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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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**FORM 6-K**

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**Report of Foreign Private Issuer  
Pursuant to Rule 13a-16 or 15d-16 of  
the Securities Exchange Act of 1934**

For the month of December, 2016

Commission File Number: 001-36619

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**Affimed N.V.**

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**Im Neuenheimer Feld 582,  
69120 Heidelberg,  
Germany**  
(Address of principal executive offices)

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Indicate by check mark whether the registrant files or will file annual reports under cover of Form 20-F or Form 40-F.

Form 20-F

Form 40-F

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1):

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7):

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On November 30, 2016, Affimed GmbH, a subsidiary of Affimed N.V. (“Affimed” and, together with Affimed GmbH, the “Company”), entered into a loan agreement (the “Loan Agreement”) with Silicon Valley Bank, a California corporation, as lender (“SVB”). The obligations under the Loan Agreement are fully guaranteed by Affimed pursuant to a Deed of Guaranty and Indemnity between Affimed and SVB (the “Deed”).

The Loan Agreement provides the Company with a senior secured term loan facility (the “Loan Facility”) for up to €10.0 million. The Company expects to fully draw down the initial tranche of €5.0 million (“Tranche 1”) under the Loan Facility. Up to an additional €5.0 million (“Tranche 2a”) or €2.5 million (“Tranche 2b”) may be drawn by the Company on or before May 31, 2017, in the case of each tranche, contingent on the satisfaction by such date of certain conditions as set forth in the Loan Agreement, including with respect to the raising of additional funds from a cash equity injection or an upfront milestone payment in specified amounts and evidence in form and substance reasonably satisfactory to SVB as to the continued progress of Affimed’s clinical trials.

In connection with its entry into the Loan Agreement, the Company has repaid all outstanding amounts under that certain term loan facility, dated July 24, 2014, between the Company and an affiliate of Perceptive Advisors LLC, as lender (the “Existing Loan Agreement”), and paid related fees and expenses. Upon the repayment in full of loans under the Existing Loan Agreement, the Existing Loan Agreement was terminated and any security interests in connection therewith were released.

The interest rate on amounts borrowed under the Loan Facility is calculated as the sum of (i) one-month EURIBOR plus (ii) an applicable margin of 5.5%, with EURIBOR deemed to equal zero percent if EURIBOR is less than zero percent. The Loan Facility has a maturity date of (i) May 31, 2020, if the Company draws down only under Tranche 1 or under Tranche 2a as well, with an interest-only period through (a) June 1, 2017 if only Tranche 1 is drawn down, or (b) December 1, 2017 if Tranche 2a is drawn down as well, in each case with amortized payments of principal and interest thereafter in equal monthly installments; or (ii) November 30, 2020, if the Company draws down under Tranche 2b, with an interest-only period through March 1, 2018, with amortized payments of principal and interest thereafter in equal monthly installments.

The Company may optionally prepay all or a portion of the outstanding borrowed amounts by paying such amounts and all accrued and unpaid interest thereon together with a Prepayment Charge (as defined below). If the borrowed amounts are prepaid on or prior to the second anniversary of the date on which Tranche 1 is drawn, the prepayment charge will be 3.00% of the amount being prepaid. If the borrowed amounts are prepaid after the second anniversary of the date on which Tranche 1 is drawn, but on or prior to the third anniversary of such date, the prepayment charge will be 2.00% of the amount being prepaid. Thereafter, the prepayment charge will be 1.00% of the amount being prepaid. Such prepayment charges are collectively referred to in this Report on Form 6-K as the “Prepayment Charges.” In addition, the Company will be required to prepay all such outstanding amounts, together with the applicable Prepayment Charge and the Final Payment Fee (as defined below), upon the occurrence of a change in control of the Company.

Pursuant to the Loan Agreement, the Company is also obligated to grant SVB warrants to purchase Affimed’s Common Shares, with a nominal value of €0.01 per share (the “Common Shares”). Upon the drawdown of Tranche 1, the Company will issue SVB a warrant (the “Tranche 1 Warrant”) to purchase such number of Common Shares equal to 9.5% of the amount drawn under Tranche 1 divided by the price per Common Share, as determined pursuant to the Loan Agreement. If and when the Company draws down on either Tranche 2a or Tranche 2b, the Company will issue SVB an additional warrant (the “Tranche 2 Warrant” and, together with the Tranche 1 Warrant, the “Warrants”) to purchase such number of Common Shares equal to 9.5% of the amount drawn under Tranche 2a or Tranche 2b, as the case may be, divided by the price per Common Share, as determined pursuant to the Loan Agreement. The exercise price for the Common Shares underlying each Warrant will be the price per Common Share at the time such Warrant is issued, as determined pursuant to the Loan Agreement. The aggregate number of Common Shares underlying the Warrants shall in no event exceed 0.5% of the outstanding share capital of Affimed at the time of the drawdown of the relevant tranche. The exercise price and the number of Common Shares underlying the Warrants are subject to adjustment upon a subdivision or combination of the Common Shares, a reclassification of the Common Shares or certain other corporate reorganizations. In the event that any of Affimed’s Common Shares are proposed to be registered under the Securities Act of 1933, Affimed has granted SVB the right to cause Affimed to effect the registration of the Common Shares issued upon exercise of the Warrants.

The Loan Facility is secured by a pledge of 100% of Affimed’s shares in Affimed GmbH, all intercompany accounts receivables owed by Affimed’s subsidiaries to Affimed and a security assignment of all of the Company’s bank accounts, inventory, trade receivables and payment claims as specified in (i) the Omnibus Deed of Pledge between Affimed and SVB (the “Deed of Pledge”), (ii) the Share Pledge Agreement between Affimed and SVB (the “Share Pledge Agreement”), (iii) the Account Pledge Agreement between Affimed and SVB, (the “Parent Account Pledge Agreement”), (iv) the Account Pledge Agreement between Affimed GmbH and SVB (the “Subsidiary Account Pledge Agreement”), (v) the Security Assignment

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Agreement between Affimed GmbH and SVB (the “Security Assignment Agreement”) and (vi) the Security Transfer Agreement between Affimed GmbH and SVB (the “Security Transfer Agreement”).

The Loan Agreement includes customary representations, warranties and restrictive covenants, including restrictions on certain mergers, acquisitions, dispositions, distributions (including the payment of dividends) and the incurrence of indebtedness or liens, and sets out those events which would constitute an event of default thereunder (“Events of Default”). Under the terms of the Loan Agreement, upon and during the continuance of any one or more Events of Default, SVB may, at its option and in addition to other remedies under the Loan Agreement, accelerate and demand payment of all or any part of the Company’s secured obligations together with a Prepayment Charge and declare them to be immediately due and payable. Additionally, upon and during the continuance of any one or more Events of Default, the interest rate on amounts borrowed under the Loan Facility will bear interest at a rate 3.0% above the applicable interest rate. Fees and expenses payable to SVB include SVB’s expenses incurred in negotiating the Loan Agreement and related documents as well as a final payment fee equal to 10% of the total principal amount advanced to Affimed by SVB, which is due upon the final repayment of the loans (the “Final Payment Fee”).

The foregoing description of the Loan Agreement, the Deed, the Deed of Pledge, the Share Pledge Agreement, the Parent Account Pledge Agreement, the Subsidiary Account Pledge Agreement, the Security Assignment Agreement and the Security Transfer Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of such documents, copies of which are filed as Exhibits 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7 and 10.8 to this Report on Form 6-K, respectively, and are incorporated herein by reference.

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## INCORPORATION BY REFERENCE

This Report on Form 6-K and exhibits 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7 and 10.8 to this Report on Form 6-K shall be deemed to be incorporated by reference into the registration statements on Form F-3 (Registration Number 333-207235) and Form S-8 (Registration Numbers 333-198812) of Affimed N.V. and to be a part thereof from the date on which this report is filed, to the extent not superseded by documents or reports subsequently filed or furnished.

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## 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, thereunto duly authorized, in Heidelberg, Germany, December 6, 2016.

AFFIMED N.V.

By: /s/ Adi Hoess

Name: Adi Hoess

Title: Chief Executive Officer

By: /s/ Florian Fischer

Name: Florian Fischer

Title: Chief Financial Officer

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## EXHIBIT INDEX

Exhibit	Description of Exhibit
10.1	Loan Agreement between Affimed GmbH and Silicon Valley Bank
10.2	Deed of Guaranty and Indemnity between Affimed N.V. and Silicon Valley Bank
10.3	Omnibus Deed of Pledge between Affimed N.V. and Silicon Valley Bank
10.4	Share Pledge Agreement between Affimed N.V. and Silicon Valley Bank
10.5	Account Pledge Agreement between Affimed N.V. and Silicon Valley Bank
10.6	Account Pledge Agreement between Affimed GmbH and Silicon Valley Bank
10.7	Security Assignment Agreement between Affimed GmbH and Silicon Valley Bank
10.8	Security Transfer Agreement between Affimed GmbH and Silicon Valley Bank

## LOAN AGREEMENT

## TERM LOAN

(Euros)

This **LOAN AGREEMENT** (this "**Agreement**") dated November 30, 2016 (the "**Effective Date**"), between (a) **SILICON VALLEY BANK**, a California corporation, with its principal place of business at 3003 Tasman Drive, Santa Clara, California 95054 ("**Bank**") and (b) **AFFIMED GMBH** a limited liability company incorporated under the laws of Germany registered with the Commercial Register of the local court of Mannheim under registration number HRB 721206 and whose registered office is at Im Neuenheimer Feld 582, 69120, Heidelberg ("**Borrower**") provides the terms on which Bank shall extend credit to Borrower and Borrower shall repay Bank. The parties agree as follows:

**1 ACCOUNTING AND OTHER TERMS**

**1.1 Accounting Terms.** Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP; *provided* that if at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either Borrower or Bank shall so request, Borrower and Bank shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; *provided, further*, that, until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrower shall provide Bank financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding the foregoing, all financial calculations (whether for pricing, covenants, or otherwise) shall be made on a consolidated basis. The term "financial statements" includes the notes and schedules.

**1.2 Definitions and interpretation.** Capitalised terms not otherwise defined in this Agreement shall have the meanings set out in Clause 13 (*Definitions*) and the principles of interpretation set out in Clause 13 (*Definitions*) shall apply to this Agreement.

**2 LOAN AND TERMS OF PAYMENT****2.1 Term Loan.**

(a) **Availability.** Bank shall make one (1) term loan facility available to Borrower in an amount up to the Term Loan Amount in Euros subject to the satisfaction of the terms and conditions of this Agreement in up to two tranches as follows:

(i) tranche 1 ("**Tranche 1**") is an amount up to the Tranche 1 Term Loan Amount, available for drawdown on any Business Day during the Tranche 1 Availability Period; and

(ii) tranche 2 ("**Tranche 2**") is either:

(A) an amount up to the Tranche 2a Term Loan Amount (if the Tranche 2a Conditions are satisfied and the Borrower has elected to draw down Tranche 2a); or

(B) an amount up to the Tranche 2b Term Loan Amount (if the Tranche 2b Conditions are satisfied and the Borrower has elected to draw down Tranche 2b),

available for drawdown on any Business Day during the Tranche 2 Availability Period, provided that, for avoidance of doubt, the Borrower shall only be permitted to draw down either Tranche 2a or Tranche 2b and following such drawdown, whichever of Tranche 2a or Tranche 2b has not been drawn shall be immediately cancelled.

(b) **Repayment.**

(i) **Repayment of Tranche 1:** Borrower shall repay Tranche 1 as follows:

(A) where the Borrower has drawn down under Tranche 2a, in thirty (30) equal instalments of €166,666.67 principal. Beginning on 1 December 2017, each such instalment shall be payable on the last Business Day of each month, with the first instalment to be made on Friday, 29 December 2017; or

(B) where the Borrower has drawn down under Tranche 2b, in thirty-three (33) equal instalments of €151,515.15 principal. Beginning on 1 March 2018, each such instalment shall be payable on the last Business Day of each month, with the first instalment to be made on Friday, 30 March 2018; or

(C) in thirty-six (36) equal instalments of €138,888.89 principal. Beginning on 1 June 2017, each such instalment shall be payable on the last Business Day of each month, with the first instalment to be made on Friday, 30 June 2017.

(ii) **Repayment of Tranche 2:** Borrower shall repay Tranche 2 either:

(A) where the Borrower has drawn down under Tranche 2a, in thirty (30) equal instalments of €166,666.67 principal (the "**Tranche 2a Term Loan Payment**") beginning on 1 December 2017 and shall be payable on the last Business Day of each month with the first Tranche 2a Term Loan Payment to be made on Friday, 29 December 2017; or

(B) where the Borrower has drawn down under Tranche 2b, in thirty-three (33) equal instalments of €75,757.58 principal (the "**Tranche 2b Term Loan Payment**") beginning on 1 March 2018 and shall be payable on the first Business Day of each month with the first Tranche 2b Term Loan Payment to be made on Friday, 30 March 2018.

(iii) Borrower shall repay all principal, interest, and other amounts outstanding under this Agreement in full together with the Final Payment Fee on the Term Loan Maturity Date.

(c) **Purpose.** Borrower shall apply amounts borrowed by it under the Facility towards its general corporate purposes.

(d) **Final Payment.** On the Term Loan Maturity Date, Borrower shall pay, in addition to the outstanding principal, accrued and unpaid interest, and all other amounts due on such date with respect to the Term Loan, an amount equal to the Final Payment Fee.

