Borrower, Guarantor, or any of their Subsidiaries (other than the Pledged ARS and the Auction Rate Securities listed on Schedule 1.2 hereto) shall be conclusively determined by the Lenders as an ineligible Cash Equivalent, and any such transaction shall expressly violate each other provision of this agreement governing Permitted Investments. Notwithstanding the foregoing, Cash Equivalents does not include and Borrower and its Subsidiaries are prohibited from purchasing, purchasing participations in, entering into any type of swap or other equivalent derivative transaction, or otherwise holding or engaging in any ownership interest in any type of debt instrument, including, without limitation, any corporate or municipal bonds with a long-term nominal maturity for which the interest rate is reset through a Dutch auction and more commonly referred to as an auction rate security. For the avoidance of doubt, nothing in this Agreement shall require the Company to sell, transfer, convey or otherwise dispose of any Auction Rate Securities listed on Schedule 1.2 and existing as of the Effective Date.

**Change in Control** means any event, transaction, or occurrence as a result of which (a) any “person” (as such term is defined in Sections 3(a)(9) and 13(d)(3) of the Exchange Act), other than a trustee or other fiduciary holding securities under an employee benefit plan of Borrower, is or becomes a beneficial owner (within the meaning Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of Borrower, representing forty-nine percent (49%) or more of the combined voting power of Borrower’s then outstanding securities; or (b) during any period of twelve consecutive calendar months, individuals who at the beginning of such period constituted the Board of Directors of Borrower (together with any new directors whose election by the Board of Directors of Borrower was approved by a vote of not less than two-thirds of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors then in office.

**Claims** are defined in Section 12.2.

**Code** is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Collateral Agent’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

**Collateral** is any and all properties, rights and assets of Borrower and/or Guarantor described on Exhibit A and any and all other properties, rights and assets of Borrower and/or Guarantor granted by Borrower and/or Guarantor to Collateral Agent for the ratable benefit of the Lenders or arising under the Code or other applicable law, now, or in the future.

**Collateral Account** is any Deposit Account, Securities Account, or Commodity Account.

**Collateral Agent** means, Oxford, not in its individual capacity, but solely in its capacity as agent on behalf of and for the benefit of the Lenders.

**Collateral Agent-Related Person** means the Collateral Agent, together with its Affiliates, and the officers, directors, employees, agents, advisors, auditors and attorneys-in-fact of such Persons; provided, however, that no Collateral Agent-Related Person shall be an Affiliate of Borrower or Guarantor.

**Commitment Percentage** is set forth in Schedule 1.1, as amended from time to time.

**Commodity Account** is any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.



“**Communication**” is defined in Section 10.

“**Compliance Certificate**” is that certain certificate in the form attached hereto as **Exhibit C**.

“**Contingent Obligation**” is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“**Control Agreement**” is any control agreement entered into among the depository institution at which Borrower or Guarantor maintains a Deposit Account in the United States or the securities intermediary or commodity intermediary at which Borrower or Guarantor maintains a Securities Account or a Commodity Account in the United States, Borrower or Guarantor, and Collateral Agent pursuant to which Collateral Agent obtains control (within the meaning of the Code) for the benefit of the Lenders over such Deposit Account, Securities Account, or Commodity Account.

“**CPR Agreement**” means the Contingent Payment Rights Agreement dated as of December 18, 2009 by and among Borrower, Guarantor, and American Stock Transfer & Trust Company, LLC, as in effect on the Effective Date.

“**Credit Extension**” is the Term Loan or any other extension of credit by Collateral Agent or Lenders for Borrower’s benefit.

“**Default Rate**” is defined in Section 2.3(b).

“**Deferred Interest Payment**” is defined in Section 2.3(c) hereof.

“**Deposit Account**” is any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

“**Designated Deposit Account**” is Borrower’s deposit account, account number 749004289, maintained with Bank of the West.

“**Dollars**,” “**dollars**” and “**\$**” each mean lawful money of the United States.

“**Domestic Subsidiary**” means a Subsidiary organized under the laws of the United States or any state or territory thereof or the District of Columbia.

“**Effective Date**” is defined in the preamble of this Agreement.

“**Eligible Assignee**” means (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund and (iv) any commercial bank, savings and loan association or savings bank or any other entity which is an “accredited investor” (as defined in Regulation D under the Securities Act of 1933, as amended) and which extends credit or buys loans as one of its businesses, including insurance companies, mutual funds, lease financing companies and commercial finance companies, in each case, which either (A) has a rating of BBB or higher from Standard & Poor’s Rating Group and a rating of Baa2 or higher from Moody’s Investors Service, Inc. at the date that it becomes a Lender or

(B) has total assets in excess of \$5,000,000,000, and in each case of clauses (i) through (iv), which, through its applicable lending office, is capable of lending to Borrower without the imposition of any withholding or similar taxes; provided that notwithstanding the foregoing, "Eligible Assignee" shall not include Borrower or Guarantor, or any of Borrower's or Guarantor's Affiliates or Subsidiaries. Notwithstanding the foregoing, in connection with assignments by a Lender due to a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party.

