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

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**FORM 8-K**

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

**Date of Report (Date of earliest event reported): May 23, 2014**

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**EVOKE PHARMA, INC.**  
(Exact Name of Registrant as Specified in its Charter)

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

**001-36075**  
(Commission  
File Number)

**20-8447886**  
(IRS Employer  
Identification No.)

**505 Lomas Santa Fe Drive, Suite 270**  
**Solana Beach, California**  
(Address of Principal Executive Offices)

**92075**  
(Zip Code)

**Registrant's telephone number, including area code: (858) 345-1494**

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

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

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

The information set forth in Item 2.03 of this Current Report on Form 8-K is incorporated herein by reference in this Item 1.01.

**Item 1.02. Termination of a Material Definitive Agreement.**

In connection with and in advance of the closing of the credit facility (as defined in Item 2.03 of this Current Report on Form 8-K), Evoke Pharma, Inc. (the "Company") prepaid all of the outstanding obligations under its loan and security agreement with Silicon Valley Bank (the "SVB loan agreement") on May 23, 2014 with its cash on hand. With such payoff, the SVB loan agreement and the documents entered into in connection therewith were deemed to be terminated and no longer of any force and effect. Silicon Valley Bank's security interest in substantially all of the Company's assets was also terminated.

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

Effective as of May 28, 2014 (the "closing date"), the Company entered into a loan and security agreement (the "credit facility") with Square 1 Bank ("Square 1"), pursuant to which Square 1 agreed to make term loans available to the Company for general corporate and working capital purposes and for capital expenditures, in a principal amount of up to \$4.5 million. The Company did not draw from the credit facility on the closing date, and the term loans will be funded at the Company's request prior to November 28, 2015, subject to customary conditions for funding including, among others, that no event of default exists. The Company may not request more than four term loans during the term of the credit facility. Upon the entry into the credit facility, the Company was required to pay Square 1 a facility fee of \$20,000. The credit facility is secured by substantially all of the Company's personal property other than its intellectual property.

Each term loan under the credit facility bears interest at either (A) a variable annual rate equal to the greater of (1) 1.75% above Square 1's most recently announced prime rate, or (2) 5.00%, or (B) a fixed annual rate of 5.50%, such rate to be fixed at the time of the initial borrowing at the Company's election and shall be applicable to all term loans funded under the credit facility. The Company is required to make interest-only payments through November 28, 2015 on any term loans that it draws. All outstanding term loans under the credit facility will begin amortizing at the end of the interest-only period, with monthly payments of principal and interest being made by the Company to Square 1 in consecutive monthly installments following November 28, 2015. All term loans under the credit facility mature on November 28, 2017. At the Company's option, it may prepay the outstanding principal balance of the term loans before November 28, 2017 without penalty or premium.

The credit facility includes affirmative and negative covenants applicable to the Company and any subsidiaries it creates in the future. The affirmative covenants include, among others, covenants requiring the Company to maintain its legal existence and governmental approvals, deliver certain financial reports, maintain insurance coverage and meet certain covenants with respect to enrollment and results of its EVK-001 Phase 3 trial (METO-IN-003). After the Company receives positive results from the Phase 3 trial, if at all (which the Company must achieve on or prior to September 30, 2015), it must either maintain a ratio of its cash at Square 1 to its cash burn over the preceding month of at least 3.00 to 1.00, or it must deliver evidence of a forthcoming financing or strategic partnership arrangement to Square 1, in each case in an amount satisfactory to Square 1. The negative covenants include, among others, restrictions on the Company's transferring collateral, incurring additional indebtedness, engaging in mergers or acquisitions, paying dividends or making other distributions, making investments, creating liens and selling assets, in each case subject to certain exceptions.

The credit facility also includes events of default, the occurrence and continuation of which provide Square 1 with the right to exercise remedies against the Company and the collateral securing the term loans under the credit facility, including foreclosure against the Company's properties securing the credit facilities, including its cash. These events of default include, among other things, the Company's failure to pay any amounts due under the credit facility, a breach of covenants under the credit facility, the Company's insolvency, a material adverse change, the occurrence of any default under certain other indebtedness in an amount greater than \$400,000 and a final judgment against the Company in an amount greater than \$400,000.

In connection with each funding of the term loans, the Company will issue to Square 1 a warrant to purchase up to the number of shares of the Company's common stock, par value \$0.0001 per share ("Common Stock"), equal to (A) 3% of the principal amount of the applicable term loan credit extension over (B) the initial exercise price, which shall be the closing price of the Company's Common Stock on the day of such funding. The warrants will expire ten years from each date of issuance. If a warrant has not been exercised prior to its expiration date, it will be deemed to automatically convert by "cashless" conversion. In the event that the Company is acquired, the warrants will be exercisable or deemed automatically converted, which shall be determined based upon whether the Company's successor assumes the obligations of the warrant.

The form of warrant agreement and the loan and security agreement, which are filed as Exhibit 4.1 and Exhibit 10.1, respectively, to this Current Report on Form 8-K, are incorporated herein by reference. The foregoing description of the credit facility, form of warrant agreement and loan and security agreement does not purport to be complete and is qualified in its entirety by reference to such exhibits.

### **Item 3.02. Unregistered Sale of Equity Securities.**

The warrants described in Item 2.03 above will be offered and sold in reliance upon the exemption from registration provided by Section 4(2) under the Securities Act of 1933 (the "Securities Act"). The warrant agreement contains representations to support the Company's reasonable belief that Square 1 has access to information concerning its operations and financial condition, that Square 1 will acquire the warrants for its own account and not with a view to the distribution thereof, and that Square 1 is an "accredited investor" as defined by Rule 501 promulgated under the Securities Act.

### **Forward-Looking Statements**

The Company cautions you that statements included in this Current Report on Form 8-K that are not a description of historical facts are forward-looking statements. In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "expect," "plan," "anticipate," "could," "intend," "target," "project," "contemplates," "believes," "estimates," "predicts," "potential" or "continue" or the negatives of these terms or other similar expressions. These statements are based on the Company's current beliefs and expectations. These forward-looking statements include statements regarding potential funding of the term loans under the credit facility. The inclusion of forward-looking statements should not be regarded as a representation by the Company that any of its plans will be achieved. Actual results may differ from those set forth in this report due to the risk and uncertainties inherent in the Company's business, including, without limitation: the risk that the funding of the term loans from Square 1 may not be completed on the timeframe the Company expects, or at all, including as a result of the Company's failure to meet the conditions required for such funding or failure to comply with the affirmative and negative covenants under the credit facility; and other risks detailed in periodic reports the Company files with the Securities and Exchange Commission. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof, and the Company undertakes no obligation to revise or update this report to reflect events or circumstances after the date hereof. All forward-looking statements are qualified in their entirety by this cautionary statement. This caution is made under the safe harbor provisions of the Private Securities Litigation Reform Act of 1995.

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

*(d) Exhibits.*

<u>Exhibit No.</u>	<u>Description</u>
4.1	Form of Warrant to be issued to Square 1 Bank under the Loan and Security Agreement, by and between the Company and Square 1 Bank.
10.1	Loan and Security Agreement, dated as of May 28, 2014, by and between the Company and Square 1 Bank.

**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.

EVOKE PHARMA, INC.

Date: May 28, 2014

By: /s/ Matthew J. D'Onofrio

Name: Matthew J. D'Onofrio

Title: Executive Vice President,  
Chief Business Officer and Secretary

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**EXHIBIT INDEX**

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10.1	Loan and Security Agreement, dated as of May 28, 2014, by and between the Company and Square 1 Bank.

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH APPLICABLE LAW.

### WARRANT TO PURCHASE STOCK

Corporation:	Evoke Pharma, Inc.
Number of Shares:	Calculated in accordance with Section 1.7
Class of Stock:	Common Stock
Initial Exercise Price:	Calculated in accordance with Section 1.8
Issue Date:	[        ][ <i>To be the date of the Credit Extension</i> ]
Expiration Date:	[        ][ <i>To be ten years after Issue Date</i> ]

**THIS WARRANT CERTIFIES THAT**, for good and valuable consideration, the receipt of which is hereby acknowledged, **SQUARE 1 BANK** or its assignee (“**Holder**”) is entitled to purchase the number of fully paid and nonassessable shares of the class of securities (the “**Shares**”) of the corporation (the “**Company**”) at the initial exercise price per Share (the “**Warrant Price**”) all as set forth above and as adjusted pursuant to Article 2 of this warrant, subject to the provisions and upon the terms and conditions set forth in this warrant.

### ARTICLE 1

#### EXERCISE

**1.1 Method of Exercise.** Holder may exercise this warrant by delivering this warrant and a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Section 1.2, Holder shall also deliver to the Company a check for the aggregate Warrant Price for the Shares being purchased.

**1.2 Conversion Right.** In lieu of exercising this warrant as specified in Section 1.1, Holder may from time to time convert this warrant, in whole or in part, into a number of Shares determined by dividing (a) the aggregate fair market value of the Shares or other securities otherwise issuable upon exercise of this warrant minus the aggregate Warrant Price of such Shares by (b) the fair market value of one Share. The fair market value of the Shares shall be determined pursuant to Section 1.3.

**1.3 Fair Market Value.** If the Shares are traded regularly in a public market, the fair market value of the Shares shall be the closing price of the Shares reported for the business day immediately before Holder delivers its Notice of Exercise to the Company. If the Shares are not regularly traded in a public market, the Board of Directors of the Company shall determine fair market value in its reasonable good faith judgment.

**1.4 Delivery of Certificate and New Warrant.** Reasonably promptly after Holder exercises or converts this warrant, the Company shall deliver to Holder certificates for the Shares acquired and, if this warrant has not been fully exercised or converted and has not expired, a new warrant representing the Shares not so acquired.

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

**1.6 Repurchase on Sale, Merger, or Consolidation of the Company.**

**1.6.1 "Acquisition."** For the purpose of this warrant, "Acquisition" means (a) any sale, license, or other disposition of all or substantially all of the assets (including intellectual property) of the Company, or (b) any reorganization, consolidation, merger or sale of the voting securities of the Company or any other transaction where the holders of the Company's securities before the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity after the transaction.

**1.6.2 Assumption of Warrant.** If upon the closing of any Acquisition the successor entity assumes the obligations of this warrant, then this warrant shall be exercisable for the same securities, cash, and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this warrant as if such Shares were outstanding on the record date for the Acquisition and subsequent closing. The Warrant Price shall be adjusted accordingly.

**1.6.3 Nonassumption.** If upon the closing of any Acquisition the successor entity does not assume the obligations of this warrant and Holder has not otherwise exercised this warrant in full, then this warrant shall be deemed to have been automatically converted pursuant to Section 1.2 and thereafter Holder shall participate in the Acquisition on the same terms as other holders of the same class of securities of the Company.

**1.7 Amount of Warrant Shares.** This warrant shall be exercisable for the number of Shares (before giving effect to any adjustment made in accordance with Article 2) equal to the quotient of (a) 3% of the principal amount of the Credit Extension made on the Issue Date under that certain Loan and Security Agreement between the Company and Square 1 Bank, dated on or about May 28, 2014, as it may be amended from time to time, over (b) the Initial Exercise Price.

**1.8 Initial Exercise Price.** The Initial Exercise Price shall be the closing price of the Company's common stock on the Issue Date.

**ARTICLE 2**

**ADJUSTMENTS TO THE SHARES**

**2.1 Stock Dividends, Splits, Etc.** If the Company declares or pays a dividend on its common stock payable in common stock, or other securities, or subdivides the outstanding common stock into a greater amount of common stock, then upon exercise of this warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend or subdivision occurred.