(e) **Mandatory Prepayment Upon Change in Control.** If a Change in Control occurs:

(i) the Borrower shall promptly notify Bank upon becoming aware of that Change in Control;

(ii) Bank shall not be obliged to fund a Credit Extension; and

(iii) if Bank so requires, within 14 days of Borrower notifying Bank of the Change in Control, cancel the Facilities made available under this Agreement and declare all outstanding Term Loans to be due and payable together with (A) all accrued interest on the Term Loans, (B) the Final



Payment Fee, (C) the Term Loan Early Termination Fee plus (D) all other sums, if any, that shall have become due and payable, with respect to any past due amounts.

(f) **Mandatory Prepayment Upon an Acceleration.** If the Term Loan is accelerated following the occurrence of an Event of Default, Borrower shall immediately pay to Bank an amount equal to the sum of: (i) all outstanding principal plus accrued interest, (ii) the Final Payment Fee, (iii) the Term Loan Early Termination Fee plus (iv) all other sums, if any, that shall have become due and payable, including interest at the Default Rate applicable to any such sum.

(g) **Permitted Prepayment of Term Loan.**

(1) Borrower shall have the option to prepay the Term Loans advanced by Bank under this Agreement prior to the Term Loan Maturity Date, provided (i) Borrower provides written notice to Bank of its election to prepay the whole of the Term Loans at least thirty (30) days prior to such prepayment, and (ii) Borrower pays, in the case of prepayment of the entirety of the Term Loans, on the date of such prepayment (A) all outstanding principal plus accrued interest on the Term Loans, (B) the Final Payment Fee, (C) the Term Loan Early Termination Fee plus (D) all other sums, if any, that shall have become due and payable, with respect to any past due amounts.

(2) The Term Loan Early Termination Fee shall be waived by the Bank: (a) if Borrower and Bank agree, prior to a proposed prepayment of the Term Loans and the Term Loan Maturity Date that the Bank will refinance and re-document the Facility and such refinancing completes (b) if Bank invokes its rights under Clause 2.2(j) and the rate determined by Bank pursuant to Clause 2(j)(ii) is materially greater than the rate of interest payable by Borrower under this Agreement prior to such invocation, (c) if a Euro Event occurs and Bank invokes its rights under Clause 2.4(b), (d) if Clause 9.9 (*Illegality*) applies, or (e) if Bank wishes to invoke its rights under Clause 12.1 and the Borrower reasonably objects to the proposed assignee/transferee.

## 2.2 **Payment of Interest on Term Loan.**

(a) **Interest Rate.**

**Term Loan.** Subject to Clause 2.2(b) (*Default Rate*), each Term Loan shall accrue interest at a rate equal to the aggregate of (i) EURIBOR and (ii) the Margin per annum. Interest shall be payable in accordance with Clause 2.2(e) (*Payments*) below.

(b) **Default Rate.** Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum which is three percentage points (3.00%) above the rate that is otherwise applicable thereto (the "**Default Rate**") unless Bank otherwise elects from time to time in its sole discretion to impose a smaller increase. Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including Bank Expenses) but are not paid when due shall bear interest until paid at a rate equal to the Default Rate. Payment or acceptance of the increased interest rate provided in this Clause 2.2(b) (*Default Rate*) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Bank.

(c) **Computation; 360-Day Year.** In computing interest, the date of the making of any Credit Extension shall be included and the date of payment shall be excluded; *provided, however*, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension. Interest on each Term Loan is computed on the basis of a 360 day year for the actual number of days elapsed.

(d) **Debit of Accounts.** Bank may debit any of Borrower's deposit or operating accounts for principal and interest payments when due, or any other amounts Borrower owes to Bank, and Bank shall promptly notify Borrower after it debits Borrower's accounts.

## Execution version

(e) **Payments.** Interest on the Term Loan is payable monthly in arrears on the first (1st) calendar day of each month ("**Interest Payment Date**") commencing on the relevant funding date for Tranche 1 and Tranche 2 respectively.

(f) **Notification of rates of Interest.** Bank shall promptly notify the Borrower of the determination of a rate of interest under this Agreement.

(g) **Non-Business Days.** An Interest Payment Date which would fall on a day which is not a Business Day, shall instead take place on the preceding Business Day in that calendar month.

(h) **Unavailability of Screen Rate.** If no Screen Rate is available for EURIBOR for the Interest Period of a Term Loan, the applicable EURIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of the Term Loan.

(i) **Market disruption.** If, before close of business on the Quotation Day for the relevant Interest Period, Bank determines that the cost to it of funding the Term Loan from whatever source it may reasonably select from the wholesale market for the relevant currency would be in excess of EURIBOR, then Clause 2.2(j) (*Cost of Funds*) shall apply to the Term Loan for the relevant Interest Period.

(j) **Cost of funds.** If this Clause 2.2(j) applies, the rate of interest on the Term Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:

(i) the Margin; and

(ii) the rate determined by Bank to be that which expresses as a percentage rate per annum the cost to Bank of funding the Term Loan from whatever source it may reasonably select.

If this Clause 2.2(j) applies, Bank shall, as soon as practicable, notify the Borrower.

2.3 **Fees.** Borrower shall pay to Bank:

(a) **Arrangement Fee.** A fully earned, non-refundable arrangement fee of seventy-five thousand Euros (€75,000) due and payable on the Funding Date of Tranche 1 (the "**Arrangement Fee**");

(b) **Bank Expenses.** All Bank Expenses, when due;

(c) **Final Payment.** The Final Payment Fee, when due hereunder; and

(d) **Term Loan Early Termination Fee.** The Term Loan Early Termination Fee, when due hereunder.

2.4 **Currency calculations:**

(a) Calculations as to equivalents of Euro amounts in other currencies shall for the purposes of or in connection with any Loan Document be conclusively made and determined by Bank at its spot rate of exchange for the purchase of the relevant currency in the London foreign exchange market applicable at the time of such calculation. Borrower shall, within three (3) Business Days of demand, indemnify Bank against any cost, loss or liability arising out of or as a result of the conversion. Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that which it is expressed to be payable.

(b) Without prejudice to the rights of Bank under this Agreement, on the occurrence of a Euro Event, or at any time thereafter, Bank will have the right, to the fullest extent permitted by law, by notice to Borrower that any amounts outstanding as at the date of such notice shall be converted into Dollars (provided they are freely

available in the market) or, solely where Dollars are not freely available in the market, into any other currency freely available to Bank. From the date of such notice, such amounts outstanding shall be converted into such other currency in accordance with paragraph (a) above.

**2.5 Payments; Application of Payments.**

(a) All payments (including prepayments) to be made by Borrower under any Loan Document shall be made in immediately available funds, without set-off or counterclaim, before midday London time on the date when due. Payments of principal and/or interest received after midday London time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.

(b) Bank shall be entitled (at its sole discretion) to apply the whole or any part of collected funds against the Facility or credit such collected funds to a deposit account of Borrower with Bank (or an account maintained by an Affiliate of Bank), and the order and method of application of such credited funds shall be in the reasonable discretion of Bank taking into account the legitimate business interests of the Borrower unless an Event of Default is continuing in which case the Bank shall have absolute sole discretion. Borrower shall have no right to specify the order or the accounts to which Bank shall allocate or apply any payments required to be made by Borrower to Bank or otherwise received by Bank under this Agreement when any such allocation or application is not specified elsewhere in this Agreement.

(c) All payments of principal and interest (including prepayments) to be made by Borrower and all payments of any fees due under this Agreement to be made by Borrower shall be made to Bank's Euro accounts, as set out in **Exhibit C** (*Client Payment Instructions*) of this Agreement.

**3 CONDITIONS OF LOANS**

3.1 **Conditions Precedent to Initial Credit Extension.** Bank's obligation to make the initial Credit Extension in respect of Tranche 1 and Tranche 2 is subject to the condition precedent that Bank shall have received, in form and substance reasonably satisfactory to Bank, such documents and completion of such other matters, as Bank may reasonably deem necessary or appropriate, including the following:

- (a) this Agreement duly executed by Borrower;
- (b) each Security Document duly executed by the relevant Obligor and any ancillary notices, filings or other documents required therein, save those required to be delivered after the date of this Agreement, as set out in Clause 3.3 (*Conditions Subsequent*);
- (c) the Guarantee, duly executed by Affirmed N.V.;
- (d) a certificate duly signed by two managing directors of Affirmed N.V. with respect to its constitutional documents, register of charges, authorised signatories and resolutions (managing and supervisory board or equivalent corporate bodies) authorising the execution and delivery of any Loan Documents to which Affirmed N.V. is a party;
- (e) a certificate duly signed by two managing directors (*Geschäftsführer*) of Borrower with respect to its constitutional documents, register of charges (if applicable), authorised signatories and resolutions (managing and supervisory board and general meeting of shareholders or equivalent corporate bodies) authorising the execution and delivery of this Agreement and the other Loan Documents to which Borrower is a party;
- (f) a Perfection Certificate for each Obligor signed by a Responsible Officer;

- (g) the Tranche 1 Warrant duly executed by Affimed N.V. and any ancillary documents as required by Bank;
- (h) subordination agreements in the form required by Bank in respect of any shareholder, director, officer or intra-group loan to an Obligor or any loan from a secured creditor (other than Bank) to an Obligor together with the duly executed original signatures thereto;
- (i) a legal opinion of Bank's UK counsel (enforceability) in respect of each Obligor delivered to Bank on or about the date of this Agreement;
- (j) a legal opinion of Bank's German counsel (authority/enforceability) in respect of Borrower delivered to Bank on or about the date of this Agreement;
- (k) a legal opinion of Bank's Dutch counsel (authority/enforceability) in respect of Affimed N.V. delivered to Bank on or about the date of this Agreement;
- (l) evidence satisfactory to Bank that the insurance policies required by Clause 6.4 (*Insurance*) are in full force and effect, together with, in respect of non-German insurance policies only, appropriate evidence showing Bank as first loss payee and/or additional insured clauses or endorsements in favour of Bank;
- (m) a security release agreement duly executed by each Obligor, PCOF 1, LLC, PCOF Phoenix II Fund, LP, Perceptive Credit Opportunities Fund, LP and Perceptive Credit Holdings, LP and in form and substance acceptable to Bank and any other agreement, form or other document required to release any Liens or guarantees and/or indemnities granted by an Obligor in favour of PCOF 1, LLC, PCOF Phoenix II Fund, LP, Perceptive Credit Opportunities Fund, LP and Perceptive Credit Holdings, LP;
- (n) payment of the fees and Bank Expenses then due and payable;
- (o) signed consent for Bank to: (i) use Borrower's logo; (ii) use a tombstone to highlight the transaction; and (iii) issue a press release in a form acceptable to Borrower and Bank highlighting and summarising the credit facilities extended by Bank to Borrower under this Agreement, for marketing purposes; and
- (p) such other documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate.

3.2 **Conditions Precedent to all Credit Extensions.** Bank's obligations to make each Credit Extension, including the initial Credit Extension, is subject to the following:

- (a) except as otherwise provided in Clause 3.4 (*Covenant to Deliver*), timely receipt of any Payment/Advance Request Form;
- (b) ensure that the requirements of Clause 2.1(a)(i) in relation to Tranche 1 and Clause 2.1(a)(ii) in relation to Tranche 2 have been satisfied in full to the satisfaction of Bank;
- (c) the representations and warranties in Clause 5 (*Representations and Warranties*) shall be true in all respects on the date of the Payment/Advance Request Form and on the effective date of each Credit Extension;
- (d) no Event of Default shall have occurred and be continuing or result from the Credit Extension; and

- (e) in Bank's reasonable opinion acting in good faith, there has not been any material impairment in the general affairs, management, results of operational, financial condition or the prospects of repayment of the Obligations.

3.3 **Conditions Subsequent.** Borrower shall deliver to Bank, in form and substance satisfactory to Bank:

- (a) within 5 Business Days of the date of this Agreement, evidence that Borrower or Guarantor (as applicable) has notified the depository banks about the pledge of its German bank accounts as further specified in the German Security Documents; and
- (b) within 60 days of the date of this Agreement, confirmation of the depository banks that they waived or subordinated their prior pledges and all other security interests in relation to the bank accounts of Borrower or Guarantor (as applicable) in favour of Bank; and
- (c) within 30 days of the date of this Agreement, deletion of the existing Czech law Share Pledge dated 24 July 2014 from the Czech Commercial Register.

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

3.5 **Procedures for Borrowing.** Together with any such electronic or facsimile notification, Borrower shall deliver to Bank by electronic mail or facsimile the completed Payment/Advance Request Form executed by a Responsible Officer or his or her designee. Bank may rely on any telephone notice given by a person whom Bank believes is a Responsible Officer or designee. Subject to the prior satisfaction of all other applicable conditions to the making of the Term Loan set out in this Agreement and in accordance to Clause 2.1 (*Term Loan*) above, to obtain the Term Loan, Borrower must notify Bank (which notice shall be irrevocable) by electronic mail, or telephone by midday London time on or before the date falling 5 Business Days prior to the proposed drawdown date for Tranche 1 or Tranche 2 (as applicable). Such notice shall be in the form of a completed Payment/Advance Request Form in the form attached as **Exhibit A** and shall specify (i) the date the Term Loan is to be made, which day shall be a Business Day during the Tranche 1 Availability Period (in the case of Tranche 1) or a Business Day during the Tranche 2 Availability Period (in the case of Tranche 2) ; (ii) the amount of such Term Loan; (iii) in the case of Tranche 2, whether the Term Loan is in respect of Tranche 2a or Tranche 2b; and (iv) such other procedural requirements as Bank has notified to Borrower in advance of the date of such Payment/Advance Request Form. If such notification is by telephone, Borrower must promptly confirm the notification by delivering to Bank a completed Payment/Advance Request Form in the form attached at **Exhibit A**. Bank shall transfer the amount of the Term Loan to Borrower's Euro deposit account held with the Bank. Bank may make the Term Loan based on instructions from a Responsible Officer or his or her designee or without instructions if the Term Loan is necessary to meet Obligations which have become due. Bank may rely on any telephone notice given by a Person whom Bank reasonably believes is a Responsible Officer or designee. Borrower shall indemnify Bank for any loss Bank suffers due to such reliance unless caused by Bank's negligence or intentional misconduct.