**"Equipment"** is all "equipment" as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

**"ERISA"** is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

**"Escrow Agreement"** means the Escrow Agreement, dated as of December 18, 2009, by and among Borrower, Andrew A. Sauter and American Stock Transfer & Trust Company, LLC, as in effect on the Effective Date.

**"Event of Default"** is defined in Section 8.

**"Foreign Subsidiary"** means any Subsidiary which is not a Domestic Subsidiary.

**"Funding Date"** is any date on which a Credit Extension is made to or on account of Borrower which shall be a Business Day.

**"GAAP"** is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination.

**"General Intangibles"** is all "general intangibles" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

**"Governmental Approval"** is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

**"Governmental Authority"** is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

**"Guarantor"** means Avigen, Inc., a Delaware corporation and a wholly owned Subsidiary of Borrower.

**"Indebtedness"** is (a) indebtedness for borrowed money or the deferred price of property or services (other than payroll obligations in the ordinary course of business), such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

“**Indemnified Person**” is defined in Section 12.2.

“**Indenture**” means the Indenture dated as of December 18, 2009 by and between Borrower and American Stock Transfer & Trust Company, LLC, as in effect on the Effective Date.

“**Insolvency Proceeding**” is any proceeding by or against Borrower, Guarantor and/or any of their Subsidiaries 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**” includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, trademarks, trade names, service marks, mask works, rights of use of any name, domain names, or any other similar rights, any applications therefor, whether registered or not, and the goodwill of the business of any Person connected with and symbolized thereby, know-how, operating manuals, trade secret rights, clinical and non-clinical data, rights to unpatented inventions, and any claims for damage by way of any past, present, or future infringement of any of the foregoing.

“**Inventory**” is all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

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

“**Japanese Subsidiary**” means MediciNova Japan, Inc., a company organized under the laws of Japan and a wholly-owned subsidiary of Borrower.

“**Key Person**” means each of Borrower’s (i) President and Chief Executive Officer, who is Yuichi Iwaki as of the Effective Date and (ii) Chief Financial Officer, who is Shintaro Asako as of the Effective Date.

“**Lender**” is any one of the Lenders.

“**Lenders**” shall mean the Persons identified on Schedule 1.1 hereto and each assignee that becomes a party to this Agreement pursuant to Section 12.1.

“**Lenders’ Expenses**” are all audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Collateral Agent or the Lenders in connection with the Loan Documents.

“**Lien**” is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“**Loan Documents**” are, collectively, this Agreement, the Warrant, the Pledge Agreements, the Unconditional Guaranty, the Perfection Certificates, any subordination agreements, any note, or notes or guaranties executed by Borrower, and any other present or future agreement with Borrower for the benefit of Lenders and Collateral Agent in connection with this Agreement, all as amended, restated, or otherwise modified.

“**Material Adverse Change**” is (a) a material impairment in the perfection or priority of Collateral Agent’s Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or condition (financial or otherwise) or prospects of Borrower or Guarantor; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

“**Maturity Date**” is August 1, 2013.

“**Obligations**” are Borrower’s obligation to pay when due any debts, principal, interest, Lenders’ Expenses, the Prepayment Fee, the Deferred Interest Payment, and other amounts Borrower owes the Lenders now or later, whether under this Agreement, the Loan Documents, or otherwise, including, without limitation, all obligations relating to letters of credit (including reimbursement obligations for drawn and undrawn letters of credit), cash management services, and foreign exchange contracts, if any, and including interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Collateral Agent, and the performance of Borrower’s duties under the Loan Documents.

“**OFAC**” is the U.S. Department of Treasury Office of Foreign Assets Control.

“**OFAC Lists**” are, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

“**Operating Documents**” are, for any Person, such Person’s formation documents, as certified by the Secretary of State in the case of the Borrower, of such Person’s jurisdiction of organization on a date that is no earlier than 30 days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws (including articles of association and memorandum, if any) in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“**Payment/Advance Form**” is that certain form attached hereto as **Exhibit B**.

“**Payment Date**” is the first day of each calendar month.

“**Perfection Certificate**” is defined in Section 5.1.

“**Permitted Acquisition**” means an acquisition by Borrower of capital stock or property of any person which results in such stock or property being owned by Borrower following the closing of such transaction, provided that: (a) Borrower has provided the Lenders with no less than thirty (30) days notice prior to the closing of such transaction, including without limitation, the name of the Person or a summary description of the assets that Borrower is acquiring, the total consideration for the transaction (broken out into line items for cash and other property), the form of the transaction (asset purchase, stock purchase or otherwise) and any other information reasonably requested by the Lenders; (b) the Person being acquired operates in the pharmaceutical, biopharmaceutical, or biotechnology industry; (c) the consideration paid by Borrower in any such transaction is exclusively in the form of the capital stock of Borrower; (d) before and after giving effect to the consummation of the transaction, no Event of Default has occurred and is continuing or could not reasonably be expected to result from such transaction; (e) the assets of the target company in such acquisition are free and clear of all Liens that would not otherwise constitute Permitted Liens hereunder at the time of the closing of such transaction; (f) Borrower is the surviving corporation of any such transaction, (g) Borrower delivers to the Lenders, within thirty (30) days of the closing of any such transaction, any documents required by the Lenders in order for the Lenders to obtain a first priority security interest in the assets acquired by Borrower (including, without limitation, assets owned by a Subsidiary with respect to which Borrower has acquired all or a portion of such entity’s stock) subject only to

