
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): **November 19, 2021**

PACIRA BIOSCIENCES, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-35060
(Commission File Number)

51-0619477
(IRS Employer
Identification No.)

5401 West Kennedy Boulevard, Suite 890
Tampa, Florida 33609
(Address of principal executive offices) (Zip Code)

(813) 553-6680
(Registrant's telephone number, including area code)

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))

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

Title of each class	Trading symbol	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	PCRX	Nasdaq Global Select Market

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

Emerging growth company

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

Introductory Note

As previously disclosed, on October 11, 2021, Pacira BioSciences, Inc., a Delaware corporation (“Pacira”), entered into an Agreement and Plan of Merger (the “Merger Agreement”) with Oyster Acquisition Company Inc., a Delaware corporation and wholly owned subsidiary of Pacira (“Purchaser”), and Flexion Therapeutics, Inc., a Delaware corporation (“Flexion”).

Item 1.01. Entry into a Material Definitive Agreement.

Prior to the Effective Time (as defined below) and in connection with the acceptance for payment by Purchaser of all of the outstanding shares of common stock of Flexion, \$0.001 par value per share (the “Shares”), validly tendered and not properly withdrawn pursuant to the Offer (as defined below), Pacira and American Stock Transfer & Trust Company, LLC entered into a contingent value right agreement on November 19, 2021 (the “CVR Agreement”) governing the terms of the CVRs (as defined below).

A CVR represents the non-transferable right to receive one or more contingent cash payments of up to \$8.00 per Share in the aggregate, in cash, net of applicable withholding taxes and without interest (each, a “Milestone Payment” and collectively, the “Milestone Payments”), with each Milestone Payment conditioned upon the achievement of the applicable milestone on or prior to December 31, 2030 as follows (each, a “Milestone”):

- \$1.00 per CVR, the first time that net sales of ZILRETTA® (triamcinolone acetonide extended-release injectable suspension) in any calendar year equal or exceed \$250.0 million.
- \$2.00 per CVR, the first time that net sales of ZILRETTA in any calendar year equal or exceed \$375.0 million.
- \$3.00 per CVR, the first time that net sales of ZILRETTA in any calendar year equal or exceed \$500.0 million.
- \$1.00 per CVR upon approval by the U.S. Food and Drug Administration (the “FDA”) of a biologics license application (BLA) for FX201, Flexion’s clinical stage gene therapy product candidate.
- \$1.00 per CVR upon approval by the FDA of a new drug application (NDA) for FX301, Flexion’s investigational product candidate.

It is possible that none of the Milestones described above will be achieved on or prior to December 31, 2030, in which case holders of CVRs will not receive any payments with respect to their CVRs. It is not possible to predict whether a payment will become payable with respect to the CVRs. Whether any Milestone required for payment of any Milestone Payment is met will depend on many factors, some within the control of Pacira and its subsidiaries and others outside the control of Pacira and its subsidiaries. The CVR Agreement requires Pacira to, and to cause its controlled affiliates and direct any sublicensees to, use “commercially reasonable efforts” to achieve the Milestones described above, but there can be no assurance that any of the Milestones will be achieved or that any payment with respect to the CVRs will be made.

As used in the CVR Agreement, “commercially reasonable efforts” means, with respect to a task related to a product, the efforts required to carry out such task in a diligent and sustained manner without undue interruption, pause or delay, which level is at least commensurate with the level of efforts that a pharmaceutical company of comparable size and resources as those of Pacira and its controlled affiliates would devote to a product of similar potential (including commercial potential), taking into account its proprietary position and profitability (including pricing and reimbursement status, but excluding the obligation to pay the Milestone Payments under the CVR Agreement), anticipated or actual market conditions and economic return potential, the regulatory environment, and other relevant technical, commercial, legal, scientific and/or medical factors.

The right to the payment described above is solely a contractual right governed by the terms and conditions of the CVR Agreement. The CVRs will not be evidenced by a certificate or other instrument, will not have any voting or dividend rights and will not represent any equity or ownership interest in Pacira or Flexion. The CVRs will not be registered or listed for trading. No interest will accrue or be payable in respect of any of the amounts that may be payable on CVRs. Holders of CVRs will have no greater rights against Pacira than those accorded to general, unsecured creditors under applicable legal requirements.

The foregoing description of the CVR Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the CVR Agreement, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K, and is incorporated herein by reference.

Item 2.01. Completion of Acquisition or Disposition of Assets.

As previously disclosed, pursuant to the Merger Agreement, on October 22, 2021, Purchaser commenced a tender offer to acquire all of the outstanding Shares at an offer price of (i) \$8.50 per Share, in cash, net of applicable withholding taxes and without interest (the "Cash Amount"), plus (ii) one contingent value right per Share (each, a "CVR"), which will represent the right to receive one or more contingent payments of up to \$8.00 per Share in the aggregate, in cash, net of applicable withholding taxes and without interest, upon the achievement of the Milestones on or prior to December 31, 2030, pursuant to the terms of the CVR Agreement (the "Offer Price"), upon the terms and subject to the conditions set forth in the Offer to Purchase, dated October 22, 2021 (as it may be amended or supplemented from time to time, the "Offer to Purchase"), and in the related Letter of Transmittal (which, together with the Offer to Purchase and other related materials, as each may be amended or supplemented from time to time, constitute the "Offer").

On November 19, 2021, Pacira announced that the offering period of the Offer had expired at one minute following 11:59 p.m., Eastern Time, on November 18, 2021 (the "Expiration Time"), and that as of such time, based on the information provided by the depositary for the Offer, 26,026,307 Shares were validly tendered and not validly withdrawn pursuant to the Offer prior to the Expiration Time, representing approximately 51.7% of the outstanding Shares as of such time, which Shares were sufficient to have met the minimum condition of the Offer and to enable the Merger (as defined below) to occur under Delaware law without a meeting of Flexion's stockholders and without a vote of Flexion's stockholders. In addition, the depositary for the Offer also advised Purchaser that, as of such time, notices of guaranteed delivery had been received for 9,526,961 Shares, representing approximately 18.9% of the outstanding Shares as of such time. All conditions to the Offer having been satisfied, Purchaser subsequently accepted for payment all Shares validly tendered and not validly withdrawn prior to the Expiration Time, and will promptly pay for such Shares in accordance with the terms of the Offer.

Following the completion of the Offer, on November 19, 2021, pursuant to the terms of the Merger Agreement and in accordance with Section 251(h) of the General Corporation Law of the State of Delaware (the "DGCL"), Purchaser merged with and into Flexion with Flexion surviving as a wholly owned subsidiary of Pacira (the "Merger"). At the effective time of the Merger (the "Effective Time"), Shares that were not purchased pursuant to the Offer (other than Shares held (i) by Flexion or its subsidiaries (including Shares held in Flexion's treasury), (ii) by Pacira, Purchaser, any other direct or indirect wholly owned subsidiary of Pacira, or (iii) by stockholders of Flexion who have properly exercised and perfected their statutory rights of appraisal under the DGCL) were converted into the right to receive an amount in cash equal to the Offer Price, without interest and subject to any withholding of taxes required by applicable legal requirements.

Pursuant to the Merger Agreement, each of Flexion's stock options (the "Flexion Options") that was outstanding as of immediately prior to the Effective Time was accelerated and became fully vested and exercisable effective immediately prior to, and contingent upon, the Effective Time.

Each Flexion Option that had an exercise price that was less than the Cash Amount (each, an "In-the-Money Option") that was outstanding and unexercised as of immediately prior to the Effective Time has been cancelled and converted into the right to receive (a) cash in an amount equal to the product of (i) the total number of Shares subject to such In-the-Money Option multiplied by (ii) the excess (if any), of (x) the Cash Amount over (y) the exercise price payable per Share under such In-the-Money Option, and (b) one CVR for each Share subject to such In-the-Money Option, net of applicable withholding taxes.

Each Flexion Option that had an exercise price equal to, or greater than, the Cash Amount and less than \$9.12, the closing price per Share on the Nasdaq Global Market on November 18, 2021 (the “Option Reference Price” and such Flexion Option, an “Out-of-the-Money Option”) that was outstanding and unexercised as of immediately prior to the Effective Time has been cancelled and converted into the right to receive from time to time upon the achievement of the Milestones, a cash payment, if any, equal to (a) the product of (i) the total number of Shares subject to such Out-of-the-Money Option multiplied by (ii) the amount, if any, by which (x) the Cash Amount plus the applicable Milestone Payment plus any Milestone Payments previously earned exceeds (y) the exercise price payable per Share under such Out-of-the-Money Option minus (b) the gross amount previously paid with respect to such Out-of-the-Money Option, net of applicable withholding taxes.

Any Flexion Option that had an exercise price equal to, or greater than, the Option Reference Price has been canceled for no consideration.

Each Share subject to or otherwise deliverable in connection with restricted stock unit awards granted, including, for the avoidance of doubt, any performance-based restricted stock unit awards (a “Flexion RSU”) that was outstanding as of immediately prior to the Effective Time was accelerated and became fully vested and exercisable effective immediately prior to, and contingent upon, the Effective Time, and has been cancelled and converted into the right to receive (a) cash in an amount equal to the product of (i) the total number of Shares issuable in settlement of such Flexion RSU multiplied by (ii) the Cash Amount and (b) one CVR for each Share issuable in settlement of such Flexion RSU, net of applicable withholding taxes.