#### **4 SECURITY DOCUMENTS**

All Obligations shall be secured by any and all properties, rights and assets of each Obligor in respect of which such Obligor has granted to Bank a security interest now, or in the future, in which such Obligor obtains an interest, or the power to transfer rights, as set out in the Security Documents. Borrower represents, warrants and covenants that the security interests granted or to be granted in favour of Bank shall, pursuant to the Security Documents, at all times continue to be first priority perfected security interests in the Collateral (subject only to Permitted Liens that may have

superior priority to Bank's Liens). If this Agreement is terminated, Bank's lien and security interest in the Collateral shall continue until Borrower fully and irrevocably satisfies the Obligations.

Borrower acknowledges that it previously has entered, and/or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interests in the Collateral (subject only to Permitted Liens that may have superior priority to any Lien in favour of Bank).

Borrower agrees that, unless otherwise agreed in writing signed by Bank and Borrower (a) any security interest granted by an Obligor shall survive the termination of this Agreement and shall terminate only upon the termination of all Bank Services Agreements and discharge to Bank of all obligations thereunder, and (b) if, on the effective date of the termination of this Agreement, there are any outstanding Letters of Credit, then on such date Borrower shall provide to Bank cash collateral in an amount equal to 105% of the Euro equivalent of the face amount of all such Letters of Credit plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgement), to secure all of the Obligations relating to such Letters of Credit.

Any guarantee in this Agreement or Security Document does not apply to any liability to the extent that it would result in such guarantee constituting unlawful financial assistance within the meaning of article 2:98c of the Dutch Civil Code or any equivalent and applicable provisions under the laws of the jurisdiction of incorporation of the relevant Guarantor.

## **5 REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants to Bank as follows:

5.1 **Due Incorporation and Authorisation; Power and Authority.** Borrower is a private limited company, duly incorporated and validly existing under the laws of Germany and has power to carry on its business as it is now being conducted and to own its property and other assets. In connection with this Agreement, Borrower has delivered to Bank a Perfection Certificate. Borrower represents and warrants to Bank that: (a) Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; and (b) Borrower is an organisation of the type, and is incorporated in the jurisdiction, set out in the Perfection Certificate; and (c) the Perfection Certificate accurately sets out Borrower's registered number or accurately states that Borrower has none; and (d) the Perfection Certificate accurately sets out Borrower's place of business and its registered office as well as Borrower's postal address if different from its registered office, and (e) all other information set out in the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one or more specific provisions in this Agreement).

The execution, delivery and performance of this Agreement and the other Loan Documents to which Borrower is a party are within the corporate powers of Borrower, have been duly authorised by all necessary corporate and other action and do not and will not conflict with (i) any law or regulation applicable to it; (ii) the constitutional documents of Borrower or any other organisational documents; (iii) any agreement or instrument binding on Borrower or (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or (v) constitute an event of default under any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it or its assets are bound in which the default could reasonably be expected to have a material adverse effect on Borrower's business.

5.2 **Collateral.** Borrower has good title to the Collateral, free of Liens except Permitted Liens. Borrower has no deposit accounts other than the deposit accounts with Bank, the deposit accounts, if any, described in the Perfection Certificate delivered to Bank in connection herewith, or of which Borrower has given Bank notice and taken such actions as are necessary to give Bank a perfected security interest therein.

## Execution version

The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate. None of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Clause 7.5 (*Encumbrance*).

Borrower is the sole owner of the Intellectual Property which it owns or purports to own except for (a) non-exclusive licences granted to its customers in the ordinary course of business, (b) over-the-counter software that is commercially available to the public, and (c) Intellectual Property licensed to Borrower and noted on the Perfection Certificate. Each Patent which it owns or purports to own and which is material to Borrower's business is valid and enforceable, and no part of the Intellectual Property which Borrower owns or purports to own and which is material to Borrower's business has been adjudged invalid or unenforceable, in whole or in part. To the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property infringes the rights of any third party except to the extent such claim would not reasonably be expected to have a material adverse effect on Borrower's business.

Except as noted on the Perfection Certificate, Borrower is not a party to, nor is it bound by, any Restricted Licence.

5.3 **Litigation.** Other than as disclosed in writing by the Borrower (i) on or prior to the date of this Agreement as set out in Exhibit D, (ii) after the date of this Agreement (1) prior to any drawdown of Tranche 2 or/ and (2) in any Compliance Certificate delivered to Bank after the date of this Agreement, there are no actions or proceedings pending or, to the knowledge of Borrower's Responsible Officers, threatened by or against Borrower or any of its Subsidiaries or Affiliates, involving more than, individually or in the aggregate, Two Hundred and Fifty Thousand Euro (€250,000) (or its equivalent in any other currency).

### 5.4 **Financial Statements; Financial Condition.**

(a) All audited financial statements for Affirmed N.V. and any of its Subsidiaries and/or Affiliates delivered to Bank fairly represent Affirmed N.V.'s (such Subsidiaries/Affiliates) financial condition and Affirmed N.V.'s results of operations.

(b) All other financial statements consolidated or otherwise for Borrower and any of its Subsidiaries and/or Affiliates delivered to Bank fairly represent in all material respects Borrower's (such Subsidiaries/Affiliates) financial condition and Borrower's results of operations.

(c) There has not been any material deterioration in Borrower's financial condition (or that of its Subsidiaries/Affiliates) since the date of the most recent financial statements submitted to Bank.

5.5 **Solvency.** The fair saleable value of Borrower's assets (including goodwill minus disposition costs) exceeds the amount of its liabilities (taking into account its actual and contingent liabilities); Borrower is not left with unreasonably small capital after the transactions in this Agreement, in particular but without limitation the fair value of Borrower's net assets (assets minus existing and deferred liabilities) exceeds Borrower's stated share capital (*Stammkapital*); and Borrower is not unable to pay its debts (including trade debts) within the meaning of the German Insolvency Act (*Insolvenzordnung*) and has not stopped paying its debts as they fall due.

5.6 **Regulatory Compliance.** Borrower has not breached any laws, ordinances or rules or regulations, the breach of which could reasonably be expected to cause a Material Adverse Change. None of Borrower's (or any of its Subsidiaries/Affiliates) property or assets have been used by Borrower or, to the best of Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower (and each of its Subsidiaries/Affiliates) has obtained all consents, approvals and authorisations of, made all declarations or filings with, and given all notices to, all Government Authorities that are necessary to continue its business as currently conducted, except where the failure to do so could not reasonably be expected to be detrimental to Borrower's business.

## Execution version

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

5.8 **Taxation.** Borrower has complied in all material respects with all Taxation laws in all jurisdictions in which it is subject to Taxation and has paid all Taxes due and payable by it and no claims are being asserted against it in respect of Taxes save for assessments in relation to the ordinary course of the business of Borrower or claims contested in good faith and in respect of which adequate provision has been made and disclosed in the latest accounts of Borrower or information delivered to Bank under this Agreement.

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

5.10 **No winding-up.** Borrower has not taken any corporate or other action nor has any application been made or have any other steps been taken or legal proceedings been started or (to the best of Borrower's knowledge and belief having made due and proper enquiry) threatened against Borrower or any of its Subsidiaries/Affiliates for its winding-up or for the appointment of a trustee, liquidator, receiver, administrative receiver, administrator or similar officer of it or of any or all of its assets.

5.11 **Licences.** Borrower is not a party to, nor is bound by, any licence (other than over the counter software that is commercially available to the public) or other agreement with respect to which Borrower is the licensee that prohibits or otherwise restricts Borrower from granting a charge in Borrower's interest in such licence or agreement or any other property, save as disclosed in the Perfection Certificate or in any Compliance Certificate delivered to Bank after the date of this Agreement but prior to drawdown of Tranche 2. Borrower shall provide written notice to Bank within ten (10) days of entering or becoming bound by, any such licence or agreement which is reasonably likely to have a material impact on Borrower's business or financial condition. Borrower shall take such steps as Bank reasonably requests to obtain the consent of, authorisation by or waiver by, any Person whose consent or waiver is necessary for all such licences or contract rights to be deemed Collateral and for Bank to have a charge in it that might otherwise be restricted or prohibited by law or by the terms of any such licence or agreement, whether now existing or entered into in the future.

5.12 **Subordinated Debt.** All loan amounts due to officers, directors (including managing directors (*Geschäftsführer*)), shareholders and any secured creditors (other than Bank) of Borrower have been subordinated to the Obligations.

5.13 **Definition of "Knowledge."** For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

5.14 **Central Works Council.** No (central) works' council (*centrale ondernemingsraad*) has jurisdiction in respect of any transaction contemplated by any Loan Document.

## 6 **AFFIRMATIVE COVENANTS**

Borrower shall do the following:

### 6.1 **Government Compliance.**

(a) Maintain its legal existence and good standing in its jurisdiction of incorporation or formation and maintain qualification in each jurisdiction in which the failure to do so would reasonably be expected to



## Execution version

be detrimental to Borrower's business or operations. Borrower shall and shall procure that each of its Subsidiaries/Affiliates shall comply with all laws, ordinances and regulations to which it is subject, noncompliance with which could be detrimental to Borrower's business or operations or would reasonably be expected to cause a Material Adverse Change.

(b) Obtain all of the Governmental Approvals (if any) necessary to carry on its business and for the performance by Borrower of its obligations under the Loan Documents to which it is a party and the grant of a security interest to Bank in all of its present and future property and assets, including the Governmental Approvals for any drug trials carried out by it or on its behalf. Borrower shall promptly provide copies of any such obtained Governmental Approvals to Bank.

6.2 **Financial Statements, Reports, Certificates.** Borrower shall deliver to Bank:

(a) **Monthly Financial Statements.** As soon as available, but no later than thirty (30) days after the last day of each month, a company prepared financial report as mutually agreed between the Parties prior to the execution of this Agreement covering Affirmed N.V.'s and each of its Subsidiary's operations for such month certified by a Responsible Officer and in a form acceptable to Bank (the "**Monthly Financial Statements**");

(b) **Monthly Compliance Certificate.** Within thirty (30) days after the last day of each month, a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and providing such other information as Bank shall reasonably request, in particular any material updates on the business operations, any board meetings (by presentation of the minutes of such meetings) and the development of the cash balance of the Borrower and its Subsidiaries;

(c) **Annual Audited Financial Statements.** As soon as available, but no later than 180 days after Affirmed N.V.'s financial year end, audited consolidated financial statements prepared under GAAP, consistently applied, with an unqualified opinion on the financial statements from Borrower's Auditors;

(d) **Other Statements.** Within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt;

(e) **Legal Action Notice.** A prompt report of any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries/Affiliates that could result in damages or costs to Borrower or any of its Subsidiaries/Affiliates of, individually or in the aggregate, Two Hundred and Fifty Thousand Euro (€250,000) (or its equivalent in any other currency) or more;

(f) **Intellectual Property Notice.** Prompt written notice of (i) any material change in the composition of the Intellectual Property, (ii) the registration of any copyright, including any subsequent ownership right of Borrower in or to any Intellectual Property not previously disclosed in writing to Bank, and/or (iii) Borrower's knowledge of an event that could reasonably be expected materially and adversely to affect the value of the Intellectual Property;

(g) **Operating Plan.** Within 30 days after completion of a fiscal year and also promptly following the same being updated, an operating plan, approved by the board of directors of the Borrower, to include, without limitation, balance sheet and income statement and to reflect projections on a quarterly or monthly basis for the upcoming financial year;

(h) **Other Information.** Budgets, sales projections, and other financial information and any other information reasonably requested by Bank (unless disclosure of such information to Bank is prohibited by law); and

(i) **Board Minutes and Agenda.** As soon as available but no later than thirty (30) days after the date of the Borrower's monthly board meeting, a copy of the agenda provided for such board meeting and minutes of such meeting.

6.3 **Taxes.** Borrower shall make, and cause each of its Subsidiaries/Affiliates to make, timely payment of all material Taxes or assessments (other than taxes and assessments which Borrower or a Subsidiary/Affiliate of Borrower is contesting in good faith, with adequate reserves maintained in accordance with GAAP) and will deliver to Bank, on demand, appropriate certificates attesting to such payments.

6.4 **Insurance.** Borrower shall keep its business and the Collateral insured for risks (including third party liability appropriate to a company undertaking clinical trials) and in amounts as Bank may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are satisfactory to Bank in its reasonable discretion as are typical for the industry in the relevant jurisdiction of Borrower, for companies similar to Borrower. All non-German property policies shall have a lender's loss payee endorsement showing Bank as first loss payee. All non-German policies (or their respective endorsements) shall provide that the insurer shall give Bank at least twenty (20) days' notice before cancelling its policy. At Bank's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy taken out by or otherwise vested in Borrower shall, at Bank's option, be payable to Bank on account of the Obligations. If Borrower fails to obtain insurance as required under this Clause 6.4 (*Insurance*) or to pay any amount or furnish any required proof of payment to third persons and Bank, Bank may make all or part of such payment or obtain such insurance policies required in this Clause 6.4 (*Insurance*), and take any action under the policies Bank deems prudent.