Permitted Liens, (h) any Person acquired in any such transaction shall, within thirty (30) days of the closing of any such transaction, become a co-borrower or guarantor hereunder, (i) Borrower delivers to the Lenders, within thirty (30) days of the closing of any such transaction, projections, in form and substance reasonably acceptable to Lenders, projecting that such transaction will not increase the projected net losses associated with Borrower's Cash Burn (after giving pro forma effect for such transaction), (j) Borrower's board of directors has approved the transaction, (k) in the event the transaction involves the acquisition of capital stock of a Person, Borrower or one of its Subsidiaries acquires a majority of the capital stock of such Person and (l) after giving effect to the transaction there is no Change in Control.

**"Permitted Indebtedness"** is:

- (a) Borrower's and Guarantor's Indebtedness to the Lenders and Collateral Agent under this Agreement and the other Loan Documents;
- (b) Indebtedness existing on the Effective Date and shown on the Perfection Certificate;
- (c) Subordinated Debt;
- (d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business, including, without limitation, clinical research organizations and other comparable service providers;
- (e) Indebtedness secured by liens specified in clause (c) of the definition of "Permitted Liens";
- (f) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of Borrower's business;
- (g) Indebtedness of Borrower under the ARS Credit Facility provided that the aggregate principal amount thereof does not exceed \$15,900,000 at any time;
- (h) Indebtedness representing the obligation of Borrower to pay deferred consideration to the former shareholders of the Guarantor incurred by Borrower in connection with the acquisition of the Guarantor by Borrower, which obligations are secured in full in cash by amounts on deposit in the Trust and Escrow Accounts; which Indebtedness shall in no event exceed the amount on deposit in the Trust and Escrow Accounts as of the Effective Date;
- (i) Indebtedness assumed by Borrower or issued or incurred by Borrower or a Subsidiary of Borrower as part of a Permitted Acquisition ("**Permitted Acquisition Indebtedness**"); provided that (a) the aggregate principal amount of Permitted Acquisition Indebtedness issued, incurred, or assumed by Borrower shall not exceed the sum of the cash and Cash Equivalents obtained by Borrower in such Permitted Acquisition plus cash paid or contributed by Borrower to secure the Permitted Acquisition Indebtedness in an aggregate amount not to exceed \$5,000,000 and (b) Borrower delivers to the Lenders, within thirty (30) days of the closing of any such transaction, a Control Agreement or any other documents required by the Lenders in order for the Lenders to obtain a first priority security interest in such cash and Cash Equivalents acquired by Borrower, subject only to the prior lien, if any, for the benefit of the holders of the Permitted Acquisition Indebtedness; provided, however, that notwithstanding the foregoing Borrower shall not be permitted to make any cash payment or contribution in connection with Permitted Acquisitions (x) in excess of \$5,000,000 or (y) to the extent that after giving effect to such cash payment, the Obligations would exceed Borrower's cash and Cash Equivalents on deposit in the Collateral Accounts specified in Section 6.6 hereof.
- (j) issuance of convertible notes under the Indenture as a result of the receipt of investment income in respect of amounts on deposit in the Trust Accounts or as a result of the issuance of additional convertible notes in a sum equal to the amount of cash and Cash Equivalents transferred from the Escrow Account to the Trust Account;

(k) other unsecured Indebtedness not otherwise permitted by Section 7.4 not exceeding Fifty Thousand Dollars (\$50,000) in the aggregate outstanding at any time; and

(l) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (e) and (i) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or Guarantor, as the case may be.

**“Permitted Investments”** are:

(a) Investments shown on the Perfection Certificate and existing on the Effective Date;

(b) Investments in cash and Cash Equivalents;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower’s business;

(d) Investments consisting of Collateral Accounts of Borrower permitted by Section 6.6 hereof;

(e) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of Borrower’s business;

(f) Investments in the Pledged ARS and the ARS Rights subject to the covenants contained in Section 6.10 hereof;

(g) Investments by Borrower (A) in Guarantor, (B) in the UK Subsidiary and the Japanese Subsidiary in accordance with Section 6.11 hereof, and (C) in any Person acquired as part of a Permitted Acquisition

(h) Investments existing at the time that a Person becomes a Subsidiary of Borrower or any of its Subsidiaries as part of a Permitted Acquisition, provided that such Investments constitute “Permitted Investments” hereunder;

(i) other Investments not otherwise permitted by Section 7.7 not exceeding Fifty Thousand Dollars (\$50,000) in the aggregate outstanding at any time; and

(j) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of Borrower’s business; provided that this paragraph (j) shall not apply to Investments of Borrower in any Subsidiary; and provided that any Instrument(s) evidencing such Investments shall be delivered to Collateral Agent for possession by Collateral Agent for the purpose of perfecting Collateral Agent’s Lien in such Instrument(s).