The total consideration paid for the Shares in the Offer and the Merger, including the amounts estimated to repay certain indebtedness of Flexion, was approximately \$734.3 million (after giving effect to payments received pursuant to the exercise of Flexion Options). These amounts exclude (i) fees and expenses related to the Offer and the Merger, (ii) any Flexion cash and cash equivalents assumed by Pacira and (iii) any potential Milestone Payments, if any. Pacira provided Purchaser with sufficient funds to purchase all Shares accepted for payment in the offering period of the Offer and all Shares purchased in the Merger via Pacira’s cash or other liquid financial resources. Pacira estimates that up to an additional \$424.9 million in the aggregate may be payable to holders of the CVRs if each of the Milestones is achieved.

The foregoing description of the Merger Agreement and the related transactions does not purport to be complete and is qualified in its entirety by reference to the full text of the Merger Agreement, a copy of which is filed as Exhibit 2.1 to the Current Report on Form 8-K filed by Pacira with the U.S. Securities and Exchange Commission (the “SEC”) on October 12, 2021, and is incorporated herein by reference.

Item 8.01. Other Events.

On November 19, 2021, Pacira issued a press release relating to, among other things, the consummation of the Merger. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K.

Item 9.01. Financial Statements and Exhibits.

(a) Financial Statements of Businesses Acquired.

The audited financial statements of Flexion required by this item will be filed by amendment to this Current Report on Form 8-K no later than 71 calendar days after the date on which this Current Report on Form 8-K was required to be filed.

(b) Pro Forma Financial Information.

The pro forma financial information reflecting the Merger, to the extent required by this item, will be furnished by amendment to this Current Report on Form 8-K no later than 71 calendar days after the date on which this Current Report on Form 8-K was required to be filed.

(d) Exhibits.

Exhibit Number	Exhibit Description
<u>2.1*</u>	<u>Agreement and Plan of Merger, dated as of October 11, 2021, by and among Flexion Therapeutics, Inc., Pacira BioSciences, Inc. and Oyster Acquisition Company Inc. (incorporated by reference to Exhibit 2.1 to Pacira's Current Report on Form 8-K filed with the SEC on October 12, 2021).</u>
<u>10.1</u>	<u>Contingent Value Right Agreement, dated as of November 19, 2021, by and between Pacira BioSciences, Inc. and American Stock Transfer & Trust Company, LLC.</u>
<u>99.1</u>	<u>Press Release, dated as of November 19, 2021.</u>
104	Cover Page Interactive Data File (Formatted as Inline XBRL).
*	Certain exhibits and schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. Pacira agrees to furnish supplementally to the SEC a copy of any omitted exhibits or schedules upon request; provided that Pacira may request confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

SIGNATURES

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

PACIRA BIOSCIENCES, INC.

Date: November 19, 2021

By: /s/ Kristen Williams

Kristen Williams

Chief Administrative Officer and Secretary

CONTINGENT VALUE RIGHT AGREEMENT

This CONTINGENT VALUE RIGHT AGREEMENT, dated as of November 19, 2021 (this “**Agreement**”), is entered into by and between Pacira BioSciences, Inc., a Delaware corporation (“**Parent**”), and AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC, a New York limited liability company, as Rights Agent (the “**Rights Agent**”).

RECITALS

WHEREAS, Parent, Oyster Acquisition Company Inc., a Delaware corporation and wholly owned subsidiary of Parent (“**Purchaser**”), and Flexion Therapeutics, Inc., a Delaware corporation (the “**Company**”), have entered into an Agreement and Plan of Merger, dated as of October 11, 2021 (as it may be amended or supplemented from time to time pursuant to the terms thereof, the “**Merger Agreement**”), pursuant to which Purchaser (a) has agreed to commence a cash tender offer (as it may be extended and amended from time to time as permitted under the Merger Agreement, the “**Offer**”) to acquire all of the outstanding shares of Company Common Stock (“**Shares**”) and (b) following the consummation of the Offer, will merge with and into the Company (the “**Merger**”), with the Company surviving the Merger as a wholly owned subsidiary of Parent, in accordance with Section 251(h) of the DGCL and on the terms and subject to the conditions set forth in the Merger Agreement;

WHEREAS, pursuant to the Merger Agreement, (a) in each of the Offer and the Merger, Parent has agreed to provide to the holders of Shares (other than holders of Excluded Shares and Dissenting Shares) and (b) in the Merger, Parent has agreed to provide to holders of Company RSUs and holders of In-the-Money Options, in each case, that are outstanding as of immediately prior to the Effective Time (collectively, the “**Covered Equity Awards**”), in the case of each of clauses (a) and (b), the right to receive contingent cash payments as hereinafter described;

WHEREAS, pursuant to Section 3.8(b) of the Merger Agreement, holders of Out-of-the-Money Options shall be entitled to receive contingent cash payments from Parent or the Surviving Corporation, subject to the terms of the Merger Agreement, upon delivery of a Milestone Notice (as hereinafter defined) to the Rights Agent; and

WHEREAS, pursuant to the terms of that certain Indenture, dated as of May 2, 2017 (the “**Original Indenture**”), by and between the Company and Wells Fargo Bank, National Association, as trustee (the “**Trustee**”), as amended by that certain First Supplemental Indenture, dated as of November 19, 2021 (the “**Supplemental Indenture**” and the Original Indenture as amended by the Supplemental Indenture, the “**Indenture**”), between the Company and the Trustee, at and after the effective time of the Merger, the right to convert each \$1,000 principal amount of Notes (as defined in the Indenture) shall be changed into a right to convert such principal amount of Notes into the number of “units of Reference Property” (as defined in the Supplemental Indenture) that a holder of a number of Shares equal to the Conversion Rate (as defined in the Indenture) immediately prior to the Merger would have owned or been entitled to receive upon the Merger with a unit of Reference Property equal to an amount in cash equal to \$8.50 per share, plus one CVR (as defined below).

NOW, THEREFORE, in consideration of the foregoing and the consummation of the transactions referred to above, Parent and the Rights Agent agree, for the equal and proportionate benefit of all Holders (as hereinafter defined), as follows:

1. **DEFINITIONS**

1.1. **Definitions.** Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Merger Agreement. As used in this Agreement, the following terms shall have the following meanings:

“**Acting Holders**” means, at the time of determination, Holders of at least 40% of the outstanding CVRs as set forth on the CVR Register.

“**Agreement**” is defined in the Preamble to this Agreement.

“**Assignee**” has the meaning set forth in Section 7.3.

“**BLA**” shall mean a Biologics License Application as described in Title 21 of the U.S. Code of Federal Regulations, Part 601, et seq., that is submitted to the FDA in order to gain the FDA’s approval to commercialize a biologic product in the United States for the indications set forth in such BLA.

“**Calendar Quarter**” means each period of three consecutive months commencing on January 1, April 1, July 1 and October 1 of each calendar year.

“**Calendar Year**” means the period of four consecutive Calendar Quarters beginning on January 1 and ending on December 31 of each calendar year.

“**Change of Control**” means (i) a sale or other disposition of all or substantially all of the assets of either Parent or the Company on a consolidated basis (other than to any direct or indirect wholly owned subsidiary of Parent), (ii) a merger or consolidation involving either Parent or the Company in which Parent or the Company, respectively, is not the surviving entity, and (iii) any other transaction involving either Parent or the Company in which Parent or the Company, respectively, is the surviving entity but in which the stockholders of Parent or the Company, respectively, immediately prior to such transaction own less than fifty percent (50%) of the surviving entity’s voting power immediately after the transaction, other than any *bona fide* equity financing transaction solely related to the continued financing of the operations of Parent and its subsidiaries.

“**Commercially Reasonable Efforts**” means, with respect to a task related to a product, the efforts required to carry out such task in a diligent and sustained manner without undue interruption, pause or delay, which level is at least commensurate with the level of efforts that a pharmaceutical company of comparable size and resources as those of Parent and its controlled Affiliates would devote to a product of similar potential (including commercial potential), taking into account its proprietary position and profitability (including pricing and reimbursement status, but excluding the obligation to pay the Milestone Payments under this Agreement), anticipated or actual market conditions and economic return potential, the regulatory environment, and other relevant technical, commercial, legal, scientific and/or medical factors.

“**Company**” has the meaning set forth in the Recitals of this Agreement.

“**Covered Equity Awards**” has the meaning set forth in the Recitals.

“**Covered Milestone Payments**” has the meaning set forth in Section 2.4(f).

“**CVRs**” means the rights of Holders to receive contingent cash payments pursuant to the Merger Agreement, the Indenture and this Agreement where one (1) CVR is issuable for each Share, each Share subject to a Covered Equity Award and each unit of Reference Property.

“**CVR Register**” has the meaning set forth in Section 2.3(b).

“**DTC**” means The Depository Trust Company or any successor entity thereto.

“**Event of Default**” has the meaning set forth in Section 6.1.

“**FDA**” shall mean the U.S. Food and Drug Administration, or any successor agency thereto.

“**Funds**” has the meaning set forth in Section 2.4(h).

“**FX201**” means a product that includes the viral vector currently referred to by the Company as “FX201” and described in (a) IND #19,214 titled “*Humantakinogene hadenovec, gene therapy for intra-articular administration for the treatment of osteoarthritis of the knee*” submitted to the FDA on September 11, 2019 or any modification thereof, and (b) US Patent 10,301,647 and Provisional Patent Application 63236580.

“**FX301**” means the product currently referred to by the Company as “FX301” and described in (a) IND #146,177 titled “*Post-surgical Regional Analgesia by Peripheral Nerve Block Technique*” submitted to the FDA on January 26, 2021 or any modification thereof, and (b) PCT Application Number PCT/US2020/049826.