6.5 **Bank Accounts.**

(a) To permit Bank to monitor Borrower's financial performance and condition, Borrower shall, within 90 (ninety) days of the Effective Date, open and maintain all of Borrower's UK depository and operating accounts and securities/investment accounts and excess funds (if any) with Bank's UK branch. All of Borrower's UK depository and operating accounts maintained outside the UK shall be maintained with the banks disclosed to Bank in the Perfection Certificate of the Borrower or any other bank or financial institution acceptable to Bank.

(b) Borrower shall promptly notify Bank, in writing, of any deposit, operating or securities/investment account proposed to be opened by Borrower with any institution other than Bank or an Affiliate of Bank. In addition, for each such account that Borrower at any time opens or maintains, Borrower shall, at Bank's request and option, pursuant to an agreement in form and substance acceptable to Bank, cause the bank or securities intermediary to agree that such account is the collateral of Bank pursuant to the terms of the Loan Documents, which control agreement may not be terminated without the prior written consent of Bank. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's employees.

6.6 **Protection and Registration of Intellectual Property Rights.**

(a) Borrower shall: (i) protect, defend and maintain the validity and enforceability of the Intellectual Property; (ii) promptly advise Bank in writing of material infringements of the Intellectual Property; and (iii) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Bank's prior written consent.

(b) Borrower shall provide written notice to Bank within ten (10) days of entering or becoming bound by any Restricted Licence (other than over-the-counter software that is commercially available to the public). Borrower shall take such steps as Bank requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted Licence to be deemed "Collateral" and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted Licence, whether now existing or entered into in the future, and (ii) Bank to have the ability in the event of a realisation of any Collateral to dispose of such Collateral in accordance with Bank's rights and remedies under this Agreement and the other Loan Documents.

6.7 **Studies.** Borrower shall use all commercially reasonable efforts to ensure that all studies and/or clinical trials conducted by it or on its behalf strictly comply with the following as they are applicable in the country/ countries in which the studies and/ or clinical trials are conducted:

## Execution version

- (a) laws and regulations and government guidelines relating to studies/ clinical trials;
- (b) all Government Approvals and good clinical practice;
- (c) ethics committee approval(s);
- (d) the terms of the applicable protocols; and
- (e) any other requirements of the responsible regulatory or competent authorities;

and (if requested by Bank) shall provide reasonable evidence of such compliance (save where provision of such evidence would involve Borrower contravening the law, in particular, data privacy laws).

6.8 **Litigation Cooperation.** From the date hereof and continuing until all Obligations have been irrevocably discharged and Bank has no commitment or liability hereunder, make available to Bank, without expense to Bank, Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Bank may deem them reasonably necessary to institute or defend any third-party action or proceeding instituted by or against Bank with respect to any Collateral or relating to Borrower.

6.9 **Access to Collateral; Books and Records** Allow Bank, or its agents, at reasonable times, on five (5) Business Day's notice (provided no notice is required if an Event of Default has occurred and is continuing), to inspect the Collateral and audit and copy Borrower's Books. Such inspections or audits shall be conducted no more often than once every twelve (12) months unless an Event of Default has occurred and is continuing and shall be carried out at the expense of the Borrower.

6.10 **Hedging Transactions** Should Borrower propose to enter into a Hedging Transaction, Bank shall have the first right to provide such Hedging Transaction to Borrower; provided, however, if Bank is not competitive with current market conditions for such Hedging Transaction then such Hedging Transaction may be maintained with another financial institution.

6.11 **Further Assurances.** Borrower shall execute any further instruments and take further action as Bank reasonably requests to perfect or continue Bank's security interest in the Collateral or to effect the purposes of this Agreement.

### 6.12 Warrants.

(a) Borrower shall procure that Affirmed N.V. will as a condition precedent to drawdown of Tranche 1 and/or Tranche 2 (as applicable) issue a Warrant providing for the following Warrant Shares:

- (i) on and from the date of drawdown of Tranche 1, such number of Warrant Shares equal to 9.5% of the amount to be drawn under Tranche 1 (calculated in Dollars based on the Euro foreign exchange reference rate of the European Central Bank applicable at the time of such calculation); and
- (ii) on and from the date of drawdown of Tranche 2, such number of Warrant Shares equal to 9.5% of the amount to be drawn under Tranche 2 (calculated in Dollars based on the Euro foreign exchange reference rate of the European Central Bank applicable at the time of such calculation),

provided that, that the total number of Warrant Shares granted shall not exceed 0.5% of the outstanding fully paid Common Shares as at the proposed drawdown date of Tranche 1 or Tranche 2 (as applicable).

(b) The exercise price per Warrant Share shall be the lesser of (i) the trailing 10-day average share price quoted on NASDAQ prior to the drawdown of Tranche 1 or Tranche 2 (as applicable) or (ii) the share price quoted on NASDAQ on the day immediately prior to the drawdown of Tranche 1 or Tranche 2 (as applicable), payable in cash, by way of net-issuance as set out in Clause 1.9 of the Warrant Agreement or in kind (subject to section 2:94b of the Dutch Civil Code) and whether or not by means of set-off by the Company (the "Exercise Price"). The Exercise Price shall always be equal to an amount of at least the nominal value of the Common Shares. For the purposes of this Clause, "NASDAQ" shall mean the NASDAQ Stock Market operated by Nasdaq, Inc..

(c) Each Warrant shall be in the form attached to this Agreement as Exhibit E.

## **7 NEGATIVE COVENANTS**

Borrower shall not do any of the following without Bank's prior written consent or as expressly permitted in any sub-clause of this Clause 7.

7.1 **Dispositions.** Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers: (a) of Inventory in the ordinary course of business; (b) of worn-out or obsolete Equipment; (c) required to effect of comply with the terms of any Permitted Liens and Permitted Investments; (d) of licences for the use of the property of Borrower or its Subsidiaries in the ordinary course of business. Borrower shall not enter into an agreement with any Person other than Bank which restricts the subsequent granting of a security interest in the Intellectual Property.

7.2 **Changes in Business, Ownership, Management or Business Locations.** (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower or such Subsidiary or reasonably related thereto as at the Effective Date, (b) liquidate or dissolve, (c) have a change in senior management (including, without limitation, the resignation of any person occupying the roles of Chief Executive Officer, Chief Science Officer or Chief Financial Officer from time to time without (i) the Borrower notifying Bank of the change as soon as practical after the Borrower has completed its internal procedures with respect to the approval/ authorization of such change; and (ii) either: (1) if it is intended that that person be replaced, the Borrower to use reasonable endeavours to ensure a suitably qualified replacement person is appointed within 180 days of the resignation or removal of his or her predecessor and to update the Bank on the hiring process as well as to disclose to Bank the identity of a replacement person at the Borrower's earliest convenience (taking into account the Borrower's internal procedures for such replacement) or (2) if it is not intended that such person be replaced, notify the Bank that another suitably qualified member of the senior management team will perform the functions of the outgoing member; or (d) permit or suffer any Change in Control.

Borrower shall not, without at least ten (10) days prior written notice to Bank: (1) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Twenty Thousand Euros (€20,000 (or its equivalent in any other currency)) in Borrower's assets or property) or deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Fifty Thousand Euros (€50,000 (or its equivalent in any other currency)) to a bailee at a location other than to a bailee and at a location already disclosed in the Perfection Certificate, (2) change its jurisdiction of organisation, registration or incorporation, (3) change its organisational structure or type or; (4) change its legal name. If Borrower intends to deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Fifty Thousand Euros (€50,000) (or its equivalent in any other currency) to a bailee, and Bank and such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral, then Borrower will first receive the written consent of Bank, and such bailee shall execute and deliver a bailee agreement in form and substance satisfactory to Bank in its sole discretion.

7.3 **Mergers or Acquisitions.** Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the share capital or property of another Person. A Subsidiary of the Borrower may merge or consolidate into another Subsidiary of Borrower or into Borrower.

## Execution version

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

7.5 **Encumbrance.** Create, incur, allow, or suffer any Lien on any of, the Collateral or its right, title and interest in any Intellectual Property, or assign or convey any right to receive income, or permit any of its Subsidiaries to do so, except for Permitted Liens, permit any Collateral not to be subject to the first priority security interest granted by the Security Documents, except as is otherwise permitted in Clause 7.1 (*Dispositions*) and the definition of "Permitted Liens".

7.6 **Distributions; Investments.** (a) Directly or indirectly acquire or own any Person, or make any Investment in any Person, other than Permitted Investments, or permit any of its Subsidiaries to do so; or (b) pay any dividends or make any distribution or payment or redeem, or purchase any of its share capital or give any financial assistance in respect of the purchase of any of its share capital.

7.7 **Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favourable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person and transactions permitted pursuant to the terms of Clause 7.1 (*Dispositions*).

7.8 **Subordinated Debt.** (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) without Bank's prior written consent, amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to the Obligations owed to Bank.

7.9 **Opening of New Bank Accounts.** Borrower undertakes not to open any new bank accounts that are not the subject of a first priority security interest under the German Security Documents either in Germany or elsewhere unless (i) with the prior written consent of Bank and (ii) under the proviso that Bank will obtain, contemporaneously with the opening of any such account, a first priority security interest over such account in accordance with the requirements of the applicable local laws (in particular Germany) and in each case under terms and conditions acceptable to Bank.

7.10 **Joint Ventures.** Borrower shall not enter into any joint venture or partnership, whether with another company, unincorporated firm, undertaking, association or any other entity other than in the ordinary course of business and on arms-length terms or with the prior written consent of the Bank (such consent not to be unreasonably conditioned, withheld or delayed).

## 8 **EVENTS OF DEFAULT**

Any one of the following shall constitute an event of default (an "**Event of Default**"):

8.1 **Payment Default.** An Obligor fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on the Term Loan Maturity Date). During such cure period, the failure to make any payment specified under clause (a) or (b) of this Clause 8.1 is not an Event of Default (but no Credit Extension will be made during the cure period).

### 8.2 **Covenant Default.**

(a) Borrower fails or neglects to perform any obligation in Clause 6 (*Affirmative Covenants*) or breaches any covenant in Clause 7 (*Negative Covenants*); or

(b) An Obligor fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or in any Loan Document to which it is a party or in any other present or future agreement between an Obligor and Bank, and as to any default (other than those specified in

this Clause 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) Business Days after the occurrence thereof (but no Credit Extensions shall be made during such cure period). Cure periods provided under this Clause 8.2 shall not apply to any covenant that requires something to be satisfied, completed or tested on or by a certain date.

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

8.4 **Attachment.** (i) Any material portion of the assets of an Obligor or any Subsidiary's/Affiliate's is attached, seized, levied on, or comes into possession of a trustee, receiver, creditor or encumbrancer (provisional) and the attachment (including but not limited to *conservatoir beslag*), seizure or levy is not removed in ten (10) days; (ii) the service of proceedings upon an Obligor or any of its Subsidiaries seeking to attach, by trustee or similar process, any funds of an Obligor or any such Subsidiary on deposit with Bank, or any entity under control of Bank (including a subsidiary of Bank); (iii) an Obligor or any of its Subsidiaries is enjoined, restrained, or prevented by court order from conducting a material part of its business; (iv) a judgment or other claim becomes a lien on a material portion of the assets of an Obligor or any Subsidiaries; or (v) a notice of lien, levy, or assessment is filed against the assets of any Obligor or any Subsidiaries/Affiliates of an Obligor by any government department or agency including HM Revenue & Customs and not paid within ten (10) days after such Obligor or any Subsidiaries/Affiliates of such Obligor receives such notice.

8.5 **Insolvency.** Any of the following occurs in respect of an Obligor or any Subsidiaries/Affiliates of an Obligor: (i) it is, or is deemed for the purposes of any law to be, unable to pay its debts as they fall due or insolvent within the meaning of the German Insolvency Act (*Insolvenzordnung*) (without having to make any proof to the satisfaction of the Court under section 123(2) of the Insolvency Act 1986, if applicable) or, with respect to Borrower, is illiquid, over-indebted or otherwise deemed insolvent pursuant to the terms of the German Insolvency Act (*Insolvenzordnung*); (ii) it admits its inability to pay its debts as they fall due; (iii) it suspends (or threatens to suspend) making payment on any of its debts or announces an intention to do so; (iv) a moratorium is declared in respect of any of its indebtedness; (v) by reason of actual or anticipated inability to pay debts as they fall due or insolvency it begins negotiations with any creditor for the rescheduling of any of its indebtedness; or (vi) Affirmed N.V. files a notice under Section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*), or (vii) is being dissolved (*ontbonden*).

8.6 **Insolvency Proceedings.** Any of the following occurs in respect of an Obligor or any Subsidiaries/Affiliates of an Obligor (each of which shall be an "**Insolvency Proceeding**"): (i) any step is taken with a view to a moratorium or a composition, assignment or similar arrangement with any of its creditors; (ii) a meeting of its shareholders or directors (or managing directors (as applicable)) is convened for the purpose of considering any resolution for, to petition for or to make an application to or to file documents with a court or any registrar for, its winding-up, administration or dissolution or any such resolution is passed; (iii) managing director(s) of an Obligor or any creditors of an Obligor request the opening of insolvency proceedings; (iv) an order is made for the opening of insolvency proceedings (*Insolvenzverfahren*) or preliminary insolvency proceedings (*vorläufiges Insolvenzverfahren*), its winding-up, administration or dissolution, or any Person presents a petition, or makes an application to or files documents with a court or any registrar, for its winding-up, administration or dissolution, or gives notice to Bank of an intention to appoint an administrator; (iv) any liquidator, receiver, administrative receiver (*Insolvenzverwalter*), preliminary administrative receiver (*vorläufiger Insolvenzverwalter*), administrator or similar officer is appointed in respect of it or any of its assets; (v) its shareholders or directors (or managing directors (as applicable)) request the appointment of, or give notice of their intention to appoint, a liquidator, receiver, administrator or similar officer; or (vi) any analogous proceedings takes place in any other jurisdiction.