**“Permitted Liens”** are:

(a) Liens existing on the Effective Date and shown on the Perfection Certificate or arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either not delinquent or being contested in good faith and for which Borrower or Guarantor maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) purchase money Liens (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than One Hundred Thousand Dollars (\$100,000) in the aggregate principal amount outstanding at any one time, or (ii) on existing Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment;

(d) statutory Liens securing claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other Persons imposed without action of such parties, provided they have no priority over any of Collateral Agent's Lien and the aggregate amount of such Liens does not any time exceed Fifty Thousand Dollars (\$50,000) at any one time;

(e) leases or subleases of real property granted in the ordinary course of business, and leases, subleases, non-exclusive licenses or sublicenses of property (other than real property or Intellectual Property) granted in the ordinary course of Borrower's business, if the leases, subleases, licenses and sublicenses do not prohibit granting Collateral Agent a security interest;

(f) banker's liens, rights of setoff and Liens in favor of financial institutions incurred made in the ordinary course of business arising in connection with Borrower's deposit accounts or securities accounts held at such institutions to secure solely payment of fees and similar costs and expenses subject to Borrower's compliance with Section 6.6(b) hereof;

(g) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(h) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.4 or 8.7;

(i) easements, reservations, rights-of-way, restrictions, minor defects or irregularities in title and similar charges or encumbrances affecting real property not constituting a material adverse effect on the business or condition (financial or otherwise) of Borrower;

(j) licenses permitted by the terms of Section 7.1 hereof;

(k) Liens securing the ARS Credit Facility provided such Liens are confined to the Pledged ARS and the proceeds thereof;

(l) Liens in favor of the former shareholders of the Guarantor provided such liens attach only to the amounts on deposit in the Trust and Escrow Accounts and secure only the obligations of Borrower to pay deferred consideration to the former shareholders of the Guarantor in connection with the acquisition of the Guarantor by Borrower;

(m) Liens existing at the time that a Person becomes a Subsidiary of Borrower or any of its Subsidiaries as part of a Permitted Acquisition provided such Liens constitute "Permitted Liens" hereunder;

(n) Liens securing Permitted Acquisition Indebtedness assumed by Borrower in a Permitted Acquisition provided that (i) the aggregate principal amount of Permitted Acquisition Indebtedness secured by such Liens shall not exceed \$100,000 in any Permitted Acquisition and (ii) any Permitted Acquisition Indebtedness secured by such Liens shall be Indebtedness incurred for financing particular Equipment and such Liens shall be confined to the Equipment financed and the proceeds of such Equipment;

(o) Liens securing Permitted Acquisition Indebtedness incurred or issued by Borrower in Permitted Acquisitions provided that (i) the aggregate principal amount of Permitted Acquisition Indebtedness secured by Borrower shall not exceed the sum of the cash and Cash Equivalents obtained by Borrower in Permitted Acquisitions plus cash paid or contributed by Borrower in connection with Permitted Acquisitions in an aggregate amount not to exceed \$5,000,000 and (ii) the assets encumbered to secure such Permitted Acquisition Indebtedness are limited to cash collateral accounts containing amounts which do not exceed the sum of the cash and Cash Equivalents obtained by Borrower in Permitted Acquisitions plus cash paid or contributed by Borrower in connection with Permitted Acquisitions in an aggregate amount not to exceed \$5,000,000; and

(p) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a), (c), and (n) and (o) above, but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness may not increase.

“**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.

“**Pledge Agreements**” means (i) the Charge over Shares and Security Trust Deed dated as of the Effective Date whereby Borrower pledges sixty-five percent (65%) of the capital stock of the UK Subsidiary to the Collateral Agent, for the benefit of Lenders and (ii) the Pledge Agreement dated as of the Effective Date whereby Borrower pledges sixty-five percent (65%) of the capital stock of the Japanese Subsidiary to the Collateral Agent, for the benefit of Lenders.

“**Pledged ARS**” are the auction rate securities owned by Borrower identified on Schedule A hereto, which are pledged by Borrower to UBS Securities to secure the ARS Credit Facility.

“**Prepayment Fee**” means with respect to the Term Loan subject to prepayment prior to the Maturity Date, whether by mandatory or voluntary prepayment, acceleration or otherwise, an additional fee payable to the Lenders in amount equal to:

- (i) for a prepayment made on or after the Effective Date through and including the date which is twelve (12) months thereafter, three percent (3.0%) of the principal amount of the Term Loan prepaid;
- (ii) for a prepayment made after the date which is twelve (12) months after the Effective Date through and including the date which is twenty-four (24) months after the Effective Date, two percent (2.0%) of the principal amount of the Term Loan prepaid; and
- (iii) for a prepayment made on or after the date which is twenty-four (24) months after the Effective Date and prior to the Maturity Date, one percent (1.0%) of the principal amount of the Term Loan prepaid.

“**Pro Rata Share**” means, with respect to each Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by dividing the amount of Term Loan held by such Lender by the aggregate amount of all outstanding Term Loan.