**2.2 Reclassification, Exchange or Substitution.** Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this warrant, Holder shall be entitled to receive, upon exercise or conversion of this warrant, the number and kind of securities and property that Holder would have received for the Shares if this warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. The Company or its successor shall reasonably promptly issue to Holder a new warrant for such new securities or other property. The new warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Warrant Price and to the number of securities or property issuable upon exercise of the new warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

**2.3 Adjustments for Combinations, Etc.** If the outstanding Shares are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased. If the outstanding Shares are combined or consolidated, by reclassification or otherwise, into a greater number of shares, the Warrant Price shall be proportionately decreased.

**2.4 [Reserved].**

**2.5 Certificate as to Adjustments.** Upon each adjustment of the Warrant Price, the Company at its expense shall reasonably promptly compute such adjustment, and furnish Holder with a certificate of its Chief Business Officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price in effect upon the date thereof and the series of adjustments leading to such Warrant Price.

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

### **ARTICLE 3**

#### **REPRESENTATIONS AND COVENANTS OF THE COMPANY**

##### **3.1 Representations and Warranties.**

**(a)** The Company hereby represents and warrants to the Holder as follows:

**(i)** All Shares which may be issued upon the exercise of the purchase right represented by this warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

(ii) The Company's capitalization table attached to this warrant is true and complete as of the Issue Date.

(b) The Holder hereby represents and warrants to the Company as follows:

(i) The Holder is acquiring this warrant for its own account for investment and not with a view to, or for sale in connection with, any distribution thereof; nor with any present intention of distributing or selling the same; and the Holder has no present or contemplated agreement, undertaking, arrangement, obligation, indebtedness or commitment providing for the disposition thereof;

(ii) The Holder is an "accredited investor" as defined in Rule 501(a) under the Securities Act of 1933, as amended; and

(iii) The Holder has made such inquiry concerning the Company and its business and personnel as it has deemed appropriate and the Holder has sufficient knowledge and experience in finance and business that it is capable of evaluating the risks and merits of its investment in the Company.

**3.2 Notice of Certain Events.** The Company shall provide Holder with not less than 10 days' prior written notice, including a description of the material facts surrounding, any of the following events: (a) declaration of any dividend or distribution upon its common stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) effecting any reclassification or recapitalization of common stock; or (c) the merger or consolidation with or into any other corporation, or sale, lease, license, or conveyance of all or substantially all of its assets, or liquidation, dissolution or winding up.

**3.3 Information Rights.** At any time when the Company is not complying with the periodic reporting requirements of the Securities Exchange Act of 1934, as amended, and so long as the Holder holds this warrant and/or any of the Shares, the Company shall deliver to the Holder (a) reasonably promptly after mailing, copies of all communiques to the shareholders of the Company, (b) within one hundred eighty (180) days after the end of each fiscal year of the Company, the annual audited financial statements of the Company certified by independent public accountants of recognized standing and (c) within forty-five (45) days after the end of each of the first three quarters of each fiscal year, the Company's quarterly, unaudited financial statements.

#### ARTICLE 4

#### MISCELLANEOUS

**4.1 Term: Exercise Upon Expiration.** This warrant is exercisable in whole or in part, at any time and from time to time on or before the Expiration Date set forth above. If this warrant has not been exercised prior to the Expiration Date, this warrant shall be deemed to have been automatically exercised on the Expiration Date by "cashless" conversion pursuant to Section 1.2.

**4.2 Legends.** This warrant and the Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH APPLICABLE LAW.

**4.3 Compliance with Securities Laws on Transfer.** This warrant and the Shares issuable upon exercise of this warrant may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to an affiliate of Holder or if there is no material question as to the availability of current information as referenced in Rule 144(c), Holder represents that it has complied with Rule 144(d) and (e) in reasonable detail, the selling broker represents that it has complied with Rule 144(f), and the Company is provided with a copy of Holder's notice of proposed sale. The Company shall not require Holder to provide an investment representation letter or an opinion of counsel if the transfer is to a holding company that controls Holder, or to a trust created by such holding company for the purpose of maintaining warrants and other equity securities on behalf of Holder.

**4.4 Transfer Procedure.** Subject to the provisions of Section 4.3, Holder may transfer all or part of this warrant (this warrant, together with any warrants issued upon any permitted transfer hereunder are referred to herein collectively as the "**Warrants**") or the Shares issuable upon exercise of this warrant by giving the Company notice of the portion of the warrant being transferred setting forth the name, address and taxpayer identification number of the transferee and surrendering this warrant to the Company for reissuance to the transferee(s) (and Holder, if applicable). No surrender or reissuance shall be required if the transfer is to an affiliate of Holder.

**4.5 Notices.** All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid, at such address as may have been furnished to the Company or the Holder, as the case may be, in writing by the Company or such Holder from time to time. All notices to the Holder shall be addressed as follows:

Square 1 Bank  
Attn: Warrant Administrator  
406 Blackwell Street, Suite 240  
Crowe Building  
Durham, NC 27701

All notices to the Company shall be addressed as follows:

Evoke Pharma, Inc.  
Attn: Matt D'Onofrio  
505 Lomas Santa Fe Drive  
Suite 270  
Solana Beach, CA 92075

With a copy to:

Latham & Watkins LLP  
Attn: Cheston Larson  
12670 High Bluff Drive  
San Diego, CA 92130

**4.6 Amendments.** This warrant and any term hereof may be changed or waived only by an instrument in writing signed by the Company and the holders of Warrants exercisable for a majority of the total number of Shares then issuable pursuant to all Warrants. Any change or waiver effected in accordance with this Section 4.6 shall be binding upon each holder of Warrants.

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

**4.8 Governing Law.** This warrant shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its principles regarding conflicts of law.

**4.9 No Rights as Shareholder.** Until the exercise of this warrant, the Holder shall not have or exercise any rights by virtue hereof as a shareholder of the Company.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Warrant to Purchase Stock as of the date set forth above.

**EVOKE PHARMA, INC.**

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

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

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

*[Signature Page to Warrant to Purchase Stock]*

APPENDIX 1

NOTICE OF EXERCISE

1. The undersigned hereby elects to purchase \_\_\_\_\_ shares of the common stock of **EVOKE PHARMA, INC.** pursuant to the terms of the attached warrant, and tenders herewith payment of the purchase price of such shares in full.

1. The undersigned hereby elects to convert the attached warrant into shares in the manner specified in the warrant. This conversion is exercised with respect to \_\_\_\_\_ of the shares covered by the warrant.

**[Strike paragraph that does not apply.]**

2. Please issue a certificate or certificates representing said shares in the name of the undersigned or in such other name as is specified below:

Square 1 Bank  
Attn: Warrant Administrator  
406 Blackwell Street, Suite 240  
Fowler Building  
Durham, NC 27701

3. The undersigned represents it is acquiring the shares solely for its own account and not as a nominee for any other party and not with a view toward the resale or distribution thereof except in compliance with applicable securities laws, and hereby reaffirms the representations and warranties set forth in Sections 3.1(b), 4.2, 4.3 and 4.4 of the attached warrant.

**SQUARE 1 BANK** or Registered Assignee

\_\_\_\_\_  
(Signature)

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

**EVOKE PHARMA, INC.**  
**LOAN AND SECURITY AGREEMENT**

## RECITALS

Borrower wishes to obtain credit from time to time from Bank, and Bank desires to extend credit to Borrower. This Agreement sets forth the terms on which Bank will advance credit to Borrower, and Borrower will repay the amounts owing to Bank.

## AGREEMENT

The parties agree as follows:

### 1. DEFINITIONS AND CONSTRUCTION.

**1.1 Definitions.** As used in this Agreement, all capitalized terms shall have the definitions set forth on Exhibit A. Any term used in the Code and not defined herein shall have the meaning given to the term in the Code.

**1.2 Accounting Terms.** Any accounting term not specifically defined on Exhibit A shall be construed in accordance with GAAP and all calculations shall be made in accordance with GAAP (except for non-compliance with FAS 123R in monthly reporting). The term "financial statements" shall include the accompanying notes and schedules.

### 2. LOAN AND TERMS OF PAYMENT.

#### 2.1 Credit Extensions.

**(a) Promise to Pay.** Borrower promises to pay to Bank, in lawful money of the United States of America, the aggregate unpaid principal amount of all Credit Extensions made by Bank to Borrower, together with interest on the unpaid principal amount of such Credit Extensions at rates in accordance with the terms hereof.

#### **(b) Term Loan.**

**(i)** Subject to and upon the terms and conditions of this Agreement, Bank agrees to make one (1) or more term loans to Borrower in an aggregate principal amount not to exceed Four Million Five Hundred Thousand Dollars (\$4,500,000) (each a "Term Loan" and collectively the "Term Loans"). Borrower may request Term Loans at any time from the date hereof through the Availability End Date, but Borrower may not request more than four (4) Term Loans without Bank's prior written consent. The proceeds of the Term Loans shall be used for general corporate and working capital purposes and for capital expenditures.

**(ii)** Interest shall accrue from the date of each Term Loan at the rate specified in Section 2.3(a), and prior to the Availability End Date for the applicable Term Loan shall be payable monthly in arrears beginning on the first day of the month next following the date such Term Loan is funded, and continuing on the same day of each month

thereafter. Any Term Loans that are outstanding on the Availability End Date shall be payable in 24 equal monthly installments of principal, plus all accrued and unpaid interest, beginning on the date that is one month immediately following the Availability End Date, and continuing on the same day of each month thereafter through the Term Loan Maturity Date, at which time all outstanding amounts due in connection with the Term Loans and any other amounts due under this Agreement shall be immediately due and payable. Term Loans, once repaid, may not be reborrowed. Borrower may prepay any Term Loans without penalty or premium.

(iii) When Borrower desires to obtain a Term Loan, Borrower shall notify Bank (which notice shall be irrevocable) by facsimile transmission to be received no later than 3:30 p.m. Eastern time on the day on which the Term Loan is to be made. Such notice shall be substantially in the form of Exhibit C. The notice shall be signed by an Authorized Officer.

## **2.2 Intentionally Left Blank.**

## **2.3 Interest Rates, Payments, and Calculations.**

### **(a) Interest Rates.**

(i) **Term Loans.** Except as set forth in Section 2.3(b), the Term Loans shall bear interest, on the outstanding daily balance thereof, at either (A) a variable annual rate equal to the greater of (1) 1.75% above the Prime Rate then in effect, or (2) 5.00%, or (B) a fixed annual rate of 5.50%. Borrower shall deliver written notice to Bank specifying which of the above two interest rate structures Borrower elects to apply during the term of this Agreement before submitting (or together with) the initial Loan Advance Request Form to Bank pursuant to Section 2.1(b)(iii). Such election shall be irrevocable.

(b) **Late Fee; Default Rate.** If any payment is not made within 15 days after the date such payment is due, Borrower shall pay Bank a late fee equal to the lesser of (i) 5% of the amount of such unpaid amount or (ii) the maximum amount permitted to be charged under applicable law. All Obligations shall bear interest, from and after the occurrence and during the continuance of an Event of Default, at a rate equal to 5 percentage points above the interest rate applicable immediately prior to the occurrence of the Event of Default.

(c) **Payments.** Bank shall charge all interest, all Bank Expenses, and all Periodic Payments against any of Borrower's deposit accounts. Any interest not paid when due shall be compounded by becoming a part of the Obligations, and such interest shall thereafter accrue interest at the rate then applicable hereunder.