8.7 **Other Agreements.** There is, under any agreement to which an Obligor is a party with a third party or parties, (a) any default resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of One Hundred thousand Euros (€100,000); or (b) any default by an Obligor, the result of which could be materially detrimental to such Obligor's business.

8.8 **Judgments.** If an enforceable judgment, arbitration award, order or decree for the payment of money in an amount, individually or in the aggregate, of at least Two Hundred and Fifty thousand Euros (€250,000)

## Execution version

(or its equivalent in any other currency) shall be rendered against an Obligor or any of its Subsidiaries and shall remain unsatisfied or unstayed for a period of ten (10) days of it being made (provided that no Credit Extensions will be made prior to the satisfaction or stay of such judgment, order or decree) other than any judgment, arbitration award, order or decree which is subject to an appeal proceeding which the relevant Obligor or relevant Subsidiary can demonstrate it is actively pursuing and (a) can also demonstrate that it has a reasonable chance of success in such appeal unless the amount of such Judgment is Five Hundred Thousand Euros €500,000 ("**Judgment Threshold**") or more; or (b) if the amount of such judgment equals or exceeds the Judgment Threshold, can also demonstrate to Bank's reasonable satisfaction that: (i) it has a good chance of success in such appeal, and (ii) it has a credible strategy in respect of such appeal, and (iii) if such appeal is adversely determined, is not likely to result in a Material Adverse Change.

8.9 **Misrepresentations.** If any representation or warranty or statement in writing made or deemed to be made or repeated by an Obligor or any Person acting for an Obligor in, or in connection with the negotiation of, any Loan Document or in any notice, certificate or statement of fact referred to in or delivered under any Loan Document or in any other written material delivered to Bank is or shall prove to be untrue or incorrect or misleading when made or deemed to be made or repeated under such Loan Document.

8.10 **Subordinated Debt.** Any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect, any Person shall be in breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement.

8.11 **Other Agreements with Bank.** An Obligor, or any Subsidiaries/Affiliates of an Obligor fails to perform any of its obligations under any agreement between the relevant Obligor, or any Subsidiaries of an Obligor and Bank or any of its Affiliates and such failure results in an event of default (howsoever described under such agreement) or otherwise gives Bank the right to demand accelerated repayment of moneys payable thereunder.

8.12 **Governmental Approvals.** Any Governmental Approval shall have been (a) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term or (b) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Governmental Approval or that could result in the Governmental Authority taking any of the actions described in (a) above, and such decision or such revocation, rescission, suspension, modification or non-renewal (i) is, or could reasonably be expected to be, a Material Adverse Change, or (ii) adversely affects the legal qualifications of an Obligor or any Subsidiaries/Affiliates of an Obligor to hold such Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or non-renewal could reasonably be expected to affect the status of or legal qualifications of an Obligor or any Subsidiaries/Affiliates of an Obligor to hold any Governmental Approval in any other jurisdiction.

## 9 **BANK'S RIGHTS AND REMEDIES**

9.1 **Rights and Remedies.** When an Event of Default occurs and continues Bank may, without notice or demand, do any or all of the following:

(a) declare all Obligations immediately due and payable (but if an Event of Default described in Clause 8.5 (*Insolvency*) or 8.6 (*Insolvency Proceedings*) occurs all Obligations are immediately due and payable without any action by Bank);

(b) stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Bank;

(c) terminate any FX Contracts;

(d) settle or adjust disputes and claims directly with account debtors for amounts, on terms and in any order that Bank considers advisable and notify any Person owing Borrower money of Bank's security interest in such funds and verify and/or collect the amounts owed by such account debtors. After the occurrence of an Event of

## Execution version

Default, any amounts received by Borrower shall be held in trust by Borrower for Bank, and, if requested by Bank, Borrower shall immediately deliver such receipts to Bank in the form received from the account debtor, with proper endorsements for deposit;

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

(f) apply towards the discharge of the Obligations any (i) balances and deposits of Borrower it holds, or (ii) any amount held by Bank owing to or for the credit or the account of Borrower;

(g) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Bank is hereby granted a non-exclusive, royalty-free licence or other right 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 similar property 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 Clause, Borrower's rights under all licences and all franchise agreements inure to Bank's benefit;

(h) place a "hold" on any account maintained with Bank and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any control agreement or similar agreements providing control of any Collateral; and

(i) exercise any rights and remedies available to Bank under the Security Documents or applicable law.

9.2 **Protective Payments.** If Borrower fails to obtain the insurance called for by Clause 6.4 (*Insurance*) or fails to pay any premium thereon or fails to pay any other amount which Borrower is obliged to pay under this Agreement or any other Loan Document, Bank may obtain such insurance or make such payment, and all amounts so paid by Bank are Bank Expenses and immediately due and payable, bearing interest at the interest rate then applicable to the Obligations, and secured by the Collateral. Bank will make reasonable efforts to provide Borrower with notice of Bank obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Bank are deemed an agreement to make similar payments in the future or Bank's waiver of any Event of Default.

9.3 **Bank Expenses.** Any Bank Expenses are immediately due and payable, and shall bear interest at the then applicable rate and be secured by the Collateral. No payments by Bank shall be deemed an agreement to make similar payments in the future or Bank's waiver of any Event of Default.

9.4 **Application of Payments and Proceeds Upon Default.** If an Event of Default has occurred and is continuing, Bank may apply any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of accounts or other disposition of the Collateral, or otherwise, to the Obligations in such order as Bank shall determine in its sole discretion. Any surplus shall be paid to Borrower or other Persons legally entitled thereto; Borrower shall remain liable to Bank for any deficiency. If Bank, in its good faith business judgement, directly or indirectly enters into a deferred payment or other credit transaction with any purchaser on any sale of Collateral, Bank shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Bank of cash therefor.

9.5 **Bank's Liability for Collateral.** So long as Bank complies with reasonable banking practices regarding the safekeeping of Collateral Bank shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of



any carrier, warehouseman, bailee or other Person. Borrower bears all risk of loss of or damage or destruction to the Collateral.

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

9.7 **Withholding; Gross-up.** All payments to be made by Borrower under this Agreement, whether in respect of principal, interest, fees or otherwise, shall (save insofar as required by law to the contrary) be paid in full without set-off or counterclaim and free and clear of and without any deduction or withholding or payment for or on account of any Taxes that may be imposed in the United Kingdom or any other jurisdiction from which payment may be made by Borrower under this Agreement. If Borrower shall be required by law to effect any deduction or withholding or payment as aforesaid from or in connection with any payment made under this Agreement for the account of Bank then:

(a) Borrower shall promptly notify Bank upon becoming aware of the relevant requirements to deduct any such deduction or withholding or payment;

(b) Borrower shall ensure that such deduction or withholding or payment does not exceed the minimum legal liability therefor, shall remit the amount of such Tax to the appropriate Taxation authority and shall forthwith pay to Bank such additional amount as will result in the immediate receipt by Bank of the full amount which would otherwise have been receivable hereunder had no such deduction or withholding or payment been made (such additional amount being a "**Tax Payment**"); and

(c) Borrower shall not later than fifty (50) days after each deduction or withholding or payment of any Taxes forward to Bank documentary evidence reasonably required by Bank in respect of the payment of any such Taxes.

9.8 **Tax Credit.** If the Borrower makes a payment on account of Tax under Clause 9.7(b) above and the Bank determines in its absolute discretion that:

- (a) a credit against, relief or remission for or repayment of any Tax ("**Tax Credit**") is attributable to a Tax Payment; and
- (b) Bank has obtained and used that Tax Credit,

Bank shall pay an amount to Borrower which Bank determines in its absolute discretion will leave it in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

9.9 **Illegality.** If it shall become unlawful for Bank to continue to fund or maintain any Credit Extensions, or to perform its obligations hereunder, upon demand by Bank, Borrower shall prepay the Credit Extensions in full with all accrued interest thereon, the Final Payment Fee and all other amounts payable by Borrower hereunder.

9.10 **Additional Costs.**

(a) Borrower shall pay Bank, upon demand by Bank, from time to time such amounts as Bank may determine to be necessary to compensate it for any costs incurred by Bank that Bank determines are attributable to its making or maintaining of any amount receivable by Bank hereunder in respect of any Credit Extensions relating

## Execution version

thereto (such increases in costs and reductions in amounts receivable being herein called "**Additional Costs**"), in each case resulting from any regulatory change which:

(i) changes the basis of taxation of any amounts payable to Bank under this Agreement in respect of any Credit Extensions (other than changes which affect taxes measured by or imposed on the overall net income of Bank by the jurisdiction in which Bank has its principal office);

(ii) imposes or modifies any reserve, special deposit or similar requirements relating to any extensions of credit or other assets of, or any deposits with, or other liabilities of Bank; or

(iii) imposes any other condition affecting this Agreement (or any of such extensions of credit or liabilities),

(each of the events specified at paragraphs (i), (ii) and (iii) being a "**Regulatory Change**").

(b) Bank will notify Borrower of any event occurring after the Effective Date which will entitle Bank to compensation pursuant to this Clause 9.10 (*Additional Costs*) as promptly as practicable after it obtains knowledge thereof and determines to request such compensation. Bank will furnish Borrower with a statement setting out the basis and amount of each request by Bank for compensation under this Clause 9.10 (*Additional Costs*). Determinations and allocations by Bank for purposes of this Clause 9.10 (*Additional Costs*) of the effect of any Regulatory Change on its costs of maintaining its obligations to make Credit Extensions, of making or maintaining Credit Extensions, or on amounts receivable by it in respect of Credit Extensions, and of the additional amounts required to compensate Bank in respect of any Additional Costs, shall be conclusive absent manifest error.

(c) If Bank shall determine that the adoption or implementation of any applicable law, rule, regulation, or treaty regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank, or comparable agency charged with the interpretation or administration thereof, or compliance by Bank (or its applicable lending office) with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank, or comparable agency, has or would have the effect of reducing the rate of return on capital of Bank or any person or entity controlling Bank (a "**Parent**") as a consequence of its obligations hereunder to a level below that which Bank (or its Parent) could have achieved but for such adoption, change, or compliance (taking into consideration policies with respect to capital adequacy) by an amount deemed by Bank to be material, then from time to time, within ten (10) days after demand by Bank, Borrower shall pay to Bank such additional amount or amounts as will compensate Bank for such reduction. A statement of Bank claiming compensation under this Clause 9.10 (*Additional Costs*) and setting out the additional amount or amounts to be paid to it hereunder shall be conclusive absent manifest error.

## 10 NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the actual receipt where such communication is deposited in the mail, first class, registered or certified mail return receipt requested; (b) upon transmission and receipt of a transmission confirmation, when sent by electronic mail; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid if the overnight courier has promised overnight delivery; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, or email address indicated below. Bank or Borrower may change its mailing or electronic mail address by giving the other party written notice thereof in accordance with the terms of this Clause 10 (*Notices*).

If to Borrower:

Affimed GmbH  
Im Neuenheimer Feld 582  
69120 Heidelberg  
Germany

Attn: Dr Florian Fischer  
Email: F.Fischer@affimed.com

with a copy to: CMS Hasche Sigle  
Partnerschaft von Rechtsanwälten and Steuerberatern mbB  
Nymphenburger Straße 12  
80335 Munich  
Germany

Attn: RA Stefan-Ulrich Müller  
Email: Stefan-Ulrich.Mueller@cms-hs.com

If to Bank: Silicon Valley Bank  
3003 Tasman Drive, Santa Clara, CA 95054

Attn: Mr Tim Hardin  
Email: THardin@svb.com

with a copy to: SVB Financial Group (UK) Limited  
7th Floor 41 Lothbury  
London EC2R 7HF

Attn: Mr Jim Watts  
Email: Jwatts2@svb.com

## **11 CHOICE OF LAW AND JURISDICTION AND APPOINTMENT OF PROCESS AGENT**

11.1 This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

11.2 The courts of England have exclusive jurisdiction to settle any dispute (a "**Dispute**") arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or any non-contractual obligations arising out of or in connection with this Agreement). It is agreed that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

11.3 This Clause 11 (*Choice of Law and Jurisdiction and appointment of process agent*) is for the benefit of Bank only. As a result, Bank shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, Bank may take concurrent proceedings in any number of jurisdictions.

11.4 Without prejudice to any other mode of service allowed under any relevant law, Borrower:

(a) irrevocably appoints Law Debenture Corporate Services Limited of Fifth Floor, 100 Wood Street, London EC2V 7EX, attention: Kristy Buchan, Senior Service of Process Officer as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and

(b) agrees that failure by a process agent to notify Borrower of the process will not invalidate the proceedings concerned.

## Execution version

11.5 If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower must immediately (and in any event within five days of such event taking place) appoint another agent on terms acceptable to Bank. Failing this, Bank may appoint another agent for this purpose.

11.6 Borrower expressly agrees and consents to the provisions of this Clause 11 (*Choice of law and Jurisdiction and appointment of process agent*).