“**Registered Organization**” is any “registered organization” as defined in the Code with such additions to such term as may hereafter be made

“**Required Lenders**” means (i) for so long as all of the Persons that are Lenders on the Effective Date (each an “**Original Lender**”) have not assigned or transferred any of their interests in the Term Loan, Lenders holding one hundred percent (100%) of the aggregate outstanding principal balance of the Term Loan, or (ii) at any time from and after any Original Lender has assigned or transferred any interest in its Term Loan, Lenders holding, sixty-six percent (66%) or more of the aggregate outstanding principal balance of the Term Loan, *plus*, in respect of this clause (ii), (A) each Original Lender that has not assigned or transferred any portion of its respective Term Loan and (B) each assignee of an Original Lender provided such assignee was assigned or transferred and continues to hold 100% of the assigning Original Lender’s interest in the Term Loan (in each case in respect of clauses (A) and (B) of this clause (ii), whether or not such Lender is included within the Lenders holding sixty-six percent (66%) of the Terms Loan); *provided, however*, that notwithstanding the foregoing, for purposes of Section 9.1(b) hereof, “Required Lenders” means (i) for so long as all Original Lenders retain 100% of their interests in their respective



Term Loan, Lenders holding one hundred percent (100%) of the aggregate outstanding principal balance of the Term Loan or (ii) at any time from and after any Original Lender has assigned or transferred any interest in its Term Loan Lenders holding, sixty-six percent (66%) or more of the aggregate outstanding principal balance of the Term Loan, plus, in respect of this clause (ii), each Original Lender that has not assigned or transferred any portion of its respective Term Loan (in each case in respect of this clause (ii), whether or not such Original Lender is included within the Lenders holding sixty-six percent (66%) of the Term Loan). For purposes of this definition only, a Lender shall be deemed to include itself, and any Lender that is an Affiliate or Approved Fund of such Lender.

“**Requirement of Law**” is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“**Responsible Officer**” is any of the President, Chief Executive Officer, or Chief Financial Officer of Borrower acting alone.

“**Secured Promissory Note**” is defined in Section 2.4.

“**Secured Promissory Note Record**” is a record maintained by each Lender with respect to the outstanding Obligations owed by Borrower to Lender and credits made thereto.

“**Securities Account**” is any “securities account” as defined in the Code with such additions to such term as may hereafter be made.

“**Subordinated Debt**” is indebtedness incurred by Borrower subordinated to all of Borrower’s or now or hereafter indebtedness to the Lenders (pursuant to a subordination, intercreditor, or other similar agreement in form and substance reasonably satisfactory to Collateral Agent and the Lenders entered into between Collateral Agent, Borrower, and the other creditor), on terms reasonably acceptable to Collateral Agent and the Lenders.

“**Subsidiary**” means, with respect to any Person, any Person of which more than 50.0% of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or one or more of Affiliates of such Person.

“**Term Loan**” is defined in Section 2.2(a)(ii) hereof.

“**Term Loan Commitment**” means, for any Lender, the obligation of such Lender to make a Term Loan, up to the principal amount shown on **Schedule 1.1**. “**Term Loan Commitments**” means the aggregate amount of such commitments of all Lenders.

“**Transfer**” is defined in Section 7.1.

“**Trust and Escrow Accounts**” mean (i) the trust account (Account # 1009376645 at Evergreen Institutional Treasury Money Market Fund #397) held by American Stock Transfer & Trust Company, LLC as security for the obligations of Borrower under the convertible secured notes issued as part of the consideration paid in connection with Borrower’s acquisition of Guarantor, which account contained an aggregate balance of approximately Twenty Seven Million Eight Hundred Thousand Dollars (\$27,800,000) as of the Effective Date (the “**Trust Account**”), (ii) the escrow account (Account # 1009376641 at Evergreen Institutional Treasury Money Market Fund #397) held by American Stock Transfer & Trust Company, LLC pursuant to the Escrow Agreement, the proceeds of which are to be used to pay certain deferred consideration to the former stockholders of the Guarantor, which account contained an aggregate balance of approximately Six Hundred Thousand Dollars (\$600,000) as of the Effective Date (the “**Escrow Account**”) and (iii) the escrow account (Account # 41 22001837 at Wells Fargo Bank, N.A) the proceeds of which secure possible tenant exposure from Guarantor’s previous subtenants, which account contained an aggregate balance of approximately Five Hundred Thousand Dollars (\$500,000) as of the Effective Date.

“**Unconditional Guaranty**” means the Unconditional Guaranty entered into as of the Effective Date by the Guarantor in favor of the Collateral Agent and the Lenders.

“**UK Subsidiary**” means MediciNova (Europe) Limited, a company with limited liability organized under the laws of England and Wales and a wholly-owned subsidiary of Borrower.

“**Warrant**” is that certain Warrant to Purchase Stock dated as of the Effective Date executed by Borrower in favor of each Lender.