(d) **Computation.** In the event the Prime Rate is changed from time to time hereafter, the applicable rate of interest hereunder shall be increased or decreased, effective as of the day the Prime Rate is changed, by an amount equal to such change in the Prime Rate. All interest chargeable under the Loan Documents shall be computed on the basis of a 360 day year for the actual number of days elapsed.

**2.4 Crediting Payments.** Unless an Event of Default exists, Bank shall credit a wire transfer of funds, check or other item of payment to such deposit account or Obligation as Borrower specifies. After the occurrence and during the continuance of an Event of Default, Bank shall have the right, in its sole discretion, to immediately apply any wire transfer of funds, check, or other item of payment Bank may receive to conditionally reduce Obligations, but such applications of funds shall not be considered a payment on account unless such payment is of immediately available federal funds or unless and until such check or other item of payment is honored when presented for payment. Notwithstanding anything to the contrary contained herein, any wire transfer or payment received by Bank after 5:30 p.m. Eastern time shall be deemed to have been received by Bank as of the opening of business on the immediately following Business Day. Whenever any payment to Bank under the Loan Documents would otherwise be due (except by reason of acceleration) on a date that is not a Business Day, such payment shall instead be due on the next Business Day, and additional fees or interest, as the case may be, shall accrue and be payable for the period of such extension.

**2.5 Fees.** Borrower shall pay to Bank the following:

(a) **Facility Fee.** On or before the Closing Date, a fee equal to \$20,000, which shall be nonrefundable; and

(b) **Bank Expenses.** On the Closing Date, all Bank Expenses incurred through the Closing Date, and, after the Closing Date, all Bank Expenses, as and when they become due.

**2.6 Term.** This Agreement shall become effective on the Closing Date and, subject to Section 12.7, shall continue in full force and effect for so long as any Obligations (other than inchoate indemnity obligations) remain outstanding or Bank has any obligation to make Credit Extensions under this Agreement. Notwithstanding the foregoing, Bank shall have the right to terminate its obligation to make Credit Extensions under this Agreement immediately and without notice upon the occurrence and during the continuance of an Event of Default. Upon payment in full in Cash of the Obligations (other than inchoate indemnity obligations) in their entirety, Borrower may terminate this Agreement upon three (3) Business Days written notice to Bank. Following such payment in full in Cash of the Obligations (other than inchoate indemnity obligations) in their entirety, and at such time as Bank's obligation to make Credit Extensions has terminated, Bank shall release its Liens in the Collateral and Bank shall promptly take such action reasonably requested by Borrower, at Borrower's sole cost and expense, in order to cause such Liens to be terminated of record (including by filing UCC-3 or similar termination statements with respect to such Liens), and all rights therein shall revert to Borrower.

### **3. CONDITIONS OF LOANS.**

**3.1 Conditions Precedent to Closing.** The agreement of Bank to enter into this Agreement on the Closing Date is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, each of the following items and completed each of the following requirements:

(a) this Agreement;

- Agreement;
- (b) an officer's certificate of Borrower with respect to incumbency and resolutions authorizing the execution and delivery of this
  - (c) a financing statement (Form UCC-1);
  - (d) Borrower shall have opened at least one deposit account with Bank;
  - (e) payment of the fees and Bank Expenses then due specified in Section 2.5, which may be debited from any of Borrower's accounts with Bank;
  - (f) current SOS Reports indicating that except for Permitted Liens, there are no other security interests or Liens of record in the Collateral;
  - (g) evidence satisfactory to Bank that Borrower has no outstanding Indebtedness to Silicon Valley Bank;
  - (h) current financial statements, including audited statements for Borrower's most recently ended fiscal year, together with an unqualified opinion (or an opinion qualified only for going concern so long as Borrower's investors provide additional equity as needed); company prepared consolidated and consolidating balance sheets, income statements, and statements of cash flows for the most recently ended month in accordance with Section 6.2; and such other updated financial information as Bank may reasonably request; provided that (i) if Borrower is not requesting a Term Loan on the Closing Date, Borrower may instead deliver its most recent financial statements filed with the Securities and Exchange Commission, and (ii) any such items that have been made publicly available shall be deemed received by Bank prior to the Closing Date if Bank confirms such public availability prior to the Closing Date;
  - (i) a current Compliance Certificate in accordance with Section 6.2;
  - (j) a Borrower Information Certificate; and
  - (k) such other documents or certificates, and completion of such other matters, as Bank may reasonably request.

**3.2 Conditions Precedent to all Credit Extensions.** The obligation of Bank to make each Credit Extension, including the initial Credit Extension, is contingent upon Borrower's compliance with Section 3.1 above, and is further subject to the following conditions:

- (a) timely receipt by Bank of the Loan Advance/Paydown Request Form as provided in Section 2.1;
- (b) Borrower shall have transferred substantially all of its Cash assets into operating accounts held with Bank and otherwise be in compliance with Section 6.6 hereof;

(c) a warrant, duly executed by Borrower, in substantially the form attached hereto as Exhibit E, with respect to such Credit Extension;

(d) prior to the initial Credit Extension, Borrower shall provide all monthly financial statements, in accordance with Section 6.2(i), since Borrower's most recent financial reporting filing with the Securities and Exchange Commission; and

(e) the representations and warranties contained in Section 5 shall be true and correct in all material respects on and as of the date of such Loan Advance/Paydown Request Form and on the effective date of each Credit Extension as though made at and as of each such date, and no Event of Default shall have occurred and be continuing, or would exist after giving effect to such Credit Extension (provided, however, that those representations and warranties expressly referring to another date shall be true, correct and complete in all material respects as of such date). The making of each Credit Extension shall be deemed to be a representation and warranty by Borrower on the date of such Credit Extension as to the accuracy of the facts referred to in this Section 3.2.

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

**4.1 Grant of Security Interest.** Borrower grants and pledges to Bank a continuing security interest in the Collateral to secure prompt repayment of any and all Obligations and to secure prompt performance by Borrower of each of its covenants and duties under the Loan Documents. Except for Permitted Liens or as disclosed in the Schedule, such security interest constitutes a valid, first priority security interest in the presently existing Collateral, and will constitute a valid, first priority security interest in later-acquired Collateral. Borrower also hereby agrees not to sell, transfer, assign, mortgage, pledge, lease, grant a security interest in, or encumber any of its Intellectual Property, other than Permitted Liens. Notwithstanding any termination of this Agreement or of any filings undertaken related to Bank's rights under the Code, Bank's Lien on the Collateral shall remain in effect for so long as any Obligations (other than inchoate indemnity obligations) are outstanding.

**4.2 Perfection of Security Interest.** Borrower authorizes Bank to file at any time financing statements, continuation statements, and amendments thereto that (i) either specifically describe the Collateral or describe the Collateral as all assets of Borrower of the kind pledged hereunder, and (ii) contain any other information required by the Code for the sufficiency of filing office acceptance of any financing statement, continuation statement, or amendment, including whether Borrower is an organization, the type of organization and any organizational identification number issued to Borrower, if applicable. Borrower shall have possession of the Collateral, except goods transferred in the ordinary course of business, where expressly otherwise provided in this Agreement, or where Bank chooses to perfect its security interest by possession in addition to the filing of a financing statement. Where Collateral is in possession of a third party bailee, Borrower shall take such steps as Bank reasonably requests for Bank to (i) subject to Section 7.10 below, obtain an acknowledgment, in form and substance reasonably satisfactory to Bank, of the bailee that the bailee holds such Collateral for the benefit of Bank, and (ii) subject to Section 6.6, obtain "control" of any Collateral consisting of investment property, deposit accounts, letter-of-credit rights or electronic chattel paper (as such items and the term "control" are defined in Revised Article 9 of the Code) by causing the

securities intermediary or depository institution or issuing bank to execute a control agreement in form and substance reasonably satisfactory to Bank. Borrower will not create any chattel paper without placing a legend on the chattel paper acceptable to Bank indicating that Bank has a security interest in the chattel paper. Borrower from time to time may deposit with Bank specific cash collateral to secure specific Obligations; Borrower authorizes Bank to hold such specific balances in pledge and to decline to honor any drafts thereon or any request by Borrower or any other Person to pay or otherwise transfer any part of such balances for so long as the specific Obligations are outstanding. Borrower shall take such other actions as Bank reasonably requests to perfect its security interests granted under this Agreement.

## 5. REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants as follows:

**5.1 Due Organization and Qualification.** Borrower and each Subsidiary is a corporation duly existing under the laws of the state in which it is organized and qualified and licensed to do business in any state in which the conduct of its business or its ownership of property requires that it be so qualified, except where the failure to do so would not reasonably be expected to cause a Material Adverse Effect.

**5.2 Due Authorization; No Conflict.** The execution, delivery, and performance of the Loan Documents are within Borrower's powers, have been duly authorized, and are not in conflict with nor constitute a breach of any provision contained in Borrower's Certificate of Incorporation or Bylaws, nor will they constitute an event of default under any material agreement by which Borrower is bound. Borrower is not in default under any agreement by which it is bound, except to the extent such default would not reasonably be expected to cause a Material Adverse Effect.

**5.3 Collateral.** Borrower has rights in or the power to transfer the Collateral, and its title to the Collateral is free and clear of Liens, adverse claims, and restrictions on transfer or pledge except for Permitted Liens. Other than movable items of personal property such as laptop computers, all Collateral having an aggregate book value not in excess of \$100,000, is located solely in the Collateral States. All Inventory is in all material respects of good and merchantable quality, free from all material defects, except for Inventory for which adequate reserves have been made. Except as set forth in the Schedule or as permitted under Section 6.6, none of Borrower's Cash is maintained or invested with a Person other than Bank or Bank's affiliates.

**5.4 Intellectual Property.** Borrower is the sole owner of the intellectual property created or purchased by Borrower, except for licenses permitted hereunder. To the best of Borrower's knowledge, each of the Copyrights, Trademarks and Patents created or purchased by Borrower is valid and enforceable, and no part of the intellectual property created or purchased by Borrower has been judged invalid or unenforceable, in whole or in part, and no claim has been made to Borrower that any part of the intellectual property created or purchased by Borrower violates the rights of any third party except, in each case, to the extent that would not reasonably be expected to cause a Material Adverse Effect.

**5.5 Name; Location of Chief Executive Office.** Except as disclosed in the Schedule, Borrower has not done business under any name other than that specified on the signature page hereof, and its exact legal name is as set forth in the first paragraph of this Agreement. The chief executive office of Borrower is located at the address indicated in Section 10 hereof.

**5.6 Litigation.** Except as set forth in the Schedule, there are no actions or proceedings pending by or against Borrower or any Subsidiary before any court or administrative agency in which a likely adverse decision would reasonably be expected to have a Material Adverse Effect.

**5.7 No Material Adverse Change in Financial Statements.** All consolidated and consolidating financial statements related to Borrower and any Subsidiary that are delivered by Borrower to Bank fairly present in all material respects Borrower's consolidated and consolidating financial condition as of the date thereof and Borrower's consolidated and consolidating results of operations for the period then ended. There has not been a material adverse change in the consolidated or in the consolidating financial condition of Borrower since the date of the most recent of such financial statements submitted to Bank, other than those of which Bank has been given notice pursuant to Section 6.2.

**5.8 Solvency, Payment of Debts.** Borrower is able to pay its debts (including trade debts) as they mature; the fair saleable value of Borrower's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; and Borrower is not left with unreasonably small capital after the transactions contemplated by this Agreement.