“**Holder**” means a Person in whose name a CVR is registered in the CVR Register at the applicable time.

“**Indenture**” has the meaning set forth in the Recitals.

“**Independent Accountant**” has the meaning set forth in Section 4.5(a).

“**Merger**” has the meaning set forth in the Recitals of this Agreement.

“**Merger Agreement**” has the meaning set forth in the Recitals of this Agreement.

“**Milestone**” means each of Milestone 1, Milestone 2, Milestone 3, Milestone 4 and Milestone 5.

“**Milestone 1**” means, the first time that the Net Sales of the Company in any Calendar Year ending on or prior to the Milestone Deadline Date is equal to or exceeds \$250,000,000.

“**Milestone 1 Amount**” means, with respect to the achievement of Milestone 1, an amount per CVR equal to \$1.00.

“**Milestone 2**” means, the first time that the Net Sales of the Company in any Calendar Year ending on or prior to the Milestone Deadline Date is equal to or exceeds \$375,000,000.

“**Milestone 2 Amount**” means, with respect to the achievement of Milestone 2, an amount per CVR equal to \$2.00.

“**Milestone 3**” means, the first time that the Net Sales of the Company in any Calendar Year ending on or prior to the Milestone Deadline Date is equal to or exceeds \$500,000,000.

“**Milestone 3 Amount**” means, with respect to the achievement of Milestone 3, an amount per CVR equal to \$3.00.

“**Milestone 4**” means FDA approval of a BLA for FX201.

“**Milestone 4 Amount**” means, with respect to the achievement of Milestone 4, an amount per CVR equal to \$1.00.

“**Milestone 5**” means FDA approval of a NDA for FX301.

“**Milestone 5 Amount**” means, with respect to the achievement of Milestone 5, an amount per CVR equal to \$1.00.

“**Milestone Deadline Date**” means December 31, 2030.

“**Milestone Non-Achievement Certificate**” has the meaning set forth in Section 2.4(g).

“**Milestone Notice**” has the meaning set forth in Section 2.4(a).

“**Milestone Payment**” means each of Milestone 1 Amount, Milestone 2 Amount, Milestone 3 Amount, Milestone 4 Amount and Milestone 5 Amount.

“**Milestone Payment Date**” has the meaning set forth in Section 2.4(a).

“**NDA**” shall mean a “new drug application” as such term is used under the United States Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301, et. seq., as it may be amended from time to time, including all subsequent submissions, supplements and amendments thereto.

“**Net Sales**” means the gross amount invoiced by Parent, any of its Affiliates (including the Surviving Corporation) or any of its Sublicensees (each, a “**Selling Party**”) to a third party for sales or distribution of the Product, less the following deductions actually incurred, allowed, paid and accrued, in each case, as calculated in accordance with GAAP consistently applied:

- (i) customary trade, cash and quantity discounts given to customers;
- (ii) rebates, credits and allowances given by reason of rejections returns, damaged or defective product or recalls, or any other items returned or returnable in accordance with policy;
- (iii) government-mandated rebates, credits and adjustments paid or deducted;
- (iv) customary price adjustments, allowances, credits, chargeback payments, discounts, rebates, free of charge concessions, fees and reimbursements granted or made to managed care organizations, wholesaler fees, group purchasing organizations or other buying groups, pharmacy benefit management companies, health maintenance organizations and any other providers of health insurance coverage, health care organizations or other health care institutions (including hospitals), health care administrators, patient assistance or other similar programs, or to federal state/provincial, local and other governments, including their agencies;
- (v) reasonable and customary freight, shipping, insurance and other transportation expenses to the extent included in the price and separately itemized on the invoice;
- (vi) amounts written off as uncollectable debt; provided that the amount of any uncollectable debt deducted pursuant to this exception and actually collected in a subsequent Calendar Quarter shall be included in Net Sales for such subsequent Calendar Quarter; and
- (vii) sales, value-added, excise taxes, tariffs and duties, and other taxes and government charges directly related to the sale, delivery or use of the Product (but not including taxes assessed against the net income derived from such sale).

No particular amount identified above shall be deducted more than once in calculating Net Sales (i.e., no “double counting” of deductions). Furthermore, Net Sales shall not include use of, disposition of, or sale at or below the direct manufacturing cost of, the Product by Parent, its Affiliates (including the Surviving Corporation) and/or its Sublicensees of the Product for non-clinical or clinical studies, samples, grants, patient-assistance programs or charitable donations.

Resales or sales of the Product made in good faith between or among any Selling Party shall not be included in the calculation of Net Sales but the subsequent resale or sale to a non-Affiliate third party (other than a Selling Party) shall be included in the computation of Net Sales.

In the event of any sale of Product for any consideration other than exclusively monetary consideration on bona fide arm’s-length terms, then for purposes of calculating Net Sales under this Agreement, such Product shall be deemed to have been sold exclusively for cash at the weighted (by sales volume) average sale price of such Product in bona fide arm’s-length transactions (when sold alone, and not with other products) in the applicable region in which such sale or other disposition occurred during the applicable accounting period in accordance with GAAP consistently applied. In the event of any sale or disposition of Product combined with other products, the Net Sales apportioned to the Product shall be calculated in accordance with GAAP consistently applied.

All Net Sales shall be computed in Dollars, and where any Net Sales are calculated in a currency other than Dollars, they shall be translated into Dollars in accordance with GAAP.

“**Noteholder**” means a “Holder” as defined in the Indenture.

“**Offer**” has the meaning set forth in the Recitals of this Agreement.

“**Officer’s Certificate**” means a certificate signed by the chief executive officer, president, chief financial officer, any vice president, the controller, the treasurer or the secretary, in each case of Parent, in his or her capacity as such an officer, and delivered to the Rights Agent.

“**Permitted Transfer**” means a transfer of CVRs (a) upon death of a Holder by will or intestacy; (b) pursuant to a court order; (c) by operation of law (including by consolidation or merger) or without consideration in connection with the dissolution, liquidation or termination of any corporation, limited liability company, partnership or other entity; (d) in the case of CVRs held in book-entry or other similar nominee form, from a nominee to a beneficial owner and, if applicable, through an intermediary, as allowable by DTC; (e) if the Holder is a partnership or limited liability company, a distribution by the transferring partnership or limited liability company to its partners or members, as applicable; (f) by instrument to an inter vivos or testamentary trust in which the CVRs are to be passed to beneficiaries upon the death of the trustee; or (g) as provided in Section 2.6; *provided* that the term “Permitted Transfer” in respect of a CVR that was received with respect to Covered Equity Awards pursuant to the Merger Agreement shall be limited to the event described in (a), unless Parent permits otherwise.

“**Product**” means ZILRETTA® (triamcinolone acetone extended-release injectable suspension).

“**Progress Report**” has the meaning set forth in Section 4.7.

“**Progress Report Date**” has the meaning set forth in Section 4.7.

“**Purchaser**” has the meaning set forth in the Recitals of this Agreement.

“**Rights Agent**” means the Rights Agent named in the first paragraph of this Agreement, until a successor Rights Agent becomes such pursuant to the applicable provisions of this Agreement, and thereafter “Rights Agent” shall mean such successor Rights Agent.

“**Shares**” is defined in the Preamble to this Agreement.

“**Sublicensee**” shall mean an authorized or permitted licensee or sublicensee of rights to the Product.

1.2. Rules of Construction. For purposes of this Agreement, the parties hereto agree that: (a) whenever the context requires, the singular number shall include the plural, and vice versa; (b) the word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and does not simply mean “if”; (c) the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation;” (d) the meaning assigned to each capitalized term defined and used in this Agreement is equally applicable to both the singular and the plural forms of such term, and words denoting any gender include all genders; (e) where a word or phrase is defined in this Agreement, each of its other grammatical forms has a corresponding meaning unless the context otherwise requires; (f) a reference to any specific Law or to any provision of any Law includes any amendment to, and any modification, re-enactment or successor thereof, any legislative provision substituted therefor and all rules, regulations and statutory instruments issued or promulgated thereunder or pursuant thereto, except that, for purposes of any representations and warranties in this Agreement that are made as a specific date, references to any specific Law will be deemed to refer to such legislation or provision (and all rules, regulations and statutory instruments issued or promulgated thereunder or pursuant thereto) as of such date; (g) references to any agreement or Contract are to that agreement or Contract as amended, modified or supplemented as of the date of this Agreement or, thereafter from time to time; (h) the word “or” shall not be exclusive (i.e., “or” shall be deemed to mean “and/or”); (i) all references to “dollars” or “\$” are to U.S. Dollars, unless expressly stated otherwise; and (j) the measure of a period of one (1) month or year for purposes of this Agreement will be the date of the following month or year corresponding to the starting date; provided, however, if no corresponding date exists, then the end date of such period being measured will be the next actual date of the following month or year (for example, one month following August 18 is September 18 and one month following August 31 is October 1). The headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

2. CONTINGENT VALUE RIGHTS

2.1. CVRs. The CVRs represent the rights of Holders to receive contingent cash payments pursuant to the Merger Agreement and this Agreement. The initial Holders shall be determined pursuant to the terms of the Merger Agreement and this Agreement, and a list of the initial Holders shall be furnished to the Rights Agent by or on behalf of Parent in accordance with Section 4.1 hereof.

2.2. Non-transferable. The CVRs may not be sold, assigned, transferred, pledged, encumbered or in any other manner transferred or disposed of, in whole or in part, other than through a Permitted Transfer. Any such sale, assignment, transfer, pledge, encumbrance or disposal that is not a Permitted Transfer shall be null and void.