## 12 GENERAL PROVISIONS

12.1 **Successors and Assigns.** This Agreement binds and is for the benefit of the successors and permitted assigns of each party hereto. Borrower may not assign this Agreement or assign any rights or transfer any Obligations under it without Bank's prior written consent which may be granted or withheld in Bank's absolute discretion. Bank has the right, with prior written notice, but without the consent of Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights and benefits under this Agreement, the Loan Documents or any related agreement (other than each Warrant, as to which assignment, transfer and other such actions are governed by the terms of such Warrant) provided that (a) the Bank shall be responsible for reasonable and properly incurred external costs incurred in connection with such assignment or transfer and (b) such assignment or transfer shall not be made to a direct competitor of the Borrower.

12.2 **Indemnity.** Borrower hereby indemnifies, defends and holds Bank and its directors, officers, employees, agents, attorneys-in-fact or any other Person representing Bank (each an "**Indemnified Person**") harmless against: (a) all obligations, demands, claims, and liabilities asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (b) all losses or Bank Expenses incurred, or paid by such Indemnified Person from, following or consequential to the transactions between Bank and Borrower (including legal and audit fees and expenses), except to the extent that obligations, demands, claims, liabilities or losses are directly attributable to any Indemnified Person's gross negligence or wilful misconduct.

12.3 **Right of Set-Off.** Bank may set off any matured obligation due from Borrower under the Loan Documents against any matured obligation owed by Bank to Borrower, regardless of the place of payment, banking branch or currency of either obligation. Further, Borrower authorises Bank to apply (without prior notice) any credit balance (whether or not then due) to which Borrower is at any time beneficially entitled on any account at, any sum held to its order by and/or any liability or obligation (whether or not matured) of, any office of Bank in or towards satisfaction of any sum then due and payable by it to Bank under any of the Loan Documents and unpaid. For these purposes, Bank may convert one currency into another, provided that nothing in this Clause 12.3 (*Right of Set-Off*) shall be effective to create a charge. Bank shall not be obliged to exercise any of its rights under this Clause 12.3 (*Right of Set-Off*), which shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right (including the benefit of the Loan Documents) to which it is at any time otherwise entitled (whether by operation of law, contract or otherwise).

12.4 **Time of Essence.** Time is of the essence for the performance of all obligations in this Agreement.

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

12.6 **Correction of Loan Documents.** Bank may correct patent errors and complete any blanks in the Loan Documents consistent with the agreement of the parties.

12.7 **Amendments in Writing; Waiver; Integration.** No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be enforceable or admissible unless, and only to the extent, expressly set out in writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan

## Execution version

Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties hereto about the subject matter of the Loan Documents merge into the Loan Documents.

12.8 **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, are an original, and all taken together, constitute one Agreement.

12.9 **Survival.** All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been paid in full and satisfied. Any grant of a security interest by Borrower in connection with this Agreement shall survive until the termination of all Bank Services Agreements, and the obligation of Borrower in Clause 12.2 (*Indemnity*) to indemnify Bank shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

12.10 **Confidentiality.** In handling any confidential information, Bank shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Bank's Subsidiaries or Affiliates; (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, Bank first obtains a non-disclosure agreement with the prospective transferee's or purchaser's agreement and provided further that Bank shall not be liable for any breach of such non-disclosure agreement); (c) as required by law, regulation, subpoena, or other order; (d) to Bank's regulators or as otherwise required in connection with Bank's examination or audit; (e) as Bank considers appropriate in exercising its rights or remedies under the Loan Documents and (f) to third-party service providers of Bank so long as such service providers have executed a confidentiality agreement with Bank with terms no less restrictive than those contained herein. Confidential information does not include information that is either: (i) in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain after disclosure to Bank; or (ii) disclosed to Bank by a third party if Bank does not know that the third party is prohibited from disclosing the information.

Bank may use confidential information for the development of databases, reporting purposes, and market analysis so long as such confidential information is aggregated and anonymised prior to distribution unless otherwise expressly permitted by Borrower. The provisions of the immediately preceding sentence shall survive the termination of this Agreement.

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

12.12 **Third Party Rights.** A Person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement.

12.13 **Calculations and certificates.**

(a) Bank shall maintain accounts evidencing the amount Borrower owes it, in accordance with its usual practice. In the absence of manifest error, the entries made in the accounts maintained by Bank are prima facie evidence of Borrower's obligations and amount it owes to Bank.

(b) Any certification or determination by Bank of a rate or amount under this Agreement is, in the absence of manifest error, conclusive evidence of the matters to which it relates. Each certificate or determination shall contain reasonable details of the basis of determination.

12.14 **Contractual recognition of bail-in.** Notwithstanding any other term of any Loan Document or any other agreement, arrangement or understanding between the parties, each party acknowledges and accepts that any liability of any party to any other party under or in connection with the Loan Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
  - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
  - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
  - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Loan Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

### **13 DEFINITIONS**

13.1 **Definitions.** In this Agreement:

"**Additional Costs**" is defined in Clause 9.10(a) (*Additional Costs*).

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

"**Affirmed N.V.**" means Affirmed N.V., a public company incorporated in The Netherlands, having Dutch Trade Register number 60673389 and whose statutory seat is in Amsterdam and whose registered address is at Im Neuenheimer Feld 582, 69120, Heidelberg, Germany.

"**Agreed Form**" means in relation to any document the form of that document specifically agreed by or on behalf of Borrower and Bank.

"**Agreement**" is defined in the preamble to this Agreement.

"**Arrangement Fee**" is defined in Clause 2.3(a) (*Arrangement Fee*).

"**Bail-In Action**" means the exercise of any Write-down and Conversion Powers.

"**Bail-In Legislation**" means: (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation from time to time ; and (b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

"**Bank**" is defined in the preamble to this Agreement.

"**Bank Expenses**" are (a) all audit fees and expenses; (b) all reasonable costs and out-of-pocket expenses (including reasonable legal fees and expenses) for preparing, negotiating, closing and administering, the Loan Documents (including any amendments or replacements thereof) or otherwise incurred with respect to an Obligor in connection with any Term Loan and (b) all costs and expenses (including legal fees and expenses) for defending and enforcing the Loan Documents (including appeals or Insolvency Proceedings) or granting any waivers or concessions or otherwise incurred with respect to an Obligor in connection with any Term Loan and/or any Loan Document.

## Execution version

**"Bank Services"** are any products, credit services, and/or financial accommodation previously, now, or hereafter provided to an Obligor or any of its Subsidiaries by Bank or any Bank Affiliate, including, any letters of credit, cash management services (including merchant services, direct deposit of payroll, business credit cards, and cheque cashing services), interest rate swap arrangements and foreign exchange services as any such products or services may be identified in Bank's various agreements related thereto (each, a **"Bank Services Agreement"**).

**"Borrower"** is defined in the preamble to this Agreement.

**"Borrower's Auditors"** means any of Ernst & Young, KPMG, Deloitte and Price Waterhouse Coopers or any other independent certified public accounting firm acceptable to Bank in its reasonable discretion.

**"Borrower's Books"** are all the books and records of an Obligor including ledgers, records regarding the Obligors' assets or liabilities, the Collateral, business operations or financial condition and all computer programs or discs or any equipment containing the information.

**"Business Day"** is any day that is not a Saturday, Sunday, a day on which Bank is closed or a day on which leading banks are closed in the City of London, England and/or the State of California and which is a Target Day.

**"Change in Control"** means:

(a) in relation to Affirmed N.V. any event, transaction, or occurrence as a result of which (i) any person other than a trustee or other fiduciary holding shares under an employee benefit plan of Borrower, is or becomes a beneficial owner, directly or indirectly, of shares of Borrower, representing over fifty per cent (50%) of the combined voting power of Borrower's then outstanding shares; or (ii) during any period of twelve consecutive calendar months, individuals who at the beginning of such period were appointed as managing directors or constituted the Board of Directors of Affirmed N.V. (together with any new directors whose election by the shareholder's meeting or Board of Directors of Affirmed N.V. (as applicable) was approved by a vote of not less than two-thirds of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason other than death, age or disability; and/or

(b) in relation to Affirmed N.V., any event, transaction, or occurrence as a result of which any person or group of persons acting in concert gains direct or indirect control of Affirmed N.V. For the purpose of this paragraph (b):

(i) "acting in concert" means a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in Affirmed N.V. by any of them, either directly or indirectly, to obtain or consolidate control of the Affirmed N.V.; and

(ii) "control" means holding beneficially of fifty per cent (50%) or more of the issued share capital of Affirmed N.V. (whether by way of acquisition or hostile takeover).

**"Collateral"** is any and all present and future property, rights and assets of an Obligor which are subject to any Lien in favour of Bank.

**"Compliance Certificate"** means the certificate in the form of **Exhibit B** to this Agreement.

**"Contingent Obligation"** is, for any Person, any direct or indirect liability, contingent or not, of that Person for (i) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (ii) any obligations for undrawn letters of credit for the account of that Person; and (iii) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designed to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated

## Execution version

liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

"**Copyrights**" are all copyright rights, applications or registrations and like protections in each work or authorship or derivative work, whether published or not (whether or not it is a trade secret) now or later existing, created, acquired or held.

"**Credit Extension**" is each Term Loan or any other extension of credit by Bank for Borrower's benefit under this Agreement.

"**Default Rate**" is defined in Clause 2.2(b) (*Default Rate*).

"**Dispute**" is defined in Clause 11 (*Choice of Law and Jurisdiction and appointment of process agent*).

"**EEA Member Country**" means any member state of the European Union, Iceland, Liechtenstein and Norway.

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

"**Equipment**" is all present and future machinery, equipment, tenant improvements, furniture, fixture vehicles (including motor vehicles and trailers), tools, parts and attachments in which Borrower or any of its Subsidiaries has any interest.

"**EURIBOR**" means in relation to the Term Loan:

- (a) the Screen Rate for a period equal in length to the Interest Period; or
- (b) if:
  - (i) no Screen Rate is available for Euro; or
  - (ii) no Screen Rate is available for the Interest Period of the Term Loan,as otherwise determined in accordance with Clause 2.2(h) (*Unavailability of Screen Rate*),

and if such rate is less than zero, EURIBOR shall be deemed to be zero.

"**Euro Event**" means any of the following circumstances:

- (a) the withdrawal of any Participating Member State;
- (b) the abolition of the Economic and Monetary Union;
- (c) the creation by a Participating Member State of a currency other than Euro; or
- (d) the promulgation of a currency by any Participating Member State that redenominates (or purports to redenominate) any Euro obligations into a new currency.

"**Euros**" or use of the sign "€" or use of the abbreviation "**EUR**" means the lawful currency of any Participating Member State.

"**Event of Default**" means any of the events set out in Clause 8 (*Events of Default*).



## Execution version

"**Facility**" means the facility made available under this Agreement.

"**Final Payment Fee**" means an amount equal to ten per cent. (10%) of the total principal amount advanced to Borrower by Bank under the Term Loan.

"**Foreign Currency**" means any lawful money that is not Euros.

"**Foreign Institutions**" means any bank or institution which is not located in the United States or the United Kingdom.

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

"**FX Contract**" is any foreign exchange contract by and between Borrower and Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency on a specified date.

"**GAAP**" is generally accepted accounting principles in The Netherlands, including, in each case, IFRS.

"**German Security Documents**" means, individually and collectively each of, (a) a certain Security Assignment Agreement (accounts receivable) dated as of the Effective Date, between Borrower and Bank, (b) a certain Account Pledge Agreement dated as of the Effective Date, between Borrower and Bank, (c) a certain Account Pledge Agreement dated as of the Effective Date between Affirmed N.V. and Bank, (d) a certain Share Security Agreement dated as of the Effective Date between Affirmed N.V. and Bank, and (e) a certain Security Transfer Agreement dated as of the Effective Date, between Borrower and Bank, and (f) any and all other security agreements, mortgages or other collateral granted to Bank by Borrower as security for the Obligations, now or in the future.

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

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

"**Guarantee**" means (a) the guarantee and indemnity dated on or about the date of this Agreement by Affirmed N.V. in favour of Bank and (b) any other guarantee and/or indemnity granted by any person on account of the Obligations of Borrower under this Agreement.

"**Hedging Transaction**" means (i) any foreign exchange transaction involving the purchase or sale of a specific amount of currency on a specified date or (ii) any other transaction, in each case, solely for the purpose of hedging interest payable under this Agreement where the principal amount hedged is greater than €100,000.

"**IFRS**" are the International Financial Reporting Standards, a collection of guidelines and rules set by the International Accounting Standards Board ([www.iasb.org](http://www.iasb.org)) which are applicable to the circumstances as of the date of determination.

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

"**Indemnified Person**" is defined in Clause 12.2 (*Indemnity*).

"**Insolvency Proceeding**" is defined in Clause 8.6 (*Insolvency Proceedings*).

**"Intellectual Property"** means all of Borrower's present and future right, title, and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;
- (b) any and all trade secrets and trade secret rights, including any rights to unpatented inventions, know-how and operating manuals;
- (c) any and all source codes;
- (d) any and all registered designs and other design rights which may be available to a Borrower;
- (e) any and all goodwill and trade secrets;
- (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
- (f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

**"Interest Payment Date"** has the meaning given to that term in Clause 2.2(e) (*Payments*).

**"Interest Period"** means each period commencing on an Interest Payment Date and ending on the date one day prior to the next Interest Payment Date

**"Interpolated Screen Rate"** means, in relation the Term Loan, the rate which results from interpolating on a linear basis between:

- (a) the Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of the Term Loan; and
- (b) the Screen rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of the term Loan,

each as of 11:00am Brussels time.