**5.9 Compliance with Laws and Regulations.** Borrower and each Subsidiary have met the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. No event has occurred resulting from Borrower's failure to comply with ERISA that is reasonably likely to result in Borrower's incurring any liability that could have a Material Adverse Effect. Borrower is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940. Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T and U of the Board of Governors of the Federal Reserve System). Borrower has not violated any statutes, laws, ordinances or rules applicable to it, the violation of which would reasonably be expected to have a Material Adverse Effect. Borrower and each Subsidiary have filed or caused to be filed all tax returns required to be filed, and have paid, or have made adequate provision for the payment of, all taxes reflected therein except those being contested in good faith with adequate reserves under GAAP or where the failure to file such returns or pay such taxes would not reasonably be expected to have a Material Adverse Effect.

**5.10 Subsidiaries.** Borrower does not own any stock, partnership interest or other equity securities of any Person, except for Permitted Investments.

**5.11 Government Consents.** Borrower and each Subsidiary have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all governmental authorities that are necessary for the continued operation of Borrower's business as currently conducted, except where the failure to do so would not reasonably be expected to cause a Material Adverse Effect.

**5.12 Inbound Licenses.** Except as disclosed on the Schedule or as otherwise disclosed to Bank pursuant to Section 6.8, Borrower is not a party to, nor is bound by, any material license or other agreement important for the conduct of Borrower's business that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property important for the conduct of Borrower's business, other than this Agreement or the other Loan Documents.

**5.13 Full Disclosure.** No representation, warranty or other statement made by Borrower in any certificate or written statement furnished to Bank taken together with all such certificates and written statements furnished to Bank contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in such certificates or statements not misleading in light of the circumstances in which they were made, it being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not to be viewed as facts and that actual results during the period or periods covered by any such projections and forecasts may differ from the projected or forecasted results.

## **6. AFFIRMATIVE COVENANTS.**

Borrower covenants that, until payment in full of all outstanding Obligations (other than inchoate indemnity obligations), and for so long as Bank may have any commitment to make a Credit Extension hereunder, Borrower shall do all of the following:

**6.1 Good Standing and Government Compliance.** Borrower shall maintain its and each of its Subsidiaries' corporate existence and good standing in their respective states of formation, shall maintain qualification and good standing in each other jurisdiction in which the failure to so qualify would reasonably be expected to have a Material Adverse Effect, and shall furnish to Bank the organizational identification number issued to Borrower by the authorities of the state in which Borrower is organized, if applicable. Borrower shall meet, and shall cause each Subsidiary to meet, the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. Borrower shall comply, and shall cause each Subsidiary to comply, with all statutes, laws, ordinances and government rules and regulations to which it is subject, and shall maintain, and shall cause each of its Subsidiaries to maintain, in force all licenses, approvals and agreements, the loss of which or failure to comply with which would reasonably be expected to have a Material Adverse Effect.

**6.2 Financial Statements, Reports, Certificates.** Borrower shall deliver to Bank: (i) as soon as available, but in any event within 30 days after the end of each calendar month, a company prepared consolidated and, if applicable, consolidating balance sheet, income statement, and statement of cash flows covering Borrower's operations during such period, in a form reasonably acceptable to Bank and certified by a Responsible Officer; provided that, so long as no Credit Extensions are outstanding, and for so long as Borrower is subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, Borrower may instead deliver its most recent financial statements filed with the Securities and Exchange

Commission within 30 days after the end of the applicable period; (ii) as soon as available, but in any event within 180 days after the end of Borrower's fiscal year, audited consolidated and consolidating financial statements of Borrower prepared in accordance with GAAP, consistently applied, together with an opinion which is either unqualified, qualified only for going concern so long as Borrower's investors provide additional equity as needed or otherwise consented to in writing by Bank on such financial statements of an independent certified public accounting firm reasonably acceptable to Bank; (iii) an annual plan approved by Borrower's Board of Directors as soon as available but not later than March 31 of each fiscal year of Borrower during the term of this Agreement; (iv) if applicable, copies of all statements, reports and notices sent or made available generally by Borrower to its security holders or to any holders of Subordinated Debt (excluding any materials provided to such security holders, stockholders or holders of Subordinated Debt solely in their capacity as members of Borrower's Board of Directors) and all reports on Forms 10-K and 10-Q filed with the Securities and Exchange Commission; (v) promptly upon receipt of notice thereof, a report of any legal actions pending or threatened against Borrower or any Subsidiary that could reasonably be expected to result in damages or costs to Borrower or any Subsidiary of \$250,000 or more; (vi) promptly upon receipt, each management letter prepared by Borrower's independent certified public accounting firm regarding Borrower's management control systems; and (vii) such budgets, sales projections, operating plans or other financial information generally prepared by Borrower in the ordinary course of business as Bank may reasonably request from time to time. Any items that are required to be delivered under this paragraph that are made publicly available shall be deemed delivered on the date made publicly available, provided Borrower gives Bank written notice of such public availability within 5 days of such item being made publicly available.

**(a)** Within 30 days after the last day of each month, Borrower shall deliver to Bank with the monthly financial statements a Compliance Certificate certified as of the last day of the applicable month and signed by a Responsible Officer in substantially the form of Exhibit D hereto, together with (i) at Bank's reasonable request, aged listings by invoice date of accounts receivable and accounts payable and (ii) clinical trial updates.

**(b)** As soon as possible and in any event within 3 Business Days after becoming aware of the occurrence and existence of an Event of Default hereunder, Borrower shall deliver to Bank a written statement of a Responsible Officer setting forth details of the Event of Default, and the action which Borrower has taken or proposes to take with respect thereto.

**(c)** Bank (through any of its officers, employees, or agents) shall have the right, upon reasonable prior notice, from time to time during Borrower's usual business hours but no more than once a year (unless an Event of Default has occurred and is continuing), to inspect Borrower's Books and to make copies thereof and to check, test, inspect, audit and appraise the Collateral at Borrower's expense in order to verify Borrower's financial condition or the amount, condition of, or any other matter relating to, the Collateral.

Borrower may deliver to Bank on an electronic basis any certificates, reports or information required pursuant to this Section 6.2, and Bank shall be entitled to rely on the information contained in the electronic files, provided that Bank in good faith believes that the files were delivered by a Responsible Officer. Borrower shall include a submission date on any certificates and reports to be delivered electronically.

**6.3 Inventory and Equipment; Returns.** Borrower shall keep all Inventory and Equipment in good and merchantable condition, free from all material defects except for Inventory and Equipment (i) sold in the ordinary course of business, and (ii) for which adequate reserves have been made, in all cases in the United States and such other locations as to which Borrower gives prior written notice. Returns and allowances, if any, as between Borrower and its account debtors shall be on the same basis and in accordance with the usual customary practices of Borrower, as they exist on the Closing Date. Borrower shall promptly notify Bank of all returns and recoveries and of all disputes and claims involving inventory having a book value of more than \$100,000.

**6.4 Taxes.** Borrower shall make, and cause each Subsidiary to make, due and timely payment or deposit of all material federal, state, and local taxes, assessments, or contributions required of it by law, including, but not limited to, those laws concerning income taxes, F.I.C.A., F.U.T.A. and state disability, and will execute and deliver to Bank, on demand, proof satisfactory to Bank indicating that Borrower or a Subsidiary has made such payments or deposits and any appropriate certificates attesting to the payment or deposit thereof; provided that Borrower or a Subsidiary need not make any payment if the amount or validity of such payment is contested in good faith by appropriate proceedings and is reserved against (to the extent required by GAAP) by Borrower or such Subsidiary.

**6.5 Insurance.** Borrower, at its expense, shall (i) keep the Collateral insured against loss or damage, and (ii) maintain liability and other insurance, in each case as ordinarily insured against by other owners in businesses similar to Borrower's. All such policies of insurance shall be in such form, with such companies, and in such amounts as reasonably satisfactory to Bank. All policies of property insurance shall contain a lender's loss payable endorsement, in a form reasonably satisfactory to Bank, showing Bank as an additional loss payee, and all liability insurance policies shall show Bank as an additional insured and specify that the insurer must give at least 20 days' notice to Bank before canceling its policy for any reason. Within 30 days of the Closing Date, Borrower shall cause to be furnished to Bank a copy of its policies or certificate of insurance including any endorsements covering Bank or showing Bank as an additional insured. Upon Bank's request, Borrower shall deliver to Bank certified copies of the policies of insurance and evidence of all premium payments. Proceeds payable under any casualty policy will, at Borrower's option, be payable to Borrower to replace the property subject to the claim, provided that any such replacement property shall be deemed Collateral in which Bank has been granted a first priority security interest, provided that if an Event of Default has occurred and is continuing, all proceeds payable under any such policy shall, at Bank's option, be payable to Bank to be applied on account of the Obligations.

**6.6 "Primary Depository".** Subject to the provisions of Section 3.2(b), (a) within one week after the Closing Date, Borrower shall have transferred not less than fifty percent (50%) of Borrower's total cash into deposit accounts with Bank, and (b) within 60 days after the Closing Date, Borrower shall maintain all its depository and operating accounts with Bank and its primary investment accounts with Bank or Bank's affiliates. Prior to maintaining any investment accounts with Bank's affiliates, Borrower, Bank, and any such affiliate shall have entered into a securities account control agreement with respect to any such investment accounts, in form and substance satisfactory to Bank.

**6.7 Financial Covenants.** Borrower shall maintain the following financial ratios and covenants:

**(a) Patient Dosing Milestone.** On or before June 30, 2014, Borrower shall achieve the first patient dosing in connection with Borrower's EVK-001 Phase III trial (METO-IN-003).

**(b) Phase III Enrollment Milestone.** On or before June 1, 2015, Borrower shall achieve at least 75% enrollment in Borrower's EVK-001 Phase III trial (METO-IN-003) for female participants.

**(c) Phase III Results.** On or before September 30, 2015, Borrower shall receive positive (as reasonably determined based on similarly situated companies completing Phase III trials) results from its EVK-001 Phase III trial (METO-IN-003).

**(d) Remaining Months Cash.** At all times after Borrower achieves the milestone set forth in Section 6.7(c) above, before Borrower's Remaining Months Cash drops below 3.00 to 1.00 at any time, Borrower shall have delivered to Bank either (i) documents (such as a Securities and Exchange Commission filing) evidencing a forthcoming financing, or (ii) a signed and accepted letter of intent with a strategic partner (each of clause (i) and (ii), a "Financing Event"), in each case providing for additional financing in an amount acceptable to Bank. Such Financing Event shall occur within 60 days after Bank receives the documents required by clause (i) or (ii), as applicable.

**6.8 Consent of Inbound Licensors.** Within 30 days after entering into or becoming bound by any material inbound license or material agreement, Borrower shall (i) provide written notice to Bank of the material terms of such license or agreement with a description of its likely impact on Borrower's business or financial condition, and (ii) if Bank so requests, in good faith use commercially reasonable efforts to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for Borrower's interest in such licenses or contract rights to be deemed Collateral and for Bank to have a security interest in it that might otherwise be restricted by the terms of the applicable license or agreement, whether now existing or entered into in the future, provided, however, that the failure to obtain any such consent or waiver shall not constitute a default under this Agreement.

**6.9 Creation/Acquisition of Subsidiaries.** In the event any Borrower or any Subsidiary of any Borrower creates or acquires any Subsidiary after the Closing Date, Borrower or such Subsidiary shall promptly notify Bank of such creation or acquisition, and Borrower or such Subsidiary shall take all actions reasonably requested by Bank to achieve any of the following with respect to such "**New Subsidiary**" (defined as a Subsidiary formed after the date hereof during the term of this Agreement): (i) to cause such New Subsidiary to become either a co-Borrower hereunder, if such New Subsidiary is organized under the laws of the United States, or a secured guarantor with respect to the Obligations; and (ii) to grant and pledge to Bank a perfected security interest in 100% of the stock, units or other evidence of ownership held by

Borrower or its Subsidiaries of any such New Subsidiary which is organized under the laws of the United States, and 65% of the stock, units or other evidence of ownership held by Borrower or its Subsidiaries of any such New Subsidiary which is not organized under the laws of the United States.