*[Signature Page to Follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**MEDICINOVA, INC.**

a Delaware corporation

By: /s/ Shintaro Asako  
Name: Shintaro Asako  
Title: CFO

**GUARANTOR:**

**AVIGEN, INC.**

a Delaware corporation

By: /s/ Shintaro Asako  
Name: Shintaro Asako  
Title: CEO and CFO

**COLLATERAL AGENT AND LENDER:**

**OXFORD FINANCE CORPORATION, as Collateral  
Agent and as a Lender**

By: /s/ T.A. Lex  
Name: T.A. Lex  
Title: COO

*[Signature Page to Loan and Security Agreement]*

**SCHEDULE 1.1**

**LENDERS AND COMMITMENTS**

**Term Loan**

| <u>Lender</u>              | <u>Term Loan Commitment</u> | <u>Commitment Percentage</u> |
|----------------------------|-----------------------------|------------------------------|
| Oxford Finance Corporation | \$15,000,000                | 100.00%                      |
| TOTAL                      | \$15,000,000                | 100.00%                      |

## EXHIBIT A

The Collateral consists of all of Borrower's and/or Guarantor's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as provided below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and all Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include (i) any of the following, whether now owned or hereafter acquired except to the extent that it is necessary under applicable law to have a security interest in any of the following in order to have a perfected lien and security interest in and to the "IP Proceeds" defined below: any copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished; any patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same; trademarks, trade names, service marks, mask works, rights of use of any name or domain names and, to the extent permitted under applicable law, any applications therefor, whether registered or not; and the goodwill of the business of Borrower and/or Guarantor connected with and symbolized thereby, know-how, operating manuals, trade secret rights, clinical and non-clinical data, rights to unpatented inventions; provided, however, the Collateral shall include all Accounts, license and royalty fees and other revenues, proceeds, or income arising out of or relating to any of the foregoing and any claims for damage by way of any past, present, or future infringement of any of the foregoing (collectively, the "IP Proceeds") or (ii) the Pledged ARS or (iii) more than sixty-five percent (65%) of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Borrower or Guarantor of any Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter or (iv) Borrower's right to receive the First Milestone Payment under the Assignment Agreement upon the occurrence of the First Milestone Payment (as such terms are defined in the CPR Agreement), or (v) the Trust and Escrow Accounts (provided that the Collateral shall include any cash or other assets which are released from such Trust and Escrow Accounts and delivered to Borrower).

Pursuant to the terms of a certain negative pledge arrangement with Collateral Agent, Borrower and Guarantor have agreed not to encumber any of its Intellectual Property without Collateral Agent's prior written consent.

**EXHIBIT B**

**Loan Payment/Advance Request Form**

**DISBURSEMENT LETTER**

The undersigned, being the duly elected and acting \_\_\_\_\_ of **MEDICINOVA, INC.**, a Delaware corporation ("**Borrower**"), does hereby certify to **OXFORD FINANCE CORPORATION**, ("**Oxford**" and "**Lender**"), as collateral agent (the "**Collateral Agent**") in connection with that certain Loan and Security Agreement dated on or about the date hereof by and between Borrower and Collateral Agent (the "Loan Agreement"; with other capitalized terms used below having the meanings ascribed thereto in the Loan Agreement) that:

1. The representations and warranties made by Borrower and Guarantor in Section 5 of the Loan Agreement and in the other Loan Documents are true and correct in all material respects as of the date hereof.
2. No event or condition has occurred that would constitute an Event of Default under the Loan Agreement or any other Loan Document.
3. Borrower and Guarantor are in compliance with the covenants and requirements contained in Sections 4, 6 and 7 of the Loan Agreement.
4. All conditions referred to in Section 3 of the Loan Agreement to the making of the Loan to be made on or about the date hereof have been satisfied.
5. No Material Adverse Change has occurred.
6. The proceeds for the Term Loan shall be disbursed as follows:

Disbursement from Collateral Agent:

|   |    |              |
|---|----|--------------|
| Loan Amount                             |    | \$15,000,000 |
| Less:                                   |    |              |
| Lender's Legal Fees                     |    | (\$ _____)   |
| Balance of Facility Fee                 | \$ | <u>N/A</u>   |
| Net Proceeds due from Collateral Agent: | \$ | _____        |

The aggregate net proceeds of the Term Loan in the amount of \$ \_\_\_\_\_ shall be transferred to Borrower's account as follows:

Account Name: \_\_\_\_\_  
Bank Name: \_\_\_\_\_  
Bank Address: \_\_\_\_\_  
Account Number: \_\_\_\_\_  
ABA Number: \_\_\_\_\_

Dated: \_\_\_\_\_, 2010

**BORROWER:**

**MEDICINOVA, INC.**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GUARANTOR:**

**AVIGEN, INC.**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**AS COLLATERAL AGENT AND AS A LENDER:**

**OXFORD FINANCE CORPORATION**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT C  
COMPLIANCE CERTIFICATE**

TO: **OXFORD FINANCE CORPORATION**, as Collateral Agent

Date: \_\_\_\_\_

FROM: **MEDICINOVA, INC.**

The undersigned authorized officer of **MEDICINOVA, INC.** hereby certifies that in accordance with the terms and conditions of the Loan and Security Agreement between Borrower, Guarantor, and Lender (the "Agreement"),

(i) Borrower and Guarantor are in complete compliance for the period ending \_\_\_\_\_ with all required covenants except as noted below and

(ii) All representations and warranties of Borrower and Guarantor stated in the Agreement are true and correct as of the date hereof. Attached herewith are the required documents, if any, supporting the above certification(s). The Officer further certifies that any financial statements and audits, if applicable, are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes and other year-end adjustments.