2.3. No Certificate; Registration; Registration of Transfer; Change of Address.

(a) The CVRs shall not be evidenced by a certificate or other instrument.

(b) The Rights Agent shall keep a register (the “**CVR Register**”) for the purpose of registering CVRs and transfers of CVRs as herein provided. The CVR Register will initially show one position for Cede & Co. representing all of the CVRs that are issued to the holders of Shares held by DTC on behalf of the street holders of the Shares. The Rights Agent will have no responsibility whatsoever directly to the street name holders or DTC participants with respect to transfers of CVRs. With respect to any payments to be made under Section 2.4 below, the Rights Agent will accomplish the payment to any former street name holders of the Shares by sending a lump sum payment to DTC. The Rights Agent will have no responsibilities whatsoever with regard to the distribution of payments by DTC to such street name holders. In the case of CVRs to be received by the holders of Covered Equity Awards pursuant to the Merger Agreement, such CVRs shall initially be registered in the name and address of the holder of such Covered Equity Awards as set forth in the records of the Company at the Effective Time and in a denomination equal to the number of shares of Company Common Stock subject to such Covered Equity Awards cancelled in connection with the Merger. In the case of CVRs to be received by a Noteholder upon conversion of a Note pursuant to the Indenture, (i) such Noteholder shall become a Holder under this Agreement with respect to such CVRs as of the Conversion Date (as defined in the Indenture) for such Note, (ii) such CVRs shall initially be registered in the name and address of the beneficial Noteholder as of the Conversion Date as directed by Parent and (iii) such CVRs shall be in a denomination equal to the number of units of Reference Property for such Note pursuant to the terms of the Indenture.

(c) Subject to the restrictions on transferability set forth in Section 2.2, every request made to transfer a CVR must be in writing and accompanied by a written instrument of transfer and other documentation reasonably requested by the Rights Agent in form reasonably satisfactory to the Rights Agent pursuant to its guidelines, duly executed by the Holder thereof, the Holder's attorney duly authorized in writing, the Holder's personal representative or the Holder's survivor, as applicable, and setting forth in reasonable detail the circumstances relating to the transfer. Upon receipt of such written notice, the Rights Agent shall, subject to its reasonable determination that the transfer instrument is in proper form, notify Parent that it has received such written notice. Upon receipt of such notice from the Rights Agent, Parent shall in good faith reasonably determine whether the transfer otherwise complies with the other terms and conditions of this Agreement (including the provisions of Section 2.2), and if the Parent so reasonably determines that it does so comply, Parent shall instruct the Rights Agent in writing to register the transfer of the CVRs in the CVR Register and notify the Parent of the same. No service charge shall be made for any registration of transfer of a CVR, but Parent and the Rights Agent may require payment of a sum sufficient to cover any stamp or other Tax or charge that is imposed in connection with any such registration of transfer. The Rights Agent shall have no duty or obligation to take any action under any section of this Agreement that requires the payment of applicable Taxes or charges unless and until the Rights Agent is satisfied that all such Taxes or charges have been paid. All duly transferred CVRs registered in the CVR Register shall be the valid obligations of Parent and shall entitle the transferee to the same benefits and rights under this Agreement as those held immediately prior to the transfer by the transferor. No transfer of a CVR shall be valid unless and until registered in the CVR Register.

(d) A Holder may make a written request to the Rights Agent to change such Holder's address of record in the CVR Register. The written request must be duly executed by the Holder. Upon receipt of such written request, the Rights Agent is hereby authorized to, and shall promptly, record the change of address in the CVR Register.

2.4. Payment Procedures.

(a) If any Milestone is achieved, then, in each case, on a date (a "**Milestone Payment Date**") that is within sixty (60) days following the last day of such Calendar Quarter in which such Milestone is achieved, Parent will deliver to the Rights Agent (A) a notice (a "**Milestone Notice**") indicating the achievement of such Milestone and that the Holders are entitled to receive the applicable Milestone Payment, and (B) cash, by wire transfer of immediately available funds to an account specified by the Rights Agent, equal to the aggregate amount necessary to pay the applicable Milestone Payment to all Holders pursuant to Section 4.2, along with any letter of instruction reasonably required by the Rights Agent.

(b) The Rights Agent shall promptly, and in any event within ten (10) Business Days of receipt of a Milestone Notice and cash, by wire transfer of immediately available funds, equal to the aggregate amount necessary to pay the Milestone Payment to all Holders pursuant to Section 4.2 as well as any letter of instruction reasonably required by the Rights Agent, send each Holder at its registered address a copy of such Milestone Notice. If a Milestone Payment is payable to the Holders, then at the time the Rights Agent sends a copy of the Milestone Notice to the Holders, the Rights Agent shall also pay the Milestone Payment to each of the Holders in accordance with the corresponding letter of instruction (i) by electronic payment or check mailed to the address of such Holder reflected in the CVR Register as of 5:00 p.m. New York City time on the date of the Milestone Notice or (ii) with respect to any such Holder that is due an amount in excess of \$100,000 in the aggregate who has provided the Rights Agent wiring instructions in writing as of the close of business on the date of the Milestone Notice, by wire transfer of immediately available funds to the account specified on such instructions.

(c) Parent shall be entitled to deduct or withhold, or cause the Rights Agent or the Surviving Corporation to deduct or withhold, from any payments made pursuant to this Agreement such amounts as are required to be deducted or withheld therefrom under the Code, the U.S. Treasury Regulations thereunder, or any other applicable Tax Law, as may be reasonably determined by Parent and communicated to the Rights Agent in writing. Prior to making any such Tax withholdings or causing any such Tax withholdings to be made with respect to any Holder (other than payroll withholding and reporting on the Covered Milestone Payments (as hereinafter defined)), Parent shall instruct the Rights Agent to use commercially reasonable efforts to solicit from such Holder an IRS Form W-9 or other applicable Tax form within a reasonable amount of time in order to provide the opportunity for the Holder to provide such Tax forms to avoid or reduce such withholding amounts. To the extent any such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement and the Merger Agreement as having been paid to the Holder to whom such amounts would otherwise have been paid, and, to the extent required by applicable Law, Parent shall deliver (or shall cause the Rights Agent to deliver) to the Holder to whom such amounts would otherwise have been paid an Internal Revenue Service Form 1099, an Internal Revenue Service Form W-2 or other reasonably acceptable evidence of such withholding. Prior to the Effective Time, Parent and the Rights Agent will cooperate to establish procedures for complying with applicable tax reporting, withholding and remittance obligations arising from any payments of the Covered Milestone Payments.

(d) If any funds delivered to the Rights Agent for payment to Holders as Milestone Payments remain undistributed to the Holders on the one (1) year anniversary of the applicable Milestone Payment Date, Parent shall be entitled to require the Rights Agent to deliver to Parent or its designee any funds which had been made available to the Rights Agent in connection with such Milestone Payment and not disbursed to the Holders (including, all interest and other income received by the Rights Agent in respect of all funds made available to it), and, thereafter, such Holders shall be entitled to look to Parent (subject to abandoned property, escheat and other similar Laws) only as general creditors thereof with respect to the Milestone Payments that may be payable.

(e) Neither Parent, the Rights Agent nor any of their Affiliates shall be liable to any Holder for any Milestone Payments delivered to a public official pursuant to any abandoned property, escheat or other similar Laws. Any amounts remaining unclaimed by such Holders at such time at which such amounts would otherwise escheat to or become property of any Governmental Body shall become, to the extent permitted by applicable Laws, the property of Parent or its designee, free and clear of all claims or interest of any Person previously entitled thereto. In addition to and not in limitation of any other indemnity obligation herein, Parent agrees to indemnify and hold harmless the Rights Agent with respect to any liability, penalty, cost or expense the Rights Agent may incur or be subject to in connection with transferring such property to Parent. The indemnification provided by this Section 2.4(e) shall survive the resignation, replacement or removal of the Rights Agent and the termination of this Agreement.

(f) Except to the extent any portion of any Milestone Payment is required to be treated as imputed interest pursuant to applicable Law, the parties hereto intend to treat (i) the CVRs received with respect to the Shares pursuant to the Merger Agreement for all U.S. federal and applicable state and local income tax purposes as additional consideration paid for the Shares pursuant to the Merger Agreement, (ii) any Milestone Payments received in respect of such CVRs as amounts realized on the disposition of the applicable CVRs (or Shares), and (iii) Milestone Payments paid in respect of each CVR that was received with respect to Covered Equity Awards pursuant to the Merger Agreement (the “**Covered Milestone Payments**”), and not the receipt of such CVR, for all U.S. federal and applicable state and local income tax purposes, as compensation for services in the year in which the Milestone Payment is made. Notwithstanding the foregoing, to the extent required by applicable tax Law, Parent shall, and shall cause the Surviving Corporation to, report imputed interest on the CVRs and Milestone Payments pursuant to Section 483 of the Code.

(g) If a Milestone is not achieved during a Calendar Year, then on or before the date that is sixty (60) days after the expiration of each such Calendar Year period, Parent shall deliver to the Rights Agent a certificate certifying that such Milestone has not occurred (each, a “**Milestone Non-Achievement Certificate**”). The Rights Agent shall promptly, and in any event within ten (10) Business Days of receipt of a Milestone Non-Achievement Certificate, send each Holder at its registered address a copy of such Milestone Non-Achievement Certificate, including detail regarding the ability of a Holder or Holders to dispute or contest such determination of non-achievement of a Milestone pursuant to this Agreement.