**"Inventory"** is present and future inventory in which Borrower or any of its Subsidiaries has any interest, including merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products intended for sale or lease or to be furnished under a contract of service, of every kind and description now or later owned by or in the custody or possession, actual or constructive, of Borrower or any Subsidiaries (as applicable), including inventory temporarily out of its custody or possession or in transit and including returns on any accounts or other proceeds (including insurance proceeds) from the sale or disposition of any of the foregoing and any documents of title.

**"Investment"** is any beneficial ownership of stocks, shares, bonds and securities (including any partnership interest) in any Person, or any loan, advance or capital contribution to any Person.

**"Letter of Credit"** is a standby or commercial letter of credit issued by Bank upon request of Borrower based upon an application, guarantee, indemnity or similar agreement.

**"Lien"** is a mortgage, lien, deed of trust, levy, charge, assignment, pledge, security interest or other encumbrance.

## Execution version

"**Loan Documents**" are, collectively, this Agreement, the Perfection Certificates, each Warrant, the Security Documents, any Bank Services Agreement, and any loan, notes or guarantees executed by an Obligor in favour of Bank, and any other present or future agreement between an Obligor and Bank and/or entered into for the benefit of Bank in connection with this Agreement, all as amended, extended or restated.

"**Margin**" means 5.5 per cent. per annum.

"**Material Adverse Change**" is: (i) a material impairment in the perfection or priority of Bank's security interest in the Collateral; (ii) a material adverse change in the business, operations, or financial condition of an Obligor or (iii) a material impairment of the prospect of repayment of any portion of the Obligations;

"**Monthly Financial Statements**" is defined in Clause 6.2(a) (*Monthly Financial Statements*).

"**Obligations**" are all present and future monies, liabilities, obligations, debts, principal, interest, Bank Expenses and other amounts owing by any Obligor to Bank, in each case whether actual or contingent (including, but without limitation, Contingent Obligations) and whether owing as principal or as surety or in any other capacity or of any nature arising under or in connection with this Agreement, the other Loan Documents, (other than the Warrants) any Bank Services Agreement or otherwise howsoever and wherever arising, and including interest accruing after Insolvency Proceedings begin.

"**Obligor**" means each of (a) the Borrower; (b) Affirmed N.V. and (c) any other person that from time to time provides a Lien or a Guarantee in favour of Bank on account of the Obligations of Borrower under this Agreement.

"**Participating Member State**" means any member state of the European Union that has the Euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"**Patents**" are patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

"**Payment/Advance Request Form**" is that certain form attached hereto as Exhibit A.

"**Perfection Certificate**" means a certificate signed by a Responsible Officer of an Obligor provided to Bank as a condition precedent to the initial Credit Extension and which contains details about an Obligor's assets and liabilities, officers and shareholders and other information as set out therein.

"**Permitted Indebtedness**" is:

- (a) Borrower's Indebtedness to Bank under this Agreement or the Loan Documents;
- (b) Subordinated Debt;
- (c) Indebtedness existing on the Effective Date and shown on a Perfection Certificate (other than, following the date of the initial Credit Extension, Indebtedness disclosed on a Perfection Certificate which is being repaid using the proceeds of the initial Credit Extension);
- (d) unsecured Indebtedness to trade creditors incurred and discharged in the ordinary course of business;
- (e) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;
- (f) Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of "Permitted Liens";

## Execution version

(g) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness permitted under paragraphs (a) to (c) inclusive above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon an Obligor or a Subsidiary of an Obligor, as the case may be; and

(m) permitted by Bank in writing at any time after the date of this Agreement.

**"Permitted Investments"** are:

(a) Investments (including Subsidiaries) existing on the Effective Date and shown on the Perfection Certificate, including any commitments the Borrower has made as of the date of this Agreement in connection with any Investments (including Subsidiaries) and which Borrower has disclosed in writing to the Bank in the Perfection Certificate;

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

(c) Investments consisting of deposit accounts in which Bank has a perfected security interest;

(d) Investments accepted in connection with Transfers permitted by Clause 7.1 (*Dispositions*);

(e) Investments 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 share purchase plans or agreements approved by Borrower's Board of Directors;

(f) Investments (including debt obligations) received in connection with the bankruptcy or reorganisation of customers or suppliers and in settlement of unfulfilled obligations of, and other disputes with, customers or suppliers arising in the ordinary course of 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 paragraph (h) shall not apply to Investments of Borrower in any Subsidiary; and

(h) Investments by the Borrower in its Subsidiaries to cover operating costs in the ordinary course of business of such Subsidiary, provided that such Investments shall not exceed:

- (i) in the case of AbCheck s.r.o., a limited liability company (*společnost s ručením omezeným*) incorporated in the Czech Republic, having company number 28471512, four hundred and fifty thousand euros (€450,000) per calendar quarter or such higher amount as agreed between the Lender and the Borrower in writing from time to time; and
- (ii) in the case of Affimed Inc., a corporation incorporated under the laws of Delaware and having company number 47-3374648, three hundred and seventy five thousand euros (€375,000) per calendar quarter or such higher amount as agreed between the Lender and the Borrower in writing from time to time; and
- (iii) in the case of any other Subsidiary, such amount per calendar month as is agreed in writing between the Lender and the Borrower from time to time.

**"Permitted Liens"** are:

(a) Liens arising under this Agreement or other Loan Documents in favour of the Bank;

## Execution version

(b) Liens for taxes, fees, assessments or other government charges or levies, either being contested in good faith or payment of which can be lawfully withheld and for which Borrower maintains adequate reserves on its Books, if they have no priority over any of Bank's Liens;

(c) Purchase money Liens (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than Fifty thousand Euros (€50,000) in the aggregate amount outstanding, or (ii) existing on equipment when acquired, if the Lien is confined to the equipment itself and improvements and the proceeds of the equipment;

(d) leases or subleases and non-exclusive licences or sub-licences granted in the ordinary course of Borrower's business, if the leases, subleases, licences and sub-licences permit granting Bank a security interest;

(e) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) to (d) inclusive, but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(f) Liens in favour of other financial institutions arising in connection with Borrower's deposit accounts held at such institutions (including but not limited to any security interest or right to set-off arising under articles 24 or 25 respectively of the general terms and conditions (*algemene voorwaarden*) of any member of the Dutch Bankers' Association (*Nederlandse Vereniging van Banken*) and/or under any other general business conditions (*AGB Banken*) of any bank in Germany and/or any other comparable provisions in other countries), provided that (i) Bank has a perfected security interest in the amounts held in such deposit accounts; (ii) such security interest of Bank takes priority to any such Lien of the relevant deposit account bank; and (iii) the relevant deposit account bank has acknowledged that the Bank's security interest has priority over its Lien; and

(g) any Lien arising by operation of law and in the ordinary course of business of Borrower.

"**Person**" is any individual, sole proprietorship, partnership (including but not limited to a general partnership (*vennootschap onder firma*), a limited partnership (*commanditaire vennootschap*), a partnership (*maatschap*)), limited liability company (including but not limited to a legal person within the meaning of articles 2:1 to 2:3 inclusive of the Dutch Civil Code), joint venture, company, trust, unincorporated organisation, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Quotation Day**" means, in relation to any period for which an interest rate is to be determined, two TARGET Days before the first day of that period (unless market practice differs in the Relevant Market for Euro in which case the Quotation day will be determined by Bank in accordance with market practice in the Relevant Market (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days)

"**Regulatory Authority**" any competent authority in any country or region that regulates medicines and healthcare and life sciences products, including the Medicines and Healthcare products Regulatory Agency, the European Medicines Agency, ethics committees and the US Food and Drug Administration.

"**Regulatory Change**" is defined in Clause 9.10(a) (*Additional Costs*).

"**Relevant Market**" means the European interbank market.

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

"**Resolution Authority**" means any body which has authority to exercise any Write-down and Conversion Powers.

## Execution version

"**Responsible Officer**" is each managing director (*Geschäftsführer*), director (including a *statutair bestuurder*) or other equivalent officer of an Obligor.

"**Restricted Licence**" is any material licence or other agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such licence or agreement or any other property, or (b) for which a default under or termination of could interfere with Bank's right to sell any Collateral.

"**Screen Rate**" means the Euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page EURIBOR01 of the Thomson Reuters Screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, Bank may specify another page or service displaying the relevant rate after consultation with the Borrower.

"**Security Documents**" means each of:

- (a) a Netherlands law omnibus deed of pledge;
- (b) the German Security Documents; and
- (c) all other Liens granted in favour of the Bank as security for the Obligations now or in the future.

"**Studies**" means each of:

- (a) AFM13 Hodgkin Lymphoma Combination with PD-1;
- (b) AFM11 Non-Hodgkin Lymphoma;
- (c) AFM11 Acute Lymphocytic Leukaemia; and/or
- (d) any other study or clinical trials agreed between Borrower and Bank to be included as a study within the meaning of "Studies".

"**Subordinated Debt**" is debt incurred by an Obligor subordinated to Borrower's debt to Bank (pursuant to a subordination agreement entered into between Bank, the relevant Obligor and the subordinated creditor), on terms acceptable to Bank.

"**Subsidiary**" means (i) a subsidiary as defined in Section 1159 of the Companies Act 2006 and (ii) unless the context otherwise requires, a subsidiary undertaking within the meaning of Section 1162 of the Companies Act 2006.

"**TARGET2**" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

"**TARGET Day**" means any day on which TARGET2 is open for the settlement of payments in Euro.

"**Taxes**" means any present or future taxes, levies, duties, imposts or other charges or withholdings of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same), and "**Tax**" and "**Taxation**" have a corresponding meaning.

"**Tax Payment**" has the meaning given to that term in Clause 9.7(b) (*Withholding; Gross-up*).

"**Term Loan**" is a drawing under "**Tranche 1**" or "**Tranche 2**."

"**Term Loan Amount**" is an amount equal to the aggregate of:

- (a) the Tranche 1 Term Loan Amount; and
- (b) as applicable, either:
  - (i) the Tranche 2a Term Loan Amount (if the Tranche 2a Conditions are satisfied and the Borrower has elected to draw down Tranche 2a); or
  - (ii) the Tranche 2b Term Loan Amount (if the Tranche 2b Conditions are satisfied and the Borrower has elected to draw down Tranche 2b).

"**Term Loan Early Termination Fee**" means:

- (a) if the Term Loan is prepaid within and including two (2) years of the Funding Date of Tranche 1, 3.00% (three per cent.) of the total amount drawn by Borrower under the Facility as at the date on which the Term Loan is prepaid; or
- (b) if the Term Loan is prepaid after two (2) years of the Funding Date but within and including three (3) years of the Funding Date of Tranche 1, 2.00% (two per cent.) of the total amount drawn by Borrower under the Facility as at the date on which the Term Loan is prepaid; or
- (c) if the Term Loan is prepaid at any time after three (3) years of the Funding Date of Tranche 1 but before the Term Loan Maturity Date, 1.00% of the total amount drawn by Borrower under the Facility as at the date on which the Term Loan is prepaid.

"**Term Loan Maturity Date**" is:

- (a) 31 May 2020, if the Borrower draws down under Tranche 1 only;
- (b) 31 May 2020, if the Borrower draws down under Tranche 1 and Tranche 2a; and
- (c) 30 November 2020, if the Borrower draws down under Tranche 1 and Tranche 2b.

"**Trademarks**" are trademark and service mark rights, registered or not, applications to register and registrations and like protections, and the entire goodwill of the business of Borrower connected with the trademarks.

"**Tranche 1**" has the meaning ascribed to it in Clause 2.1(a)(i).

"**Tranche 1 Availability Period**" means the period commencing on the date of this Agreement and ending on 16 December 2016.

"**Tranche 1 Term Loan Payment**" has the meaning ascribed to it in Clause 2.1(b)(i).

"**Tranche 1 Term Loan Amount**" is an amount equal to five million Euros (€5,000,000) (as reduced or cancelled in accordance with the terms of this Agreement).

"**Tranche 1 Warrant**" means the Warrant issued to Bank under Clause 6.12(a)(i).

"**Tranche 2**" has the meaning ascribed to it in Clause 2.1(a)(ii).

"**Tranche 2 Availability Period**" means the period commencing on the date of this Agreement and ending on 31 May 2017.

## Execution version

"**Tranche 2 Warrant**" means the Warrant issued to Bank under Clause 6.12(a)(ii).

"**Tranche 2a**" means the tranche described in Clause 2.1(a)(ii)(A).

"**Tranche 2a Conditions**" means each of the following conditions:

- (a) evidence in form and substance satisfactory to Bank that the Borrower has received in cleared funds at least twenty million Euros (€20,000,000) representing either:
  - (i) an additional cash equity injection; and/or
  - (ii) an upfront milestone payment;
- (b) evidence in form and substance reasonably satisfactory to Bank as to the continued progress of the Studies;
- (c) Tranche 1 has been drawn down by the Borrower;
- (d) delivery to Bank of the Tranche 2 Warrant duly executed by Affirmed N.V. and any ancillary documents and/or legal opinions reasonably required by Bank; and
- (e) the conditions in Clause 3.2 (*Conditions Precedent to all Credit Extensions*) are satisfied.

"**Tranche 2a Term Loan Amount**" means five million Euros (€5,000,000) (as reduced or cancelled in accordance with the terms of this Agreement).

"**Tranche 2a Term Loan Payment**" has the meaning ascribed to it in Clause 2.1(b)(ii)(A).

"**Tranche 2b**" means the tranche described in Clause 2.1(a)(ii)(B).