**Please indicate compliance status since the last Compliance Certificate by circling Yes, No, or N/A under "Complies" column.**

| <u>Reporting Covenant</u>  | <u>Requirement</u>                    | <u>Complies</u> |    |     |
|--|---------------------------------------|-----------------|----|-----|
| 1) Financial statements  | Quarterly within 45 days              | Yes             | No | N/A |
| 2) Annual (CPA Audited) statements   | Within 120 days after Fiscal Year End | Yes             | No | N/A |
| 3) Annual Financial Projections/Budget   | Annually and when revised             | Yes             | No | N/A |
| 4) A/R & A/P agings  | If applicable                         | Yes             | No | N/A |
| 5) 10-K and 10-Q Filings   | If applicable                         | Yes             | No | N/A |
| 6) IP Report   | If applicable                         | Yes             | No | N/A |
| 7) Total amount of Borrower's cash and cash equivalents  | \$ _____                              |                 |    |     |
| 8) Total amount of Borrower's cash and cash equivalents maintained with Lender(s) as specified in Agreement. | If applicable<br>\$ _____             | Yes             | No | N/A |

**Deposit and Securities Accounts**

*(Please list all accounts; attach separate sheet if additional space needed)*

| <u>Bank</u> | <u>Account Number</u> | <u>New Account?</u> |    | <u>Acct Control Agmt in place?</u> |    |
|-------------|-----------------------|---------------------|----|------------------------------------|----|
| 1)          |                       | Yes                 | No | Yes                                | No |
| 2)          |                       | Yes                 | No | Yes                                | No |
| 3)          |                       | Yes                 | No | Yes                                | No |
| 4)          |                       | Yes                 | No | Yes                                | No |
| 5)          |                       | Yes                 | No | Yes                                | No |
| 6)          |                       | Yes                 | No | Yes                                | No |

**Other Matters**

Have there been any changes in management? Yes    No

Have there been any transfers/sales/disposals/retirement of Collateral or IP? Yes    No

Have there been any new or pending claims or causes of action against Borrower? Yes    No

**Exceptions**

Please explain any exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions." Attach separate sheet if additional space needed.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**LENDERS USE  
ONLY**

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

Received by: \_\_\_\_\_

Verified by: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Compliance Status

Yes

No

\_\_\_\_\_  
TITLE

**EXHIBIT D**

**SECURED PROMISSORY NOTE**

\$15,000,000.00

Dated: \_\_\_\_\_, 2010

FOR VALUE RECEIVED, the undersigned, **MEDICINOVA, INC.**, a Delaware corporation, with offices located at 4350 La Jolla Village Drive, Suite 950, San Diego, California 92122 ("**Borrower**") HEREBY PROMISES TO PAY to the order of **OXFORD FINANCE CORPORATION** ("**Lender**") the principal amount of FIFTEEN MILLION DOLLARS (\$15,000,000.00) or such lesser amount as shall equal the outstanding principal balance of the Term Loan made to Borrower by Lender, plus interest on the aggregate unpaid principal amount of Term Loan, at the rates and in accordance with the terms of the Loan and Security Agreement dated \_\_\_\_\_, 2010 by and among Borrower, Avigen, Inc., Oxford Finance Corporation, as Collateral Agent and as a Lender, and the Lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder shall be due and payable on the Maturity Date as set forth in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Borrower agrees to pay any initial partial monthly interest payment from the date the Term Loan is made to Borrower under this Secured Promissory Note (this "Note") to the first Payment Date ("Interim Interest") on the first Payment Date.

Principal, interest and all other amounts due with respect to the Term Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Note. The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

The Loan Agreement, among other things, (a) provides for the making of a secured Term Loan by Lenders to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Section 2.2 (c) and Section 2.2(d) of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Term Loan, interest on the Term Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower's obligations hereunder not performed when due.

This Note shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of New York.

Note Register; Ownership of Note. The ownership of an interest in this Note shall be registered on a record of ownership maintained by Lender or its agent. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, this Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Note on the part of any other person or entity.

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

**BORROWER:**

**MEDICINOVA, INC.**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



### **MediciNova Secures \$15 Million Debt Facility From Oxford Finance Corporation**

SAN DIEGO, Calif. – May 11, 2010 – MediciNova, Inc., a biopharmaceutical company that is publicly traded on the Nasdaq Global Market (Trading Symbol: MNOV) and the Hercules Market of the Osaka Securities Exchange (Code Number: 4875), today announced that it has entered into a \$15 million senior secured term loan with Oxford Finance Corporation.

“This funding significantly strengthens our balance sheet and enables us to further support the clinical development of our lead compound, MN-221, for the treatment of acute exacerbations of asthma and chronic obstructive pulmonary disease exacerbations,” said Yuichi Iwaki, M.D., Ph.D., President and Chief Executive Officer of MediciNova, Inc. “The addition of this debt financing represents a complement to MediciNova’s existing capital structure.”