(h) All funds received by the Rights Agent under this Agreement that are to be distributed or applied by the Rights Agent in the performance of services hereunder (the “**Funds**”) shall be held by the Rights Agent as agent for Parent and deposited in one or more bank accounts to be maintained by the Rights Agent in its name as agent for Parent. Until paid pursuant to the terms of this Agreement, the Rights Agent will hold the Funds through such accounts in: deposit accounts of commercial banks with Tier 1 capital exceeding \$1 billion or with an average rating above investment grade by S&P (LT Local Issuer Credit Rating), Moody’s (Long Term Rating) and Fitch Ratings, Inc. (LT Issuer Default Rating) (each as reported by Bloomberg Finance L.P.). The Rights Agent shall have no responsibility or liability for any diminution of the Funds that may result from any deposit made by the Rights Agent in accordance with this paragraph, including any losses resulting from a default by any bank, financial institution or other third party. The Rights Agent may from time to time receive interest, dividends or other earnings in connection with such deposits. The Rights Agent shall not be obligated to pay such interest, dividends or earnings to the Parent, any Holder or any other Person, unless there is a diminution of the Funds due to a deposit or investment made by the Rights Agent, in which case, the Rights Agent agrees that such interest, dividends or earnings shall accrue to the benefit of Parent to the extent of such diminution of the Funds.

2.5. No Voting, Dividends or Interest; No Equity or Ownership Interest.

(a) The CVRs shall not have any voting or dividend rights, and interest shall not accrue on any amounts payable on the CVRs to any Holder.

(b) The CVRs shall not represent any equity or ownership interest in Parent or in any constituent company to the Merger or any of their respective Subsidiaries or Affiliates.

2.6. Ability to Abandon CVR. A Holder may at any time, at such Holder's option, abandon all of such Holder's remaining rights in a CVR by transferring such CVR to Parent or any of its Affiliates without consideration therefor. Nothing in this Agreement shall prohibit Parent or any of its Affiliates from offering to acquire or acquiring any CVRs for consideration from the Holders, in private transactions or otherwise, in its sole discretion. Any CVRs acquired by Parent or any of its Affiliates shall be automatically deemed extinguished and no longer outstanding for purposes of the definition of Acting Holders and Article 5 and Article 6.

3. **THE RIGHTS AGENT**

3.1. Certain Duties and Responsibilities. Parent hereby appoints the Rights Agent to act as rights agent for Parent in accordance with the express terms and conditions set forth in this Agreement (and no implied terms and conditions), and the Rights Agent hereby accepts such appointment. The Rights Agent shall not have any liability for any actions taken, suffered or omitted to be taken in connection with this Agreement, except to the extent of its gross negligence, bad faith or willful or intentional misconduct (each as determined by a final judgment of a court of competent jurisdiction).

3.2. Certain Rights of the Rights Agent. The Rights Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Rights Agent. In addition:

(a) the Rights Agent may rely and shall be protected and held harmless by Parent in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) whenever the Rights Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Rights Agent may rely upon an Officer's Certificate, which certificate shall be full authorization and protection to the Rights Agent, and the Rights Agent shall, in the absence of gross negligence, bad faith or willful or intentional misconduct (each as determined by a final judgment of a court of competent jurisdiction) on its part, incur no liability and be held harmless by Parent for or in respect of any action taken, suffered or omitted to be taken by it under the provisions of this Agreement in reliance upon such certificate;

(c) the Rights Agent may engage and consult with counsel of its selection and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection and shall be held harmless by Parent in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(d) the permissive rights of the Rights Agent to do things enumerated in this Agreement shall not be construed as a duty;

(e) the Rights Agent shall not be required to give any note or surety in respect of the execution of such powers or otherwise in respect of the premises;

(f) the Rights Agent shall not be liable for or by reason of, and shall be held harmless by Parent with respect to any of the statements of fact or recitals contained in this Agreement or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by Parent only;

(g) the Rights Agent shall have no liability and shall be held harmless by Parent in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution and delivery hereof by the Rights Agent and the enforceability of this Agreement against the Rights Agent assuming the due execution and delivery hereof by Parent); nor shall it be responsible for any breach by Parent of any covenant or condition contained in this Agreement;

(h) Parent agrees to indemnify the Rights Agent for, and hold the Rights Agent harmless against, any loss, liability, damage, judgement, fine, penalty, claim, demands, suits or expense arising out of or in connection with Rights Agent's duties under this Agreement, including the reasonable out-of-pocket costs and expenses of counsel in defending Rights Agent against any loss, liability, damage, judgement, fine, penalty, claim, demands, suits or expense, unless such loss has been determined by a final non-appealable judgment of court of competent jurisdiction to be a result of Rights Agent's gross negligence, bad faith or willful or intentional misconduct;

(i) Anything to the contrary notwithstanding, in the absence of fraud, bad faith or willful or intentional misconduct on the part of the Rights Agent, (i) the Rights Agent shall not be liable for any special, punitive, indirect, consequential or incidental loss or damage of any kind whatsoever (including but not limited to lost profits) arising out of any act or failure to act hereunder, even if the Rights Agent has been advised of the likelihood of such loss or damage or has foreseen the possibility or likelihood of such damages and (ii) the aggregate liability of the Rights Agent arising in connection with this Agreement, whether in contract, or in tort, or otherwise, is limited to, and shall not exceed the amounts paid or payable hereunder by Parent to the Rights Agent as fees and charges;

(j) Parent agrees (i) to pay the fees and expenses of the Rights Agent in connection with this Agreement agreed upon in writing by the Rights Agent and Parent prior to the date hereof, and (ii) to reimburse the Rights Agent for all Taxes and governmental charges, reasonable out-of-pocket expenses and other charges of any kind and nature incurred by the Rights Agent in the execution of this Agreement (other than Taxes imposed on or measured by the Rights Agent's net income and franchise or similar Taxes imposed on it (in lieu of net income Taxes)). The Rights Agent shall also be entitled to reimbursement from Parent for all reasonable and necessary out-of-pocket expenses paid or incurred by it in connection with the administration by the Rights Agent of its duties hereunder;

(k) No provision of this Agreement shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of its rights if there shall be reasonable grounds for believing that repayment of such funds or adequate indemnification against such risk or liability is not reasonably assured to it; and

(l) The provisions of this Section 3.2 shall survive the termination of this Agreement, the resignation, replacement or removal of the Rights Agent, and the payment, termination and the expiration of the CVRs.

3.3. Resignation and Removal; Appointment of Successor.

(a) The Rights Agent may resign at any time by giving written notice thereof to Parent specifying a date when such resignation shall take effect, which notice shall be sent at least sixty (60) days prior to the date so specified but in no event shall such resignation become effective until a successor Rights Agent has been appointed and accepted such appointment in accordance with Section 3.4. Parent has the right to remove the Rights Agent at any time by specifying a date when such removal shall take effect but no such removal shall become effective until a successor Rights Agent has been appointed and accepted such appointment in accordance with Section 3.4. Notice of such removal shall be given by Parent to the Rights Agent, which notice shall be sent at least sixty (60) days prior to the date so specified.

(b) If the Rights Agent provides notice of its intent to resign, is removed or becomes incapable of acting, Parent shall, as soon as is reasonably practicable, appoint a qualified successor Rights Agent who shall be a stock transfer agent of national reputation or the corporate trust department of a commercial bank. Notwithstanding the foregoing, if Parent shall fail to make such appointment within a period of sixty (60) days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent, then the incumbent Rights Agent may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. The successor Rights Agent so appointed shall, forthwith upon its acceptance of such appointment in accordance with Section 3.4, become the successor Rights Agent.

(c) Parent shall give notice of each resignation and each removal of a Rights Agent and each appointment of a successor Rights Agent through the facilities of DTC in accordance with DTC's procedures and/or by mailing written notice of such event by first-class mail to the Holders as their names and addresses appear in the CVR Register. Each notice shall include the name and address of the successor Rights Agent. If Parent fails to send such notice within ten (10) Business Days after acceptance of appointment by a successor Rights Agent, the successor Rights Agent shall cause the notice to be transmitted at the expense of Parent. Failure to give any notice provided for in this Section 3.3, however, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

(d) Notwithstanding anything else in this Section 3.3, unless consented to in writing by the Acting Holders, Parent shall not appoint as a successor Rights Agent any Person that is not a stock transfer agent of national reputation or the corporate trust department of an international commercial bank.

3.4. Acceptance of Appointment by Successor. Every successor Rights Agent appointed hereunder shall execute, acknowledge and deliver to Parent and to the retiring Rights Agent an instrument accepting such appointment and a counterpart of this Agreement, and thereupon such successor Rights Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Rights Agent. On request of Parent or the successor Rights Agent, the retiring Rights Agent shall execute and deliver an instrument transferring to the successor Rights Agent all the rights, powers, trusts and duties of the retiring Rights Agent.

4. COVENANTS

4.1. List of Holders. Parent shall furnish or cause to be furnished to the Rights Agent, in a form reasonably satisfactory to the Rights Agent, and received from the Paying Agent in the Offer, the Paying Agent in the Merger, and in the case of Holders who held Covered Equity Awards and Holders who held Notes, the Company, the names and addresses of the Holders promptly upon the Offer Acceptance Time or the Effective Time, as applicable. Until such list of Holders are furnished to the Rights Agent, the Rights Agent shall have no duties, responsibilities or obligations with respect to such Holders.

4.2. Payment of Milestone Payments. If a Milestone has been achieved in accordance with this Agreement, Parent shall, promptly (but in any event no later than five (5) Business Days) following the delivery of the Milestone Notice, deposit with the Rights Agent, for payment to the Holders in accordance with Section 2.4, the aggregate amount necessary to pay the applicable Milestone Payment to all Holders.