**6.10 Further Assurances.** At any time and from time to time Borrower shall execute and deliver such further instruments and take such further action as may reasonably be requested by Bank to effect the purposes of this Agreement.

## 7. NEGATIVE COVENANTS.

Borrower covenants and agrees that, so long as any credit hereunder shall be available and until the outstanding Obligations are paid in full or for so long as Bank may have any commitment to make any Credit Extensions, Borrower will not do any of the following without Bank's prior written consent, which shall not be unreasonably withheld:

**7.1 Dispositions.** Convey, sell, lease, license, transfer or otherwise dispose of (collectively, to "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, or move cash balances on deposit with Bank to accounts opened by Borrower at another financial institution not permitted by Section 6.6, in each case, other than Permitted Transfers.

**7.2 Change in Name, Location, Executive Office, or Executive Management; Change in Business; Change in Fiscal Year; Change in Control.** Change its name or the state of Borrower's formation or relocate its chief executive office without 30 days prior written notification to Bank; replace or suffer the departure of its chief executive officer or chief financial officer without delivering written notification to Bank within 10 days; fail to appoint an interim replacement or fill a vacancy with a replacement satisfactory to Borrower's Board of Directors in the position of chief executive officer or chief financial officer for more than 90 consecutive days; suffer a change on its board of directors without notifying Bank in writing of such change within 10 days thereafter, or suffer the resignation of one or more directors from its board of directors in anticipation of Borrower's insolvency, in each case without the prior written consent of Bank which may be withheld in Bank's sole discretion; take action to liquidate, wind up, or otherwise cease to conduct business in the ordinary course; engage in any business, or permit any of its Subsidiaries to engage in any business, other than or reasonably related or incidental to the businesses currently engaged in by Borrower; change its fiscal year end; have a Change in Control.

**7.3 Mergers or Acquisitions.** Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with or into any other business organization (other than mergers or consolidations of a Subsidiary into another Subsidiary or into Borrower), or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person except where (a) each of the following conditions is applicable: (i) the consideration paid in connection with such transactions (including assumption of liabilities) does not in the aggregate exceed \$250,000 during any fiscal year, (ii) no Event of Default has occurred, is continuing or would exist after giving effect to such transactions, (iii) such transactions do not result in a Change in Control, and (iv) Borrower is the surviving entity; or (b)

the Obligations are repaid in full concurrently with the closing of any merger or consolidation of Borrower in which Borrower is not the surviving entity; provided, however, that Borrower shall not, without Bank's prior written consent, enter into any binding contractual arrangement (such as an engagement letter) with any Person (such as a broker or investment bank) to attempt to facilitate a merger or acquisition of Borrower unless (i) no Event of Default exists when such agreement is entered into by Borrower, (ii) such agreement does not give such Person the right to claim any fee, payment or damages from any parties, other than from Borrower or Borrower's investors, in connection with a sale of Borrower's stock or assets pursuant to or resulting from an assignment for the benefit of creditors, an asset turnover to Borrower's creditors (including, without limitation, Bank), foreclosure, bankruptcy or similar liquidation, and (iii) Borrower notifies Bank in advance of entering into such an agreement (provided, the failure to give such notification shall not be deemed a material breach of this Agreement).

**7.4 Indebtedness.** Create, incur, assume, guarantee or be or remain liable with respect to any Indebtedness, or permit any Subsidiary so to do, other than Permitted Indebtedness, or prepay any Indebtedness or take any actions which impose on Borrower an obligation to prepay any Indebtedness, except Indebtedness to Bank.

**7.5 Encumbrances.** Create, incur, assume or allow any Lien with respect to its property, or assign or otherwise convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries so to do, except for Permitted Liens, or covenant to any other Person (other than (i) the licensors with respect to the property covered under such license or (ii) the lessors of specific equipment or lenders financing specific equipment with respect to such leased or financed equipment) that Borrower in the future will refrain from creating, incurring, assuming or allowing any Lien with respect to any of Borrower's property.

**7.6 Distributions.** Pay any dividends or make any other distribution or payment on account of or in redemption, retirement or purchase of any capital stock, except that Borrower may (i) repurchase the stock of former employees, directors, or consultants in an aggregate amount not to exceed \$400,000 in any fiscal year, pursuant to stock repurchase agreements as long as an Event of Default does not exist prior to such repurchase or would not exist after giving effect to such repurchase, and (ii) repurchase the stock of former employees, directors, or consultants pursuant to stock repurchase agreements by the cancellation of indebtedness owed by such former employees, directors, or consultants to Borrower regardless of whether an Event of Default exists.

**7.7 Investments.** Directly or indirectly acquire or own, or make any Investment in or to, any Person, or permit any of its Subsidiaries so to do, other than Permitted Investments, or, subject to the requirements of Section 6.6, maintain or invest any of its Investment Property with a Person other than Bank or Bank's Affiliates or permit any Subsidiary to do so unless such Person has entered into a control agreement with Bank, in form and substance reasonably satisfactory to Bank, or suffer or permit any Subsidiary to be a party to, or be bound by, an agreement that restricts such Subsidiary from paying dividends or otherwise distributing property to Borrower.

**7.8 Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower except for (a) transactions that

are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person, (b) the sale or issuance of equity securities to Borrower's existing investors, provided no Change in Control occurs as a result, (c) Subordinated Debt, and (d) compensation arrangements.

**7.9 Subordinated Debt.** Make any payment in respect of any Subordinated Debt, or permit any of its Subsidiaries to make any such payment, except in compliance with the terms of such Subordinated Debt, or amend any provision affecting Bank's rights contained in any documentation relating to the Subordinated Debt without Bank's prior written consent.

**7.10 Inventory and Equipment.** Store the Inventory or the Equipment of a book value in excess of \$100,000 with a bailee, warehouseman, collocation facility or similar third party unless the third party has been notified of Bank's security interest and Bank (a) has received an acknowledgment from the third party that it is holding or will hold the Inventory or Equipment for Bank's benefit or (b) is in possession of the warehouse receipt, where negotiable, covering such Inventory or Equipment. Except for Inventory sold in the ordinary course of business and for movable items of personal property having an aggregate book value not in excess of \$100,000, and except for such other locations as Bank may approve in writing, Borrower shall keep the Inventory and Equipment only at the location set forth in Section 10 and such other locations of which Borrower gives Bank prior written notice and as to which Bank is able to take such actions as may be necessary to perfect its security interest or to obtain a bailee's acknowledgment of Bank's rights in the Collateral.

**7.11 No Investment Company; Margin Regulation.** Become or be controlled by an "investment company," within the meaning of the Investment Company Act of 1940, or become principally engaged in, or undertake as one of its important activities, the business of extending credit for the purpose of purchasing or carrying margin stock, or use the proceeds of any Credit Extension for such purpose.

## **8. EVENTS OF DEFAULT.**

Any one or more of the following events shall constitute an Event of Default by Borrower under this Agreement:

**8.1 Payment Default.** If Borrower fails to pay any of the Obligations when due;

**8.2 Covenant Default.**

(a) If Borrower fails to perform any obligation under Sections 6.2 (financial reporting), 6.4 (taxes), 6.5 (insurance), 6.6 (primary accounts) or 6.7 (financial covenants), or violates any of the covenants contained in Article 7 of this Agreement; or

(b) If Borrower fails or neglects to perform or observe any other material term, provision, condition, or covenant contained in this Agreement, in any of the Loan Documents, or in any other present or future agreement between Borrower and Bank and as to any default under such other term, provision, condition or covenant that can be cured, has failed

to cure such default within 15 days after Borrower receives notice thereof or any officer of Borrower becomes aware thereof; provided, however, that if the default cannot by its nature be cured within the 15 day period or cannot after diligent attempts by Borrower be cured within such 15 day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional reasonable period (which shall not in any case exceed 30 days) to attempt to cure such default, and within such reasonable time period the failure to have cured such default shall not be deemed an Event of Default but no Credit Extensions will be made.

**8.3 Material Adverse Change.** If there occurs any circumstance or any circumstances which would reasonably be expected to have a Material Adverse Effect;

**8.4 Attachment.** If any material portion of Borrower's assets is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within 10 days, or if Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a lien or encumbrance upon any material portion of Borrower's assets, or if a notice of lien, levy, or assessment is filed of record with respect to any material portion of Borrower's assets by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not paid within ten days after Borrower receives notice thereof, provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by Borrower (provided that no Credit Extensions will be made during such cure period);

**8.5 Insolvency.** If Borrower becomes insolvent, or if an Insolvency Proceeding is commenced by Borrower, or if an Insolvency Proceeding is commenced against Borrower and is not dismissed or stayed within 45 days (provided that no Credit Extensions will be made prior to the dismissal of such Insolvency Proceeding);

**8.6 Other Agreements.** If there is a default or other failure to perform in any agreement to which Borrower is a party with a third party or parties (a) resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of \$400,000, (b) in connection with any lease of real property material to the conduct of Borrower's business, if such default or failure to perform results in the right of another party to terminate such lease, or (c) that would reasonably be expected to have a Material Adverse Effect;

**8.7 Judgments.** If a final, uninsured judgment or judgments for the payment of money in an amount, individually or in the aggregate, of at least \$400,000 shall be rendered against Borrower and shall remain unsatisfied and unstayed for a period of 10 days (provided that no Credit Extensions will be made prior to the satisfaction or stay of the judgment); or

**8.8 Misrepresentations.** If any material misrepresentation or material misstatement exists now or hereafter in any warranty or representation set forth herein or in any certificate delivered to Bank by any Responsible Officer pursuant to this Agreement or to induce Bank to enter into this Agreement or any other Loan Document.

## 9. BANK'S RIGHTS AND REMEDIES.

**9.1 Rights and Remedies.** Upon the occurrence and during the continuance of an Event of Default, Bank may, at its election, without notice of its election and without demand, do any one or more of the following, all of which are authorized by Borrower:

(a) Declare all Obligations, whether evidenced by this Agreement, by any of the other Loan Documents, or otherwise, immediately due and payable (provided that upon the occurrence of an Event of Default described in Section 8.5 (insolvency), all Obligations shall become immediately due and payable without any action by Bank);

(b) Demand that Borrower (i) deposit cash with Bank in an amount equal to the amount of any Letters of Credit remaining undrawn, as collateral security for the repayment of any future drawings under such Letters of Credit, and (ii) pay in advance all Letter of Credit fees scheduled to be paid or payable over the remaining term of the Letters of Credit, and Borrower shall promptly deposit and pay such amounts;

(c) Cease advancing money or extending credit to or for the benefit of Borrower under this Agreement or under any other agreement between Borrower and Bank;

(d) Settle or adjust disputes and claims directly with account debtors for amounts, upon terms and in whatever order that Bank reasonably considers advisable;

(e) Make such payments and do such acts as Bank considers necessary or reasonable to protect its security interest in the Collateral. Borrower agrees to assemble the Collateral if Bank so requires, and to make the Collateral available to Bank as Bank may designate. Borrower authorizes Bank to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any encumbrance, charge, or lien which in Bank's determination appears to be prior or superior to its security interest and to pay all expenses incurred in connection therewith. With respect to any of Borrower's owned premises, Borrower hereby grants Bank a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of Bank's rights or remedies provided herein, at law, in equity, or otherwise;

(f) Set off and apply to the Obligations any and all (i) balances and deposits of Borrower held by Bank, and (ii) indebtedness at any time owing to or for the credit or the account of Borrower held by Bank;

(g) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Bank is hereby granted a license or other right, solely pursuant to the provisions of this Section 9.1, to use, without charge, Borrower's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section 9.1, Borrower's rights under all licenses and all franchise agreements shall inure to Bank's benefit;

(h) Sell the Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including Borrower's premises) as Bank determines is commercially reasonable, and apply any proceeds to the Obligations in whatever manner or order Bank deems appropriate. Bank may sell the Collateral without giving any warranties as to the Collateral. Bank may specifically disclaim any warranties of title or the like. This procedure will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral. If Bank sells any of the Collateral upon credit, Borrower will be credited only with payments actually made by the purchaser, received by Bank, and applied to the indebtedness of the purchaser. If the purchaser fails to pay for the Collateral, Bank may resell the Collateral and Borrower shall be credited with the proceeds of the sale;

(i) Bank may credit bid and purchase at any public sale;

(j) Apply for the appointment of a receiver, trustee, liquidator or conservator of the Collateral, without notice and without regard to the adequacy of the security for the Obligations and without regard to the solvency of Borrower, any guarantor or any other Person liable for any of the Obligations; and

(k) Any deficiency that exists after disposition of the Collateral as provided above will be paid immediately by Borrower.