The financing will be used to satisfy working capital needs in the continued clinical development of MN-221. MediciNova recently reported positive preliminary results from a Phase Ib study of MN-221 in patients with moderate-to-severe chronic obstructive pulmonary disease and is currently enrolling patients in a Phase II clinical trial evaluating MN-221 for the treatment of acute exacerbations of asthma in the emergency department setting.

“Oxford is very pleased to have MediciNova as a part of our investment portfolio,” said J. Alden Philbrick, President and Chief Executive Officer of Oxford Finance Corporation. “By working closely with MediciNova’s talented management team, we were able to develop a tailored financing solution that will help the company move closer to Phase III development and potential licensing partnerships.”

#### **About MediciNova**

MediciNova, Inc. is a publicly-traded biopharmaceutical company focused on acquiring and developing novel, small-molecule therapeutics for the treatment of diseases with unmet need with a specific focus on the U.S. market. Through strategic alliances primarily with Japanese pharmaceutical companies, MediciNova holds rights to a diversified portfolio of clinical and preclinical product candidates, each of which MediciNova believes has a well-characterized and differentiated therapeutic profile, attractive commercial potential and patent assets having claims of commercially adequate scope. MediciNova’s pipeline includes six clinical-stage compounds for the treatment of acute exacerbations of asthma, chronic obstructive pulmonary disease exacerbations, multiple sclerosis and other neurologic conditions, asthma, interstitial cystitis, solid tumor cancers, Generalized Anxiety Disorder, preterm labor and urinary incontinence and two preclinical-stage compounds for the treatment of thrombotic disorders. MediciNova’s current strategy is to focus its resources on its two prioritized product candidates, MN-221 for the treatment of acute exacerbations of asthma and chronic obstructive pulmonary disease exacerbations and MN-166 for the treatment of multiple sclerosis and other central nervous system disorders, and either pursue development independently in select markets, in the case of MN-221, or establish a strategic collaboration to support further development, in the case of MN-166. MediciNova will seek to monetize its other product candidates. For more information on MediciNova, Inc., please visit [www.medicinova.com](http://www.medicinova.com).

## About Oxford Finance Corporation

A subsidiary of Sumitomo Corporation, Oxford is a specialty finance firm providing senior secured loans to public and private life science and healthcare services companies worldwide. For 20 years, Oxford has delivered flexible financing solutions to its clients, enabling these companies to maximize their equity by leveraging their assets. In recent years, Oxford has originated over \$1 billion in loans, with lines of credit ranging from \$500 thousand to \$30 million. Oxford is headquartered in Alexandria, Virginia, with additional offices in California and Massachusetts. For more information, visit [www.oxfordfinance.com](http://www.oxfordfinance.com).

*Statements in this press release that are not historical in nature constitute forward-looking statements within the meaning of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements include, without limitation, statements regarding MediciNova's clinical trials supporting safety and efficacy of product candidates and the potential novelty of such product candidates as treatments for disease, plans and objectives for present and future clinical trials and product development, strategies, future performance, expectations, assumptions, financial condition, liquidity and capital resources. These forward-looking statements may be preceded by, followed by or otherwise include the words "believes," "expects," "anticipates," "intends," "estimates," "projects," "can," "could," "may," "will," "would," or similar expressions. These forward-looking statements involve a number of risks and uncertainties that may cause actual results or events to differ materially from those expressed or implied by such forward-looking statements. Factors that may cause actual results or events to differ materially from those expressed or implied by these forward-looking statements, include, but are not limited to, the risks and uncertainties inherent in clinical trials and product development and commercialization, such as the uncertainty in results of clinical trials for product candidates, the uncertainty of whether the results of clinical trials will be predictive of results in later stages of product development, the risk of delays or failure to obtain or maintain regulatory approval, the risk of failure of the third parties upon whom MediciNova relies to conduct its clinical trials and manufacture its product candidates to perform as expected, the risk of increased cost and delays due to delays in the commencement, enrollment, completion or analysis of clinical trials or significant issues regarding the adequacy of clinical trial designs or the execution of clinical trials and the timing, cost and design of future clinical trials and research activities, the timing of expected filings with the FDA, MediciNova's failure to execute strategic plans or strategies successfully, MediciNova's collaborations with third parties, MediciNova's ability to realize the anticipated strategic and financial benefits from its acquisition of Avigen, Inc., to integrate the two ibudilast development programs and to pursue discussions with potential partners to secure a strategic collaboration to advance the clinical development of the combined development program, the availability of funds to complete product development plans and MediciNova's ability to raise sufficient capital when needed, intellectual property or contract rights, and the other risks and uncertainties described in MediciNova's filings with the Securities and Exchange Commission, including its annual report on Form 10-K for the year ended December 31, 2009 and its subsequent periodic reports on Forms 10-Q and 8-K. Undue reliance should not be placed on these forward-looking statements, which speak only as of the date hereof. MediciNova disclaims any intent or obligation to revise or update these forward-looking statements.*

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