4.3. Books and Records. Parent shall, and shall cause its subsidiaries to, keep true, complete and accurate records in sufficient detail to enable the Holders and their consultants or professional advisors to determine the amounts payable hereunder.

4.4. Further Assurances. Parent agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered, all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement.

4.5. Audit Rights.

(a) Until one (1) year after the Milestone Deadline Date, upon reasonable advance written notice from the Acting Holders, Parent shall permit an independent certified public accounting firm of nationally recognized standing selected by such Acting Holders and reasonably acceptable to Parent (the “**Independent Accountant**”) to have access at reasonable times during normal business hours to the books and records of Parent and its controlled Affiliates as may be reasonably necessary to evaluate and verify Parent’s calculation of Net Sales hereunder; provided that (x) such Acting Holders (and the Independent Accountant) enter into customary confidentiality agreements reasonably satisfactory to Parent with respect to the confidential information of Parent or its Affiliates to be furnished pursuant to this Section 4.5 and (y) such access does not unreasonably interfere with the conduct of the business of Parent or any of its Affiliates. The fees charged by such accounting firm shall be borne by the Acting Holders; *provided* that if the amount by which the Net Sales determined by the Independent Accountant are greater than the Net Sales determined by Parent results in Parent’s obligation to make a Milestone Payment, the fees charged by such accounting firm shall be borne by Parent. The Independent Accountant shall provide Parent with a copy of all disclosures made to the Acting Holders. The decision of such Independent Accountant shall be final, conclusive and binding on Parent and the Holders, shall be nonappealable and shall not be subject to further review, absent manifest error. Parent shall not enter into any transaction constituting a Change of Control unless such agreement contains provisions that would permit such Independent Accountant with such access to the records of the other party in such Change of Control if and to the extent as are reasonably necessary to ensure compliance with this Section 4.5. The audit rights set forth in this Section 4.5(a) may not be exercised by the Acting Holders more than once in any given twelve (12) month period. Notwithstanding the foregoing, no audit pursuant to this Section 4.5(a) shall be permitted for any Calendar Year ending on a date more than three years prior to the date of written notice from the Acting Holders of commencement of an audit pursuant to this Section 4.5(a).

(b) If, in accordance with the procedures set forth in Section 4.5(a), the Independent Accountant concludes that any Milestone Payment should have been paid but was not paid when due, Parent shall promptly, and in any event within thirty (30) days of the date the Independent Accountant delivers to Parent the Independent Accountant's written report and in no event later than December 31 of the Calendar Year that includes such delivery date, pay each Holder such Milestone Payment (to the extent not paid on a subsequent date), plus interest at the thirty (30) day U.S. dollar "prime rate" effective for the date such payment was due, as reported by Bloomberg, from when such Milestone Payment should have been paid, as applicable, to the date of actual payment, pursuant to Section 2.4(a).

4.6. Commercially Reasonable Efforts. Commencing upon the Closing and continuing until the earlier of the Milestone Deadline Date or the achievement of all Milestones, Parent shall, and shall cause its controlled Affiliates and direct any Sublicensees to, use Commercially Reasonable Efforts to achieve the Milestones. Without limiting the foregoing, neither Parent nor any of its controlled Affiliates shall act in bad faith for the purpose of avoiding achievement of the Milestones or the payment of any Milestone Payment.

4.7. Progress Report. Within sixty (60) days after the end of the fourth (4th) Calendar Quarter of each Calendar Year prior to the Milestone Deadline Date or the achievement of all Milestones (each a "**Progress Report Date**"), Parent shall provide to the Rights Agent a written report setting forth in reasonable detail the activities Parent and its Affiliates have undertaken in the preceding twelve (12)-month period to market and commercialize the Product and develop each of FX201 and FX301 (the "**Progress Report**"). Parent's obligation to deliver a Progress Report on any Progress Report Date pursuant to this Section 4.7 shall be deemed satisfied to the extent one or more of Parent's periodic and current reports and other documents filed with the Securities and Exchange Commission then available on such Progress Report Date set forth in reasonable detail the activities Parent and its Affiliates have undertaken in such preceding twelve (12)-month period to market and commercialize the Product and develop each of FX201 and FX301.

5. **AMENDMENTS**

5.1. Amendments without Consent of Holders.

(a) Without the consent of any Holders, Parent and the Rights Agent, at any time and from time to time, may enter into one or more amendments hereto, for any of the following purposes:

(i) subject to Section 3.3(d), to evidence the succession of another Person as a successor Rights Agent and the assumption by any such successor of the covenants and obligations of the Rights Agent herein;

(ii) to add to the covenants of Parent such further covenants, restrictions, conditions or provisions as Parent shall consider to be for the protection of the Holders; provided that, in each case, such provisions do not adversely affect the interests of the Holders;

(iii) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein or in the Merger Agreement, or to make any other provisions with respect to matters or questions arising under this Agreement; provided that, in each case, such provisions do not adversely affect the interests of the Holders;

(iv) as may be necessary or appropriate to ensure that the CVRs are not subject to registration under the Securities Act, the Exchange Act or any applicable state securities or "blue sky" laws;

(v) to evidence the assignment of this Agreement by Parent as provided in Section 7.3; or

(vi) any other amendments hereto for the purpose of adding, eliminating or changing any provisions of this Agreement, unless such addition, elimination or change is adverse to the interests of the Holders.

(b) Without the consent of any Holders, Parent and the Rights Agent, at any time and from time to time, may enter into one or more amendments hereto to reduce the number of CVRs, in the event any Holder agrees to renounce such Holder's rights under this Agreement in accordance with Section 7.4 or to transfer CVRs to Parent pursuant to Section 2.6.

(c) Promptly after the execution by Parent and the Rights Agent of any amendment pursuant to the provisions of this Section 5.1, Parent shall mail (or cause the Rights Agent to mail) a notice thereof through the facilities of DTC in accordance with DTC's procedures and/or by first class mail to the Holders at their addresses as they appear on the CVR Register, setting forth such amendment.

5.2. Amendments with Consent of Holders.

(a) Subject to Section 5.1 (which amendments pursuant to Section 5.1 may be made without the consent of any Holder or the Rights Agent), with the consent of the Holders of not less than a majority of the outstanding CVRs as set forth in the CVR Register, whether evidenced in writing or taken at a meeting of the Holders, Parent and the Rights Agent may enter into one or more amendments hereto for the purpose of adding, eliminating or changing any provisions of this Agreement, even if such addition, elimination or change is materially adverse to the interest of the Holders.

(b) Promptly after the execution by Parent and the Rights Agent of any amendment pursuant to the provisions of this Section 5.2, Parent shall mail (or cause the Rights Agent to mail) a notice thereof through the facilities of DTC in accordance with DTC's procedures and/or by first class mail to the Holders at their addresses as they appear on the CVR Register, setting forth such amendment.

5.3. Execution of Amendments. Prior to executing any amendment permitted by this Section 5, the Rights Agent shall be entitled to receive, and shall be fully protected in relying upon, an opinion of counsel selected by Parent and reasonably acceptable to Rights Agent stating that the execution of such amendment is authorized or permitted by this Agreement. Each amendment to this Agreement shall be evidenced by a writing signed by the Rights Agent and Parent. The Rights Agent may, but is not obligated to, enter into any such amendment that affects the Rights Agent's own obligations, rights, powers, immunities or duties under this Agreement or otherwise, and the Rights Agent shall not be bound by amendments not executed by it.

5.4. Effect of Amendments. Upon the execution of any amendment under this Section 5, this Agreement shall be modified in accordance therewith, such amendment shall form a part of this Agreement for all purposes and every Holder shall be bound thereby.

6. **REMEDIES OF THE HOLDERS**

6.1. Event of Default. "Event of Default" with respect to the CVRs, means each one of the following events which shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of Law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Body):

(a) default in the payment by Parent pursuant to the terms of this Agreement of all or any part of a Milestone Payment after a period of ten (10) Business Days after such Milestone Payment shall become due and payable; or

(b) material default in the performance, or breach in any material respect, of any covenant or warranty of Parent hereunder (other than a default in whose performance or whose breach is elsewhere in this Section 6.1 specifically dealt with), and continuance of such default or breach for a period of ninety (90) days after a written notice specifying such default or breach and requiring it to be remedied is given, which written notice states that it is a "Notice of Default" hereunder and is sent by registered or certified mail to Parent and the Rights Agent by the Acting Holders.

If an Event of Default described above occurs and is continuing (and has not been cured or waived), then, and in each and every such case, the Acting Holders by notice in writing to Parent and the Rights Agent, may, in their discretion, commence a proceeding to protect the rights of the Holders, including to obtain payment for any amounts then due and payable.

The foregoing provisions of this Section 6.1, however, are subject to the condition that if, at any time after the Acting Holders shall have commenced such proceeding, and before any award shall have been obtained, Parent shall pay or shall deposit with the Rights Agent a sum sufficient to pay all amounts which shall have become due and such amount as shall be sufficient to cover reasonable compensation to the Rights Agent, its agents, attorneys and counsel, and all Events of Default under this Agreement shall have been cured, waived or otherwise remedied as provided herein, then and in every such case the Acting Holders, by written notice to Parent and to the Rights Agent, may waive all defaults that are the subject of such proceeding, but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default.