Bank may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral.

**9.2 Power of Attorney.** Effective only upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably appoints Bank (and any of Bank's designated officers, or employees) as Borrower's true and lawful attorney to: (a) send requests for verification of Accounts or notify account debtors of Bank's security interest in the Accounts; (b) endorse Borrower's name on any checks or other forms of payment or security that may come into Bank's possession; (c) sign Borrower's name on any invoice or bill of lading relating to any Account, drafts against account debtors, schedules and assignments of Accounts, verifications of Accounts, and notices to account debtors; (d) dispose of any Collateral; (e) make, settle, and adjust all claims under and decisions with respect to Borrower's policies of insurance; (f) settle and adjust disputes and claims respecting the accounts directly with account debtors, for amounts and upon terms which Bank determines to be reasonable; and (g) file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral; provided Bank may exercise such power of attorney to sign the name of Borrower on any of the documents described in clause (g) above, regardless of whether an Event of Default has occurred. The appointment of Bank as Borrower's attorney in fact, and each and every one of Bank's rights and powers, being coupled with an interest, is irrevocable until all of the Obligations have been fully repaid and performed and Bank's obligation to provide advances hereunder is terminated.

**9.3 Accounts Collection.** At any time after the occurrence and during the continuation of an Event of Default, Bank may notify any Person owing funds to Borrower of Bank's security interest in such funds and verify the amount of such Account. Borrower shall collect all amounts owing to Borrower for Bank, receive in trust all payments as Bank's trustee, and immediately deliver such payments to Bank in their original form as received from the account debtor, with proper endorsements for deposit.

**9.4 Bank Expenses.** If Borrower fails to pay any amounts or furnish any required proof of payment due to third persons or entities, as required under the terms of this Agreement, then Bank may do any or all of the following after reasonable notice to Borrower: (a) make payment of the same or any part thereof; and/or (b) obtain and maintain insurance policies of the type discussed in Section 6.5 of this Agreement, and take any action with respect to such policies as Bank deems prudent. Any amounts so paid or deposited by Bank shall constitute Bank Expenses, shall be immediately due and payable, and shall bear interest at the then applicable rate hereinabove provided, and shall be secured by the Collateral. Any payments made by Bank shall not constitute an agreement by Bank to make similar payments in the future or a waiver by Bank of any Event of Default under this Agreement.

**9.5 Bank's Liability for Collateral.** Bank has no obligation to clean up or otherwise prepare the Collateral for sale. All risk of loss, damage or destruction of the Collateral shall be borne by Borrower.

**9.6 No Obligation to Pursue Others.** Bank has no obligation to attempt to satisfy the Obligations by collecting them from any other person liable for them and Bank may release, modify or waive any collateral provided by any other Person to secure any of the Obligations, all without affecting Bank's rights against Borrower. Borrower waives any right it may have to require Bank to pursue any other Person for any of the Obligations.

**9.7 Remedies Cumulative.** Bank's rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. Bank shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by Bank of one right or remedy shall be deemed an election, and no waiver by Bank of any Event of Default on Borrower's part shall be deemed a continuing waiver. No delay by Bank shall constitute a waiver, election, or acquiescence by it. No waiver by Bank shall be effective unless made in a written document signed on behalf of Bank and then shall be effective only in the specific instance and for the specific purpose for which it was given. Borrower expressly agrees that this Section 9.7 may not be waived or modified by Bank by course of performance, conduct, estoppel or otherwise.

**9.8 Demand; Protest.** Except as otherwise provided in this Agreement, Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment and any other notices relating to the Obligations.

## **10. NOTICES.**

Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in

writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by a recognized overnight delivery service, certified mail, postage prepaid, return receipt requested, or by telefacsimile to Borrower or to Bank, as the case may be, at its addresses set forth below:

If to Borrower: Evoke Pharma, Inc.  
505 Lomas Santa Fe Drive, Suite 270  
Solana Beach, CA 92075  
Attn:  
FAX:

with copies to: Latham & Watkins LLP  
12670 High Bluff Drive  
San Diego, CA 92130  
Attn: Cheston Larson  
FAX: (619) 696-7419

Latham & Watkins LLP  
505 Montgomery St., Ste. 2000  
San Francisco, CA 94111  
Attn: Haim Zaltzman  
FAX: (415) 395-8095

If to Bank: Square 1 Bank  
406 Blackwell Street, Suite 240  
Durham, North Carolina 27701  
Attn: Loan Operations Manager  
FAX: (919) 314-3080

with a copy to: Square 1 Bank  
12481 High Bluff Drive, Suite 350  
San Diego, CA 92130  
Attn: Lisa Foussianes  
FAX: (858) 436-3501

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

#### **11. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.**

This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to principles of conflicts of law. Jurisdiction shall lie in the State of California. All disputes, controversies, claims, actions and similar proceedings arising with respect to Borrower's account or any related agreement or transaction shall be brought in the Superior Court of San Mateo County, California or the United States District Court for the

Northern District of California, except as provided below with respect to arbitration of such matters. BANK AND BORROWER EACH ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF THEM, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL OF THEIR CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY RELATED INSTRUMENT OR LOAN DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTION OF ANY OF THEM. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY BANK OR BORROWER, EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY EACH OF THEM. If the jury waiver set forth in this Section 11 is not enforceable, then any dispute, controversy, claim, action or similar proceeding arising out of or relating to this Agreement, the Loan Documents or any of the transactions contemplated therein shall be settled by final and binding arbitration held in San Mateo County, California in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association by one arbitrator appointed in accordance with those rules. The arbitrator shall apply California law to the resolution of any dispute, without reference to rules of conflicts of law or rules of statutory arbitration. Judgment upon any award resulting from arbitration may be entered into and enforced by any state or federal court having jurisdiction thereof. Notwithstanding the foregoing, the parties may apply to any court of competent jurisdiction for preliminary or interim equitable relief, or to compel arbitration in accordance with this Section. The costs and expenses of the arbitration, including without limitation, the arbitrator's fees and expert witness fees, and reasonable attorneys' fees, incurred by the parties to the arbitration may be awarded to the prevailing party, in the discretion of the arbitrator, or may be apportioned between the parties in any manner deemed appropriate by the arbitrator. Unless and until the arbitrator decides that one party is to pay for all (or a share) of such costs and expenses, both parties shall share equally in the payment of the arbitrator's fees as and when billed by the arbitrator.

## 12. GENERAL PROVISIONS.

**12.1 Successors and Assigns.** This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties and shall bind all persons who become bound as a debtor to this Agreement; provided, however, that neither this Agreement nor any rights hereunder may be assigned by Borrower without Bank's prior written consent, which consent may be granted or withheld in Bank's sole discretion. Bank shall have the right without the consent of or notice to Borrower to sell, assign, transfer, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights and benefits hereunder. Notwithstanding the foregoing, Bank shall not assign its interest in the Term Loans and Loan Documents to any Person who in Bank's reasonable discretion is a direct competitor of Borrower, whether as an operating company or direct or indirect parent with voting control over such operating company.

**12.2 Indemnification.** Borrower shall defend, indemnify and hold harmless Bank and its officers, employees, and agents against: (a) all obligations, demands, claims, and

liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement; and (b) all losses or Bank Expenses in any way suffered, incurred, or paid by Bank, its officers, employees and agents as a result of or in any way arising out of, following, or consequential to the transactions between Bank and Borrower whether under this Agreement, or otherwise (including without limitation reasonable attorneys' fees and expenses), except for losses caused by Bank's gross negligence or willful misconduct.

**12.3 Time of Essence.** Time is of the essence for the performance of all obligations set forth in this Agreement.

**12.4 Severability of Provisions.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

**12.5 Amendments in Writing, Integration.** All amendments to or terminations of this Agreement or the other Loan Documents must be in writing. All prior agreements, understandings, representations, warranties, and negotiations between the parties hereto with respect to the subject matter of this Agreement and the other Loan Documents, if any, are merged into this Agreement and the Loan Documents.

**12.6 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Executed copies of the signature pages of this Agreement sent by facsimile or transmitted electronically in Portable Document Format ("PDF"), or any similar format, shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment.

**12.7 Survival.** All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations remain outstanding or Bank has any obligation to make any Credit Extension to Borrower. The obligations of Borrower to indemnify Bank with respect to the expenses, damages, losses, costs and liabilities described in Section 12.2 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Bank have run.

**12.8 Confidentiality.** In handling any confidential information, Bank and Borrower and all employees and agents of such party shall exercise the same degree of care that such party exercises with respect to its own proprietary information of the same types to maintain the confidentiality of any non-public information thereby received or received pursuant to this Agreement except that disclosure of such information may be made (i) in the case of Bank, to the subsidiaries or Affiliates of Bank or Borrower in connection with their present or prospective business relations with Borrower, (ii) in the case of Bank, to prospective transferees or purchasers of any interest in the Credit Extensions, provided that they have entered into a comparable confidentiality agreement in favor of Borrower and have delivered a copy to Borrower, (iii) as required by law, regulations, rule or order, subpoena, judicial order or similar order, (iv) in the case of Bank, as may be required in connection with the examination, audit or similar investigation of Bank, and (v) as Bank may determine in connection with the

enforcement of any remedies hereunder. Confidential information hereunder shall not include information that either: (a) is in the public domain or in the knowledge or possession of the receiving party when disclosed to such party, or becomes part of the public domain after disclosure to such receiving party through no fault of such receiving party; or (b) is disclosed to such receiving party by a third party, provided the receiving party does not have actual knowledge that such third party is prohibited from disclosing such information.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

EVOKE PHARMA, INC.

By: /s/ David A. Gonyer

Name: David A. Gonyer

Title: President and Chief Executive Officer

SQUARE 1 BANK

By: /s/ David Kho

Name: David Kho

Title: Assistant Vice President

## EXHIBIT A

### DEFINITIONS

“Accounts” means all presently existing and hereafter arising accounts, contract rights, payment intangibles and all other forms of obligations owing to Borrower arising out of the sale or lease of goods (including, without limitation, the licensing of software and other technology) or the rendering of services by Borrower and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Borrower and Borrower’s Books relating to any of the foregoing.

“Affiliate” means, with respect to any Person, any Person that owns or controls directly or indirectly such Person, any Person that controls or is controlled by or is under common control with such Person, and each of such Person’s senior executive officers, directors, and general partners.

“Authorized Officer” means someone designated as such in the corporate resolution provided by Borrower to Bank in which this Agreement and the transactions contemplated hereunder are authorized by Borrower’s board of directors. If Borrower provides subsequent corporate resolutions to Bank after the Closing Date, the individual(s) designated as “Authorized Officer(s)” in the most recently provided resolution shall be the only “Authorized Officers” for purposes of this Agreement.

“Availability End Date” means November 28, 2015.

“Bank Expenses” means all reasonable costs or expenses (including reasonable attorneys’ fees and expenses) incurred in connection with the preparation, negotiation, administration, and enforcement of the Loan Documents; reasonable Collateral audit fees; and Bank’s reasonable attorneys’ fees and expenses (whether generated in-house or by outside counsel) incurred in amending, enforcing or defending the Loan Documents (including fees and expenses of appeal), incurred before, during and after an Insolvency Proceeding, whether or not suit is brought.

“Borrower’s Books” means all of Borrower’s books and records including: ledgers; records concerning Borrower’s assets or liabilities, the Collateral, business operations or financial condition; and all computer programs, or tape files, and the equipment, containing such information.

“Business Day” means any day that is not a Saturday, Sunday, or other day on which banks in the State of North Carolina are authorized or required to close.

“Cash” means unrestricted cash and cash equivalents.

“Cash Burn” means an amount equal to the prior period’s ending Cash minus the current period’s ending Cash that has been adjusted (up or down, as applicable) for any changes to Cash as a result of borrowings and repayments of borrowings, proceeds from the sale of equity and the exercise of stock options or warrants, and paid-in-capital and minority interest. For the avoidance of doubt, the ‘current period’ is the most recently ended month for which reporting has been provided pursuant to Section 6.2, and the ‘prior period’ is the month immediately preceding such month.

“Change in Control” means a transaction (other than a bona fide equity financing or series of financings on terms and from investors reasonably acceptable to Bank) in which any “person” or “group” (within the meaning of Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) becomes the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act of 1934), directly or indirectly, of a sufficient number of shares of all classes of stock then outstanding of Borrower ordinarily entitled to vote in the election of directors, empowering such “person” or “group” to elect a majority of the Board of Directors of Borrower, who did not have such power before such transaction.

“Closing Date” means the date of this Agreement.

“Code” means the California Uniform Commercial Code as amended or supplemented from time to time.

“Collateral” means the property described on Exhibit B attached hereto and all Negotiable Collateral to the extent not described on Exhibit B, except to the extent any such property (i) is non-assignable by its terms without the consent of the licensor thereof or another party (but only to the extent such prohibition on transfer is enforceable under applicable law, including, without limitation, §9406 and §9408 of the Code), (ii) is property for which the granting of a security interest therein is contrary to applicable law, provided that upon the cessation of any such restriction or prohibition, such property shall automatically become part of the Collateral, (iii) constitutes the capital stock of a controlled foreign corporation (as defined in the IRC), in excess of 65% of the voting power of all classes of capital stock of such controlled foreign corporations entitled to vote or any Subsidiary which sole purpose is to hold the stock of such controlled foreign corporation, or (iv) is property (including any attachments, accessions or replacements) that is subject to a Lien that is permitted pursuant to clause (c) of the definition of Permitted Liens, if the grant of a security interest with respect to such property pursuant to this Agreement would be prohibited by the agreement creating such Permitted Lien or would otherwise constitute a default thereunder, provided, that such property will be deemed “Collateral” hereunder upon the termination and release of such Permitted Lien.

“Collateral State” means the state or states where the Collateral is located, which is California.

“Contingent Obligation” means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any indebtedness, lease, dividend, letter of credit or other obligation of another, including, without limitation, any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (ii) any obligations with respect to undrawn letters of credit, corporate credit cards or merchant services issued for the account of that Person; and (iii) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term “Contingent Obligation” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

“Copyrights” means any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held.

“Credit Extension” means each Term Loan, or any other extension of credit, by Bank to or for the benefit of Borrower hereunder.

“Equipment” means all present and future machinery, equipment, tenant improvements, furniture, fixtures, vehicles, tools, parts and attachments in which Borrower has any interest.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder.

“Event of Default” has the meaning assigned in Article 8.

“GAAP” means generally accepted accounting principles, consistently applied, as in effect from time to time in the United States.

“Indebtedness” means (a) all indebtedness for borrowed money or the deferred purchase price of property or services, including without limitation reimbursement and other obligations with respect to surety bonds and letters of credit, (b) all obligations evidenced by notes, bonds, debentures or similar instruments, (c) all capital lease obligations, and (d) all Contingent Obligations, including but not limited to any sublimit contained herein.

“Insolvency Proceeding” means any proceeding commenced by or against any Person or entity under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“Inventory” means all present and future inventory in which Borrower has any interest.

“Investment” means any beneficial ownership of (including stock, partnership or limited liability company interest or other securities) any Person, or any loan, advance or capital contribution to any Person.

“IRC” means the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

“Letter of Credit” means a commercial or standby letter of credit or similar undertaking issued by Bank at Borrower’s request.

“Lien” means any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

“Loan Documents” means, collectively, this Agreement, any note or notes executed by Borrower, and any other document, instrument or agreement entered into in connection with this Agreement, all as amended or extended from time to time.

“Material Adverse Effect” means a material adverse effect on: (i) the operations, business or financial condition of Borrower and its Subsidiaries taken as a whole; (ii) the ability of Borrower to repay the Obligations or otherwise perform its obligations under the Loan Documents; or (iii) Borrower’s interest in, or the value, perfection or priority of Bank’s security interest in the Collateral.

“Negotiable Collateral” means all of Borrower’s present and future letters of credit of which it is a beneficiary, drafts, instruments (including promissory notes), securities, documents of title, and chattel paper, and Borrower’s Books relating to any of the foregoing.

“Obligations” means all debt, principal, interest, Bank Expenses and other amounts owed to Bank by Borrower pursuant to this Agreement or any other agreement, whether absolute or contingent, due or to become due, now existing or hereafter arising, including any interest that accrues after the commencement of an Insolvency Proceeding and including any debt, liability, or obligation owing from Borrower to others that Bank may have obtained by assignment or otherwise. Notwithstanding the foregoing, “Obligations” shall not include any warrant or equity-related investments.

“Patents” means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

“Periodic Payments” means all installments or similar recurring payments that Borrower may now or hereafter become obligated to pay to Bank pursuant to the terms and provisions of any instrument, or agreement now or hereafter in existence between Borrower and Bank.

“Permitted Indebtedness” means:

(a) Indebtedness of Borrower in favor of Bank arising under this Agreement or any other Loan Document;

(b) Indebtedness existing on the Closing Date and disclosed in the Schedule;

(c) Indebtedness not to exceed \$450,000 (the “Equipment Financing Cap”) in the aggregate at any time secured by a lien described in clause (c) of the defined term “Permitted Liens,” provided such Indebtedness does not exceed at the time it is incurred the lesser of the cost or fair market value of the property financed with such Indebtedness; provided that Bank agrees to consider increases in the Equipment Financing Cap based on future board-approved budgets of Borrower projecting the need for additional equipment financing;

(d) Subordinated Debt;

(e) Indebtedness to trade creditors incurred in the ordinary course of business;

(f) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(g) Indebtedness of Borrower with respect to corporate credit cards in an amount not to exceed \$50,000 at any time; and

(h) Extensions, refinancings and renewals of any items of Permitted Indebtedness, provided that the principal amount is not increased or the terms modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

“Permitted Investment” means:

(a) Investments existing on the Closing Date disclosed in the Schedule;

(b) (i) Marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one year from the date of acquisition thereof, (ii) commercial paper maturing no more than one year from the date of creation thereof and currently having rating of at least A-2 or P-2 from either Standard & Poor’s Corporation or Moody’s Investors Service, (iii) Bank’s certificates of deposit maturing no more than one year from the date of investment therein, (iv) Bank’s money market accounts, (v) Investments in regular deposit or checking accounts held with Bank or as otherwise permitted by, and subject to the terms and conditions of, Section 6.6 of this Agreement, and (vi) Investments consistent with any investment policy adopted by Borrower’s board of directors;

(c) Investments accepted in connection with Permitted Transfers;

(d) Investments of Subsidiaries in or to other Subsidiaries or Borrower and Investments by Borrower in Subsidiaries not to exceed \$450,000 in the aggregate in any fiscal year;

**(e)** Investments not to exceed \$400,000 outstanding in the aggregate at any time consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plan agreements approved by Borrower's Board of Directors;

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

**(g)** Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business, provided that this subparagraph (h) shall not apply to Investments of Borrower in any Subsidiary;

**(h)** Investments (i) in joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the licensing of technology, the development of technology or the providing of technical support permitted hereunder, provided that any cash Investments by Borrower do not exceed \$450,000 in the aggregate in any fiscal year, and (ii) by Borrower of property permitted to be transferred under Section 7.1 in connection with joint ventures or strategic alliances or collaborations of Borrower or a Subsidiary; and

**(i)** Investments permitted under Section 7.3.

"Permitted Liens" means the following:

**(a)** Any Liens existing on the Closing Date and disclosed in the Schedule (excluding Liens to be satisfied with the proceeds of the Credit Extensions) or arising under this Agreement, the other Loan Documents, or any other agreement in favor of Bank;

**(b)** Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings and for which Borrower maintains adequate reserves;

**(c)** Liens not to exceed \$450,000 (the "Equipment Financing Cap") in the aggregate at any time (i) upon or in any Equipment (other than Equipment financed by a Credit Extension) acquired or held by Borrower or any of its Subsidiaries to secure the purchase price of such Equipment or indebtedness incurred solely for the purpose of financing the acquisition or lease of such Equipment, or (ii) existing on such Equipment at the time of its acquisition, in each case provided that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such Equipment; provided that Bank agrees to consider increases in the Equipment Financing Cap based on future board-approved budgets of Borrower projecting the need for additional equipment financing;

**(d)** Statutory Liens securing claims or demands of materialmen, mechanics, carriers, repairmen, or other like Liens imposed without the action of such parties arising in the ordinary course of business;

**(e)** Liens to secure payment for workers' compensation, employment insurance, old age pensions, social security or other like obligations incurred in the ordinary course of business;

**(f)** Non-exclusive licenses of Intellectual Property granted to third parties in the ordinary course of business, and licenses of Intellectual Property that could not result in a legal transfer of title of the licensed property that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discrete geographical areas outside of the United States;

**(g)** Liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by Liens of the type described in clauses (a) through (c) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness being extended, renewed or refinanced does not increase;

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

**(i)** Liens in favor of other financial institutions arising in connection with Borrower's deposit accounts held at such institutions to secure standard fees for deposit services charged by, but not financing made available by, such institutions, provided that Bank has a perfected security interest in the amounts held in such deposit accounts; and

**(j)** Liens securing Subordinated Debt.

"Permitted Transfer" means the conveyance, sale, lease, transfer or disposition by Borrower or any Subsidiary of:

**(a)** Inventory in the ordinary course of business;

**(b)** licenses and similar arrangements for the use of the property of Borrower or its Subsidiaries in the ordinary course of business;

**(c)** Licenses permitted by subsection (f) of the definition of "Permitted Liens";

**(d)** worn-out, surplus or obsolete Equipment not financed with the proceeds of Credit Extensions;

**(e)** grants of security interests and other Liens that constitute Permitted Liens;

**(f)** Transfers that constitute Permitted Investments;

**(g)** Cash unless otherwise prohibited by the terms of this Agreement; and

**(h)** other assets of Borrower or its Subsidiaries that do not in the aggregate exceed \$450,000 during any fiscal year.