6.2. Suits by Holders. Except for the rights of the Rights Agent set forth herein, the Acting Holders will have the sole right, on behalf of all Holders, by virtue of or under any provision of this Agreement, to institute any action or proceeding with respect to this Agreement, and no individual Holder or other group of Holders will be entitled to exercise such rights. Notwithstanding the foregoing, in the event of an insolvency proceeding of the Parent, individual Holders shall be entitled to assert claims in such insolvency proceeding and take related actions in pursuit of such claims with respect to any payment that may be claimed by or on behalf of the Parent or by any creditor of the Parent. Notwithstanding any other provision in this Agreement, the right of any Holder of any CVR to receive payment of the amounts that a Milestone Notice indicates are payable in respect of such CVR on or after the applicable due date, or to commence arbitration proceedings for the enforcement of any such payment on or after such due date, shall not be impaired or affected without the consent of such Holder.

7. **OTHER PROVISIONS OF GENERAL APPLICATION**

7.1. Notices to the Rights Agent and Parent. Any notice or other communication required or permitted to be delivered to Parent or the Rights Agent under this Agreement shall be in writing and shall be deemed properly delivered, given and received (a) upon receipt when delivered by hand, (b) two (2) Business Days after being sent by registered mail or by courier or express delivery service, (c) if sent by email transmission prior to 6:00 p.m. recipient's local time, upon transmission when receipt is confirmed or (d) if sent by email transmission after 6:00 p.m. recipient's local time and receipt is confirmed, the Business Day following the date of transmission; provided that in each case the notice or other communication is sent to the physical address or email address, as applicable, set forth beneath the name of such party below (or to such other physical address or email address as such party shall have specified in a written notice given to the other party):

If to the Rights Agent, to it at:

American Stock Transfer & Trust Company, LLC
6201 15th Avenue
Brooklyn, NY 11219
Attention: Legal Dept
E-mail: LegalTeamAST@astfinancial.com

If to Parent, to it at:

Pacira BioSciences, Inc.
5401 West Kennedy Boulevard, Suite 890
Tampa, Florida 33609
Attention: Kristen Williams
Email: Kristen.Williams@pacira.com

With a copy to:

Perkins Coie LLP
1900 Sixteenth Street, Suite 1400
Denver, Colorado 80202
Attention: Jason Day; Jeffrey Beuche
Email: JDay@perkinscoie.com; JBeuche@perkinscoie.com

The Rights Agent or Parent may specify a different address, facsimile number or email address by giving notice in accordance with this [Section 7.1](#).

7.2. [Notice to Holders](#). Where this Agreement provides for notice to Holders, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and transmitted through the facilities of DTC in accordance with DTC's procedures or mailed, first-class postage prepaid, to each Holder affected by such event, at the Holder's address as it appears in the CVR Register, not later than the latest date, and not earlier than the earliest date, if any, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders.

7.3. Successors and Assigns. Parent may assign, in its sole discretion and without the consent of any other Person, any or all of its rights, interests and obligations hereunder to one or more direct or indirect wholly owned subsidiaries of Parent for so long as they remain wholly owned subsidiaries of Parent and any such subsidiary may assign any or all of its rights, interests and obligations hereunder to one or more other direct or indirect wholly owned subsidiaries of Parent for so long as they remain wholly owned subsidiaries of Parent (each, an “Assignee”); *provided* that each such Assignee agrees to assume and be bound by all of the terms and conditions of this Agreement; *provided, further*, that Parent shall remain liable for the performance by each such Assignee of all covenants, agreements and obligations of Parent hereunder. This Agreement will be binding upon, inure to the benefit of and be enforceable by Parent’s successors and each Assignee. Each of Parent’s successors and each Assignee shall, by a supplemental contingent consideration payment agreement or other acknowledgement executed and delivered to the Rights Agent, expressly agree to assume and be bound by all of the terms and conditions of this Agreement. This Agreement shall not restrict Parent’s or any successor’s ability to merge or consolidate or enter into or consummate any Change of Control. Except as otherwise permitted herein, Parent may not assign this Agreement without the prior written consent of the Acting Holders. Any attempted assignment of this Agreement or any such rights in violation of this Section 7.3 shall be void and of no effect. Unless a successor or assignee meets the requirements set forth in Section 3.3(b), Rights Agent may not assign this Agreement without Parent’s written consent. Any attempted assignment of this Agreement or any such rights in violation of this Section 7.3 shall be void and of no effect.

7.4. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, shall give to any Person (other than the Rights Agent and its permitted successors and assigns, Parent, Parent’s successors and Assignees, and the Holders and the Holders’ successors and assigns pursuant to Permitted Transfers, each of whom is intended to be, and is, a third party beneficiary hereunder) any benefit or any legal or equitable right, remedy or claim under this Agreement or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the Rights Agent and its permitted successors and assigns, Parent, Parent’s successors and Assignees, and the Holders and the Holders’ successors and assigns pursuant to Permitted Transfers. The rights hereunder of Holders and their successors and assigns pursuant to Permitted Transfers are limited to those expressly provided in this Agreement. Notwithstanding anything to the contrary contained herein, any Holder or Holder’s successor or assign pursuant to a Permitted Transfer may at any time agree to renounce, in whole or in part, whether or not for consideration, its rights under this Agreement by written notice to the Rights Agent and Parent, which notice, if given, shall be irrevocable, and Parent may, in its sole discretion, at any time offer consideration to Holders in exchange for their agreement to irrevocably renounce their rights, in whole or in part, hereunder.

7.5. Governing Law. This Agreement, the CVRs and all actions arising under or in connection herewith and therewith (whether sounding in contract, tort or otherwise) shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

7.6. Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and the application of such provision to other Persons or circumstances shall be interpreted so as reasonably to effect the intent of the parties. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

7.7. Termination. This Agreement shall be terminated and of no force or effect, the parties hereto shall have no liability hereunder (other than with respect to monies due and owing by Parent to Rights Agent), and no payments shall be required to be made, upon the earlier to occur of (a) the mailing by the Rights Agent to the address of each Holder as reflected in the CVR Register (or payment by wire transfer, as applicable) the full amount of each potential Milestone Payment required to be paid under the terms of this Agreement, (b) the termination of the Merger Agreement in accordance with its terms and (c) upon the Milestone Deadline Date. Notwithstanding the foregoing, no such termination shall affect any rights or obligations accrued prior to the effective date of such termination or Sections 2.4(e), 3.2, 7.4 to 7.8, which shall survive the termination of this Agreement, or the resignation, replacement or removal of the Rights Agent.

7.8. Entire Agreement; Counterparts. As it relates to the Rights Agent, this Agreement constitutes the entire agreement of the parties hereto and supersedes all contemporaneous and prior agreements and understandings, both written and oral, among or between any of the parties hereto, with respect to the subject matter hereof. As between the Parent and the Company, this Agreement and the Merger Agreement constitute the entire agreement and supersede all contemporaneous and prior agreements and understandings, both written and oral, among or between any of the Parties, with respect to the subject matter hereof and thereof. If and to the extent that any provision of this Agreement is inconsistent or conflicts with the Merger Agreement, this Agreement shall govern and be controlling. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by PDF shall be sufficient to bind the parties hereto to the terms and conditions of this Agreement.

7.9. No Fiduciary Obligations. Each of Parent and the Rights Agent acknowledges and agrees that (i) neither party owes any fiduciary duties to the Holders and (ii) the other party, its affiliates and their respective officers, directors and controlling Persons do not owe any fiduciary duties to the first party or any of its respective affiliates, officers, directors or controlling Persons. The only obligations of the Parent and the Rights Agent to each other and their affiliates and their respective officers, directors and controlling Persons arising out of this Agreement are the contractual obligations expressly set forth in this Agreement.

7.10. Confidentiality. The Rights Agent and the Parent agree that all books, records, information and data pertaining to the business of the other party, including inter alia, personal, non-public Holder information and any Progress Report, which are exchanged or received pursuant to the negotiation or the carrying out of this Agreement including the fees for services set forth in the attached schedule shall remain confidential, and shall not be voluntarily disclosed to any other person, including any Holder, except as may be required by a valid order of an arbitration panel, court or Governmental Body of competent jurisdiction or is otherwise required by law or regulation, including SEC or Nasdaq rules and regulations, or pursuant to subpoenas from state or federal government authorities (e.g., in divorce and criminal actions).

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IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf by its duly authorized officers as of the day and year first above written.

PARENT:

PACIRA BIOSCIENCES, INC.

By: /s/ Kristen Williams

Name: Kristen Williams

Title: Chief Administrative Officer

RIGHTS AGENT:

AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC

By: /s/ Michael Legregin

Name: Michael Legregin

Title: Senior Vice President, Attorney Advisory Group

[Signature Page to Contingent Value Right Agreement]

**FOR IMMEDIATE RELEASE****Pacira BioSciences Completes Acquisition of Flexion Therapeutics and Strengthens Leadership Position in Non-Opioid Pain Management**

-- Adds highly complementary ZILRETTA[®] to Pacira commercial offering --

-- Combined portfolio offers end-to-end non-opioid solutions along the pain pathway --

TAMPA, FL and BURLINGTON, MA, November 19, 2021 – Pacira BioSciences, Inc. (Nasdaq: PCRX), the industry leader in its commitment to non-opioid pain management and regenerative health solutions, today announced the completion of its previously announced acquisition of Flexion Therapeutics, Inc. (Nasdaq: FLXN).