"Person" means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or governmental agency.

"Prime Rate" means the variable rate of interest, per annum, most recently announced by Bank, as its "prime rate," whether or not such announced rate is the lowest rate available from Bank.

"Remaining Months Cash" means the ratio of (i) unrestricted Cash at Bank to (ii) Cash Burn.

"Responsible Officer" means each of the Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer, Vice President of Finance and the Controller of Borrower, as well as any other officer or employee identified as an Authorized Officer in the corporate resolution delivered by Borrower to Bank in connection with this Agreement.

“Schedule” means the schedule of exceptions attached hereto and approved by Bank, if any.

“SOS Reports” means the official reports from the Secretaries of State of each Collateral State, the state where Borrower’s chief executive office is located, the state of Borrower’s formation and other applicable federal, state or local government offices identifying all current security interests filed in the Collateral and Liens of record as of the date of such report.

“Subordinated Debt” means any debt incurred by Borrower that is subordinated in writing to the debt owing by Borrower to Bank on terms reasonably acceptable to Bank (and identified as being such by Borrower and Bank), including a separate writing signed by Bank with respect to each issuance of such debt.

“Subsidiary” means any corporation, partnership or limited liability company or joint venture in which (i) any general partnership interest or (ii) more than 50% of the stock, limited liability company interest or joint venture of which by the terms thereof ordinary voting power to elect the Board of Directors, managers or trustees of the entity, at the time as of which any determination is being made, is owned by Borrower, either directly or through an Affiliate.

“Term Loan Maturity Date” means November 28, 2017.

“Trademarks” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

**DEBTOR:** EVOKE PHARMA, INC.

**SECURED PARTY:** SQUARE 1 BANK

**EXHIBIT B**

**COLLATERAL DESCRIPTION ATTACHMENT TO LOAN AND SECURITY AGREEMENT**

All personal property of Borrower (herein referred to as "Borrower" or "Debtor") whether presently existing or hereafter created or acquired, and wherever located, including, but not limited to:

(a) all accounts (including health-care-insurance receivables), chattel paper (including tangible and electronic chattel paper), deposit accounts, documents (including negotiable documents), equipment (including all accessions and additions thereto), financial assets, general intangibles (including patents, trademarks, copyrights, goodwill, payment intangibles, domain names, and software), goods (including fixtures), instruments (including promissory notes), inventory (including all goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), investment property (including securities and securities entitlements), letter of credit rights, money, and all of Debtor's books and records with respect to any of the foregoing, and the computers and equipment containing said books and records;

(b) any and all cash proceeds and/or noncash proceeds of any of the foregoing, including, without limitation, insurance proceeds, and all supporting obligations and the security therefor or for any right to payment. All terms above have the meanings given to them in the California Uniform Commercial Code, as amended or supplemented from time to time, including revised Division 9 of the Uniform Commercial Code-Secured Transactions.

Notwithstanding the foregoing, the Collateral shall not include any of the intellectual property, in any medium, of any kind or nature whatsoever, now or hereafter owned or acquired or received by Borrower, or in which Borrower now holds or hereafter acquires or receives any right or interest (collectively, the "Intellectual Property"); provided, however, that the Collateral shall include all accounts and general intangibles that consist of rights to payment and proceeds from the sale, licensing or disposition of all or any part, or rights in, the foregoing (the "Rights to Payment").

Notwithstanding the foregoing, if a judicial authority (including a U.S. Bankruptcy Court) holds that a security interest in the underlying Intellectual Property is necessary to have a security interest in the Rights to Payment, then the Collateral shall automatically, and effective as of May 28, 2014, include the Intellectual Property to the extent and only to the extent necessary to permit perfection of Bank's security interest in the Rights to Payment, and further provided, however, that Bank's enforcement rights with respect to any security interest in the Intellectual Property shall be absolutely limited to the Rights to Payment only, and Bank shall have no recourse whatsoever with respect to the underlying Intellectual Property.

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**EXHIBIT C**

**LOAN ADVANCE/PAYDOWN REQUEST FORM**

*[Please refer to New Borrower Kit]*

**EXHIBIT D**

**COMPLIANCE CERTIFICATE**

*[Please refer to New Borrower Kit]*

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**EXHIBIT E**  
**FORM OF WARRANT**

*[See Exhibit 4.1]*

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## SCHEDULE OF EXCEPTIONS

**Permitted Indebtedness** (Exhibit A) – None.

**Permitted Investments** (Exhibit A) – None.

**Permitted Liens** (Exhibit A)

Liens on Samsung copier leased by Borrower pursuant to that certain Lease Agreement between Borrower and GE Capital, executed by Borrower on April 4, 2014.

**Prior Names** (Section 5.5) – None.

**Litigation** (Section 5.6) – None.

**Inbound Licenses** (Section 5.12) – None.

**CORPORATE RESOLUTION**

The undersigned duly elected and qualified [Assistant] Secretary of Evoke Pharma, Inc. (the "Company") does hereby certify that the following is a true and correct copy of certain resolutions adopted by the Company's Board of Directors in accordance with applicable law and the Company's bylaws, and that such resolutions are now unmodified and in full force and effect:

**BE IT RESOLVED**, that:

1) Any one (1) of the following, duly elected officers of the Company (each, an "Authorized Officer") whose genuine original signature appears next to his or her name is authorized to act for, on behalf of, and in the name of the Company in connection with the resolutions below:

<u>Title</u>	<u>Name</u>	<u>Authorized Signature</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

2) Any Authorized Officer may:

(a) Borrow money from time to time from Square 1 Bank ("Bank"), and may negotiate and procure loans, letters of credit, foreign exchange contracts and other financial accommodations from Bank, including without limitation, that certain Loan and Security Agreement dated on or about May 28, 2014, and also to execute and deliver to Bank one or more renewals, extensions, or modifications thereof;

(b) Give security for any liabilities of the Company to Bank by grant, security interest, assignment, lien, deed of trust or mortgage upon any real or personal property, tangible or intangible of the Company;

(c) Purchase, sell, exchange, assign, endorse for transfer and/or deliver certificates and/or instruments representing stocks, bonds, evidences of Indebtedness or other securities owned by the Company, whether or not registered in the name of the Company;

(d) Discount with Bank, commercial or other business paper belonging to the Company made or drawn by or upon third parties, without limit as to amount;

(e) Authorize and direct Bank to pay the proceeds of any such loans or discounts as directed by the persons so authorized to sign; and

(f) Execute and deliver in form and content as may be required by Bank any and all notes, evidences of indebtedness, applications for letters of credit, guaranties, subordination agreements, loan and security agreements, financing statements, assignments, liens, deeds of trust, mortgages, trust receipts and other agreements, instruments or documents to carry out the purposes of these resolutions, any or all of which may relate to all or to substantially all of the Company's property and assets;

3) The Authorized Officers may designate additional or alternate individuals as being authorized to request loan advances, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements as he or she may in his or her discretion deem reasonably necessary or proper in order to carry into effect the provisions of these resolutions.

- 4) Any and all acts authorized pursuant to these resolutions and performed prior to the passage of these resolutions are hereby ratified and approved, and the authority conferred herein may be exercised singly by any such officer, and these resolutions shall continue in full force and effect until written notice of modification or revocation is received and accepted by Bank (such notice to have no effect on any action previously taken by Bank in reliance on these resolutions). Bank may rely upon any form of notice, which it in good faith believes to be genuine or what it purports to be.
- 5) The resolutions are in full force and effect as of the date of this Certificate and are intended to replace, as of this date, any resolutions previously given by the Company to Bank in connection with the matters described herein; these resolutions and any borrowings or financial accommodations under these resolutions have been properly noted in the corporate books and records, and have not been rescinded, revoked or modified; neither the foregoing resolutions nor any actions to be taken pursuant to them are or will be in contravention of any provision of the certificate of incorporation or bylaws of the Company or of any agreement, indenture or other instrument to which the Company is a party or by which it is bound; and to the extent the certificate of incorporation or bylaws of the Company or any agreement, indenture or other instrument to which the Company is a party or by which it is bound require the vote or consent of shareholders of the Company to authorize any act, matter or thing described in the foregoing resolutions, such vote or consent has been obtained.

In Witness Whereof, I have affixed my name as [Assistant] Secretary and have caused the corporate seal (where available) of said Company to be affixed as of May 28, 2014.

\_\_\_\_\_  
[Assistant] Secretary\*

\* If the certifying officer is designated as the only signer in these resolutions then another corporate officer must also sign.

\_\_\_\_\_

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**USA PATRIOT ACT  
NOTICE  
OF  
CUSTOMER IDENTIFICATION**

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT**

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

**WHAT THIS MEANS FOR YOU:** when you open an account, we will ask your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

**SQUARE 1 BANK**

**AUTOMATIC DEBIT AUTHORIZATION**

**Member FDIC**

To: **Square 1 Bank**

Re: **Loan #** \_\_\_\_\_

You are hereby authorized and instructed to charge account No. \_\_\_\_\_ in the name of Evoke Pharma, Inc. for facility fees, principal, interest and other payments due on above referenced loan as set forth below and credit the loan referenced above.

- Debit the Facility Fee as it becomes due according to the terms of the Loan and Security Agreement and any renewals or amendments thereof.
- Debit each interest payment as it becomes due according to the terms of the Loan and Security Agreement and any renewals or amendments thereof.
- Debit each principal payment as it becomes due according to the terms of the Loan and Security Agreement and any renewals or amendments thereof.
- Debit each payment for Bank Expenses as it becomes due according to the terms of the Loan and Security Agreement and any renewals or amendments thereof.

This Authorization is to remain in full force and effect until revoked in writing.

Borrower Signature	Date

We are excited to have you as a Square 1 Bank client and want to spread the word about your success!

From press releases to mentions on social media sites, and all points in between, Square 1’s marketing and communications team is constantly seeking new opportunities to promote our clients and to connect them to prospects, existing customers, and the larger entrepreneurial/venture capital community.

If you complete the authorization below and return it to us, you are authorizing us to reference and/or include your company as part of our marketing and advertising efforts without further review or advance approval by you. Please select all areas that you approve.

- All items listed below
- List company as a Square 1 Bank customer on social media sites, including Twitter, LinkedIn, Facebook, Square 1 Bank corporate blog, or any other social media site
- Press release including your company as a Square 1 Bank client (to include company name and description only; may appear alongside other clients)
- Press release including your company as a Square 1 Bank client (**general** press release not focused on your company, but referring to your company as a client, and including your company’s name, description, and editorial comments; may appear alongside other clients)
- Provide quote for inclusion in a Square 1 Bank press release
- Use of company name and logo in Square 1 Bank marketing materials including corporate marketing collateral, website, social media sites, and other advertising campaigns
- Provide quotes for inclusion in Square 1 Bank marketing materials including corporate marketing collateral, website, social media sites, and other advertising campaigns
- Customer case study/application brief (success story to be posted on website, included in press kits and/or pitched to publications as potential articles)
- Willing to participate in a video testimonial highlighting your banking relationship and experiences with Square 1 Bank
- Other (please describe): \_\_\_\_\_

If you have questions, please contact your Square 1 banker, or our Marketing + Communications department at [marketing@square1bank.com](mailto:marketing@square1bank.com).

**Please acknowledge your authorization by signing below:**

Company Name: Evoke Pharma, Inc.

Authorized Signer: \_\_\_\_\_

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

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

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