“This is an exciting day for Pacira BioSciences as this acquisition expands our industry leadership and marks a major milestone in our strategy to build a robust offering of novel, non-opioid treatments to improve patient care along the neural pain pathway,” said David Stack, Chief Executive Officer of Pacira. “ZILRETTA is a highly complementary commercial asset that allows us to provide physicians with another tool in their pain management armamentarium to tackle osteoarthritis earlier in the patient journey as we continue to redefine the role of opioids as a last resort rescue medication. Importantly, ZILRETTA will diversify our revenue stream, enhance our topline, and we believe it will provide meaningful synergies that we expect to drive substantial near- and long-term accretion to our cash flows and earnings.”

About Pacira BioSciences

Pacira BioSciences, Inc. (Nasdaq: PCRX) is committed to providing a non-opioid option to as many patients as possible to redefine the role of opioids as rescue therapy only. The company is also developing innovative interventions to address debilitating conditions involving the sympathetic nervous system, such as cardiac electrical storm, chronic pain, and spasticity. Pacira has three commercial-stage non-opioid treatments: EXPAREL[®] (bupivacaine liposome injectable suspension), a long-acting, local analgesia currently approved for postsurgical pain management; ZILRETTA[®] (triamcinolone acetonide extended-release injectable suspension), an extended-release, intra-articular, injection indicated for the management of osteoarthritis knee pain; and iovera[®], a novel, handheld device for delivering immediate, long-acting, drug-free pain control using precise, controlled doses of cold temperature to a targeted nerve. To learn more about Pacira, including the corporate mission to reduce overreliance on opioids, visit www.pacira.com.

About EXPAREL®

EXPAREL (bupivacaine liposome injectable suspension) is indicated in patients 6 years of age and older for single-dose infiltration to produce postsurgical local analgesia, and in adults as an interscalene brachial plexus nerve block to produce postsurgical regional analgesia. Safety and efficacy have not been established in other nerve blocks. Since its launch, EXPAREL has been used in over nine million patients. EXPAREL utilizes the company's proprietary multivesicular liposomal drug delivery technology composed of a honeycomb of numerous, non-concentric, internal aqueous chambers containing bupivacaine. After injection, bupivacaine is released over time, as the lipid membranes are absorbed, prolonging the duration of action. EXPAREL is the first and only multivesicular liposome local anesthetic that can be utilized in the peri- or postsurgical setting. A single dose of EXPAREL provides significant reductions in cumulative pain scores with up to a 78 percent decrease in opioid consumption; the clinical benefit of the opioid reduction was not demonstrated. Additional information is available at www.EXPAREL.com.

Important Safety Information about EXPAREL for Patients

EXPAREL should not be used in obstetrical paracervical block anesthesia. In studies in adults where EXPAREL was injected into a wound, the most common side effects were nausea, constipation, and vomiting. In studies in adults where EXPAREL was injected near a nerve, the most common side effects were nausea, fever, and constipation. In the study where EXPAREL was given to children, the most common side effects were nausea, vomiting, constipation, low blood pressure, low number of red blood cells, muscle twitching, blurred vision, itching, and rapid heartbeat. EXPAREL can cause a temporary loss of feeling and/or loss of muscle movement. How much and how long the loss of feeling and/or muscle movement depends on where and how much of EXPAREL was injected and may last for up to 5 days. EXPAREL is not recommended to be used in patients younger than 6 years old for injection into the wound, for patients younger than 18 years old for injection near a nerve, and/or in pregnant women. Tell your health care provider if you or your child has liver disease, since this may affect how the active ingredient (bupivacaine) in EXPAREL is eliminated from the body. EXPAREL should not be injected into the spine, joints, or veins. The active ingredient in EXPAREL can affect the nervous system and the cardiovascular system; may cause an allergic reaction; may cause damage if injected into the joints; and can cause a rare blood disorder.

About ZILRETTA®

On October 6, 2017, ZILRETTA (triamcinolone acetonide extended-release injectable suspension) was approved by the U.S. Food and Drug Administration as the first and only extended-release intra-articular therapy for patients confronting osteoarthritis (OA)- related knee pain. ZILRETTA employs proprietary microsphere technology combining triamcinolone acetonide—a commonly administered, short-acting corticosteroid—with a poly lactic-co-glycolic acid (PLGA) matrix to provide extended pain relief. The pivotal Phase 3 trial on which the approval of ZILRETTA was based showed that ZILRETTA significantly reduced OA knee pain for 12 weeks, with some people experiencing pain relief through Week 16. Learn more at www.zilretta.com.

Indication and Select Important Safety Information for ZILRETTA

Indication: ZILRETTA is indicated as an intra-articular injection for the management of OA pain of the knee. Limitation of Use: The efficacy and safety of repeat administration of ZILRETTA have not been demonstrated.

Contraindication: ZILRETTA is contraindicated in patients who are hypersensitive to triamcinolone acetonide, corticosteroids or any components of the product.

Warnings and Precautions:

- **Intra-articular Use Only:** ZILRETTA has not been evaluated and should not be administered by epidural, intrathecal, intravenous, intraocular, intramuscular, intradermal, or subcutaneous routes. ZILRETTA should not be considered safe for epidural or intrathecal administration.
- **Serious Neurologic Adverse Reactions with Epidural and Intrathecal Administration:** Serious neurologic events have been reported following epidural or intrathecal corticosteroid administration. Corticosteroids are not approved for this use.
- **Hypersensitivity reactions:** Serious reactions have been reported with triamcinolone acetonide injection. Institute appropriate care if an anaphylactic reaction occurs.
- **Joint infection and damage:** A marked increase in joint pain, joint swelling, restricted motion, fever and malaise may suggest septic arthritis. If this occurs, conduct appropriate evaluation and if confirmed, institute appropriate antimicrobial treatment.

Adverse Reactions: The most commonly reported adverse reactions (incidence $\geq 1\%$) in clinical studies included sinusitis, cough, and contusions.

Please see ZILRETTALabel.com for full Prescribing Information.

About iovera[®]

The iovera[®] system is used to destroy tissue during surgical procedures by applying freezing cold. It can also be used to produce lesions in peripheral nervous tissue by the application of cold to the selected site for the blocking of pain. It is also indicated for the relief of pain and symptoms associated with osteoarthritis of the knee for up to 90 days. In one study, the majority of the patients suffering from osteoarthritis of the knee experienced pain and system relief beyond 150 days. The iovera[®] system's "1×90" Smart Tip configuration (indicating one needle which is 90 mm long) can also facilitate target nerve location by conducting electrical nerve stimulation from a separate nerve stimulator. The iovera[®] system is not indicated for treatment of central nervous system tissue. Additional information is available at www.iovera.com.

Important Safety Information for iovera[®]

The iovera[®] system is contraindicated for use in patients with the following: Cryoglobulinemia; Paroxysmal cold hemoglobinuria; cold urticaria; Raynaud's disease; open and/or infected wounds at or near the treatment line. Potential complications: As with any surgical treatment that uses needle-based therapy, there is potential for temporary site-specific reactions, including but not limited to: bruising (ecchymosis); swelling (edema); inflammation and/or redness (erythema); pain and/or tenderness; altered sensation (localized dysesthesia). Typically, these reactions resolve with no physician intervention. Patients may help the healing process by applying ice packs to the affected sites, and by taking over-the-counter analgesics.

Forward-Looking Statements

Any statements in this press release about Pacira's future expectations, plans, trends, outlook, projections and prospects, and other statements containing the words "believes," "anticipates," "plans," "estimates," "expects," "intends," "may," "will," "would," "could," "can" and similar expressions, constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements include, without limitation, statements related to the acquisition of Flexion and the benefits thereof, Pacira's strategy, plans, objectives, expectations (financial or otherwise) and intentions, future financial results and growth potential, anticipated product portfolio, development programs, patent terms and other statements that are not historical facts. Actual results may differ materially from those indicated by such forward-looking statements as a result of various important factors, including risks relating to, among others: the outcome of legal proceedings against Flexion and/or others relating to the transaction; risks associated with acquisitions, such as the risk that the businesses will not be integrated successfully, that such integration may be more difficult, time-consuming or costly than expected or that the expected benefits of the transaction will not occur; risks related to future opportunities and plans for Flexion and its products, including uncertainty of the expected financial performance of Flexion and its products; disruption from the transaction, making it more difficult to conduct business as usual or maintain relationships with customers, employees or suppliers; the possibility that if Pacira does not achieve the perceived benefits of the transaction as rapidly or to the extent anticipated by financial analysts or investors, the market price of Pacira's shares could decline; the impact of the worldwide COVID-19 (Coronavirus) pandemic and related global economic conditions on Pacira's business and results of operations; the success of Pacira's sales and manufacturing efforts in support of the commercialization of EXPAREL and iovera^o; the rate and degree of market acceptance of EXPAREL and iovera^o; the size and growth of the potential markets for EXPAREL and iovera^o and Pacira's ability to serve those markets; Pacira's plans to expand the use of EXPAREL and iovera^o to additional indications and opportunities, and the timing and success of any related clinical trials for EXPAREL and iovera^o; the ability to successfully integrate any future acquisitions into Pacira's existing business, including Flexion; and the recoverability of Pacira's deferred tax assets and factors discussed in the "Risk Factors" of each of Pacira's and Flexion's most recent Annual Report on Form 10-K and in other filings that Pacira and Flexion periodically make with the Securities and Exchange Commission. In addition, the forward-looking statements included in this press release represent Pacira's views as of the date of this press release. Important factors could cause actual results to differ materially from those indicated or implied by forward-looking statements, and as such Pacira anticipates that subsequent events and developments will cause its views to change. However, while Pacira may elect to update these forward-looking statements at some point in the future, Pacira specifically disclaims any obligation to do so, except as required by law. These forward-looking statements should not be relied upon as representing Pacira's views as of any date subsequent to the date of this press release.

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