"**Tranche 2b Conditions**" means each of the following conditions:

- (a) evidence in form and substance reasonably satisfactory to Bank that the Borrower has received in cleared funds at least fourteen million Euros (€14,000,000) representing either:
  - (i) an additional cash equity injection; and/or
  - (ii) an upfront milestone payment;
- (b) evidence in form and substance reasonably satisfactory to Bank as to the continued progress of the Studies;
- (c) Tranche 1 has been drawn down by the Borrower;
- (d) delivery to Bank of the Tranche 2 Warrant duly executed by Affirmed N.V. and any ancillary documents and/or legal opinions reasonably required by Bank; and
- (e) the conditions in Clause 3.2 (*Conditions Precedent to all Credit Extensions*) are satisfied.

"**Tranche 2b Term Loan Amount**" means two million, five hundred thousand Euros (€2,500,000) (as reduced or cancelled in accordance with the terms of this Agreement).

"**Tranche 2b Term Loan Payment**" has the meaning ascribed to it in Clause 2.1(b)(ii)(B).



"**Transfer**" is defined in Clause 7.1 (*Dispositions*).

"**Warrant**" means each of the Tranche 1 Warrant and the Tranche 2 Warrant and "**Warrants**" means both of them.

"**Write-down and Conversion Powers**" means in relation to any applicable Bail-In Legislation:

- (a) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
- (b) any similar or analogous powers under that Bail-In Legislation.

**13.2 Interpretation.** In this Agreement, unless the context otherwise requires or the contrary intention appears:

- (a) a reference to a provision of law is a reference to that provision as extended, applied, amended or enacted from time to time and includes any subordinate legislation;
- (b) the singular includes the plural and vice versa, and reference to any gender includes the other genders;
- (c) references to this Agreement or any other agreement or document are to this Agreement or such other agreement or document as it may be validly varied, amended, supplemented, restated, renewed, novated or replaced from time to time;
- (d) references to any party to this Agreement include a reference to its successors and permitted assigns and permitted transferees under this Agreement;
- (e) references to "written" or "in writing" include all forms of visible reproduction in permanent form, including electronic messages;
- (f) the words "execution", "signed", "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems as the case may be, to the extent and as provided for in any applicable law;
- (g) the headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement;
- (h) the parties hereto mutually acknowledge that they and their lawyers have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist;
- (i) any reference to:
  - (i) a "**month**" is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month (and "**months**" has a corresponding meaning) save that, where any such period would otherwise end on a day which is not a Business Day, it shall end on the next

## Execution version

Business Day, unless that day falls in the calendar month succeeding that in which it would otherwise have ended, in which case it shall end on the preceding Business Day provided that, if a period starts on the last Business Day in a calendar month or if there is no numerically corresponding day in the month in which that period is to end, that period shall end on the last Business Day in that latter month;

- (ii) a "**dispute**" means any litigation or administrative or arbitration proceeding before or of any court, tribunal, arbitrator or governmental or municipal authority, any labour dispute, any dispute with any governmental or municipal authority and any other dispute of any kind;
- (j) any covenant by a party not to do an act or thing includes an obligation not to permit or suffer such act or thing to be done;
- (k) the words "**including**" and "**in particular**" and any similar words or expressions are by way of illustration and emphasis only and do not operate to limit the generality or extent of any other words or expressions;
- (l) all Exhibits to this Agreement form part of it and take effect as if set out in this Agreement, and any reference to this Agreement includes the Exhibits;
- (m) a Default is "continuing" if it has not been remedied (to the extent capable of remedy) to the satisfaction of Bank or specifically waived in writing by Bank and an Event of Default is "**continuing**" if it has not been specifically waived in writing by Bank;
- (n) Where the Borrower consists of more than one person:
  - (i) the obligations and liabilities of the Borrower shall take effect as joint and several obligations and liabilities on the part of such persons;
  - (ii) unless the context otherwise requires, all references to the Borrower shall take effect as references to such persons or each of them;
  - (iii) neither Borrower shall be released from liability under this Agreement by reason of this Agreement not being or ceasing to be binding on the other Borrower;
  - (vi) any notice to or demand on the Borrowers shall be sufficiently served on both Borrowers if served on one Borrower.
- (o) references to Clauses and Exhibits refer to clauses of, and schedules and exhibits to, this Agreement.

### 13.3 Dutch terms

In this Agreement, where it relates to a Dutch entity, a reference to:

- (a) "gross negligence" means *grove schuld*;
- (b) "indemnify" means *vrijwaren*;
- (c) "negligence" means *schuld*;
- (d) "wilful misconduct" means *opzet*;
- (e) a "security interest" includes any mortgage (*hypotheek*), pledge (*pandrecht*), retention of title arrangement (*eigendomsvoorbehoud*), privilege (*voorrecht*), right of retention (*recht van retentie*), right to

**Execution version**

reclaim goods (*recht van reclame*), and, in general, any limited right (*beperkt recht*), created for the purpose of granting security (*goederenrechtelijk zekerheidsrecht*);

- (f) a "moratorium" includes *surseance van betaling*;
- (g) a "bankruptcy trustee" includes a *curator*; and
- (h) an "administrator" includes a *bewindvoerder*.

Signature page follows.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as a deed and delivered on the Effective Date.

**BORROWER:**

**EXECUTED** for and on behalf of **AFFIMED GMBH** by:

**By:** /s/ Florian Fischer  
**Name:** Florian Fischer  
**Title:** CFO

**By:** /s/ Jörg Windisch  
**Name:** Jörg Windisch  
**Title:** COO

**BANK:**

**EXECUTED** for and on behalf of **SILICON VALLEY BANK** by:

**By:** /s/ Nooman Haque  
**Name:** Nooman Haque  
**Title:** Director of Life Sciences

**EXHIBIT A**

**Loan Payment/Advance Request Form**

**DEADLINE FOR SAME DAY PROCESSING IS MIDDAY LONDON TIME**

Fax To: \_\_\_\_\_ Date: \_\_\_\_\_

**LOAN PAYMENT:**

[NAME OF THE COMPANY]

From Account # \_\_\_\_\_ To Account # \_\_\_\_\_  
(Deposit Account #) (Loan Account #)

Principal € \_\_\_\_\_ and/or Interest € \_\_\_\_\_

Authorised Signature: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Print Name/Title: \_\_\_\_\_

**LOAN ADVANCE:**

Complete *Outgoing Wire Request* section below if all or a portion of the funds from this loan advance are for an outgoing wire.

From Account # \_\_\_\_\_ To Account # \_\_\_\_\_  
(Loan Account #) (Deposit Account #)

Amount of [Tranche 1] [Tranche 2] Term Loan € \_\_\_\_\_

[If Tranche 2] Term Loan shall be drawn by way of [Tranche 2a]/[Tranche 2b]

Date Term Loan is to be made \_\_\_\_\_ 20[●]

All Borrower's representations and warranties in the Loan Agreement are true, correct and complete in all material respects on the date of the telephone transfer request for an advance, but those representations and warranties expressly referring to another date shall be true, correct and complete in all material respects as of such date:

Authorised Signature: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Print Name/Title: \_\_\_\_\_

**OUTGOING WIRE REQUEST:**

**Complete only if all or a portion of funds from the loan advance above is to be wired.**

Deadline for same day processing is midday London Time.

Beneficiary Name: \_\_\_\_\_ Amount of Wire: € \_\_\_\_\_

Beneficiary Bank: \_\_\_\_\_ Account Number: \_\_\_\_\_

City and State: \_\_\_\_\_

Beneficiary Bank Transit (ABA) #: \_\_\_\_\_ Beneficiary Bank Code (Swift, Sort, Chip, etc.): \_\_\_\_\_

**(For International Wire Only)**

Intermediary Bank: \_\_\_\_\_ Transit (ABA) #: \_\_\_\_\_

For Further Credit to: \_\_\_\_\_

Special Instruction: \_\_\_\_\_



*By signing below, we acknowledge and agree that our funds transfer request shall be processed in accordance with and subject to the terms and conditions set out in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by us.*

Authorized Signature: \_\_\_\_\_ 2<sup>nd</sup> Signature (if required): \_\_\_\_\_

Print Name/Title: \_\_\_\_\_ Print Name/Title: \_\_\_\_\_

Telephone #: \_\_\_\_\_ Telephone #: \_\_\_\_\_

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**EXHIBIT B**

**COMPLIANCE CERTIFICATE**

TO: SILICON VALLEY BANK

FROM: [ • ]

The undersigned authorised officer of [ • ] ("Borrower") certifies that under the terms and conditions of the Loan Agreement between, amongst others, Borrower and Bank (the "Agreement"), (1) Borrower is in complete compliance for the period ending \_\_\_\_\_ with all required covenants except as noted below, (2) there are no Events of Default, (3) all representations and warranties in the Agreement are true and correct in all material respects on this date except as noted below; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, (4) Borrower, and each of its Subsidiaries/Affiliates, has timely filed all required tax returns and reports, and Borrower has timely paid all taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Clause 5.8 (*Taxation*) of the Agreement, and (5) no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Bank. Attached are the required documents supporting the certification. The undersigned certifies that these are prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalised terms used but not otherwise defined herein shall have the meanings given to them in the Agreement.

**Please indicate compliance status by circling Yes/No under "Complies" column.**

<b><u>Reporting Covenant</u></b>	<b><u>Required</u></b>	<b><u>Complies</u></b>
Monthly financial statements	Within 30 days of the end of each month	Yes No
Annual financial statement (Audited)	180 days following Affirmed N.V.'s financial year end	Yes No
Board approved operating plan	Within 30 days after the expiration of the immediately preceding financial year	Yes No
Board meeting pack	No later than 30 days after the day of each board meeting	Yes No
The following Intellectual Property was registered after the Effective Date (if no registrations, state "None")		
_____		
The following legal actions are pending (if none state "None")		
_____		



The following are the exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions to note.")

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**AFFIMED GMBH**

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

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

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

**BANK USE ONLY**

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

AUTHORISED SIGNER

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

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

AUTHORISED SIGNER

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

Compliance Status: Yes No

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**EXHIBIT C**

**CLIENT PAYMENT INSTRUCTIONS**

**Principal and Interest Repayments**

**in Euros**

Please remit funds to:

Account Number:

IBAN:

Swift Code:

Via our EUR Correspondent:

Ref: Please quote your client name

**Fee Payments**

**in Euros**

Please remit funds to:

Account Number:

IBAN:

Swift Code:

Via our EUR Correspondent:

Ref: Please quote your client name

**EXHIBIT D**

**LITIGATION DISCLOSURES**

Amgen:

In 2006 Affimed GmbH entered into a Settlement Agreement with Micromet AG (now Amgen Research (Munich) GmbH, a subsidiary of Amgen Inc.). In the Settlement Agreement Affimed GmbH undertakes not to challenge the validity or scope of the Micromet/Amgen patent EP 1 071 752 B1 and any patents, patent applications and other protective rights relating to bispecific single chain constructs specific for CD19 and CD3. In return for Affimed GmbH's commitment and withdrawal of its former appeal against an opposition, Micromet/Amgen paid in total EUR 175,000 to Affimed GmbH. If Affimed GmbH breaches the Settlement Agreement, Micromet/Amgen may terminate the Settlement Agreement and request repayment of this amount plus 5% annual compound interest. Since Affimed GmbH's drug candidate AFM11 falls within the scope of this Settlement Agreement, Affimed GmbH has filed several oppositions against patent EP 1 071 752 B1 and related patents and will continue with other oppositions in the future. The financial risk of Affimed GmbH in case of termination of the Settlement Agreement by Micromet/Amgen is clear and in addition Affimed GmbH has serious concerns about the validity of the Settlement Agreement from an anti-trust perspective.

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EXHIBIT E

FORM OF WARRANT

WARRANT FOR THE SUBSCRIPTION OF COMMON SHARES AFFIMED N.V.

THE WARRANT REPRESENTED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND HAS BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A CURRENT VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. SUCH WARRANT GENERALLY MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION UNLESS THE COMPANY RECEIVES AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO IT STATING THAT SUCH SALE OR TRANSFER IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SAID ACT. THIS SECURITY IS ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER AND OTHER MATTERS AS SET FORTH IN THE WARRANT GOVERNING THE TERMS OF THIS WARRANT. THE COMMON SHARES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND ARE SUBJECT TO FURTHER RESTRICTION ON TRANSFER. SUCH COMMON SHARES GENERALLY MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION UNLESS THE COMPANY RECEIVES AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO IT STATING THAT SUCH SALE OR TRANSFER IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SAID ACT.

Affimed N.V., a public limited liability company under the laws of the Netherlands, having its corporate seat at Amsterdam, the Netherlands and address at D-69120 Heidelberg, Germany, Im Neuenheimer Feld 582, Germany (the "**Company**"), hereby certifies and declares that Silicon Valley Bank, a corporation incorporated under the law of California, United States of America, with registered address at 3003 Tasman Drive, Santa Clara, California, United States of America, (together with its successors, transferees and assigns, collectively, the "**Holder**"), in partial consideration for entering into a loan agreement, dated as of November 30, 2016, by and between *inter alia* the Company and the Holder, is entitled, subject to the provisions of this warrant (the "**Warrant**"), to subscribe for such number of common shares with a nominal value of EUR 0.01 in the share capital of the Company (the "**Common Shares**"), as set out below.

**WHEREAS:**

- (A) On November 30, 2016, Affimed GmbH, as borrower, and the Holder, as lender, entered into a loan agreement (the "**Loan Agreement**").
  - (B) Pursuant to the Loan Agreement the Company is required to grant this Warrant to the Holder,
  - (C) The number of Common Shares to be received upon the exercise of this Warrant and the price to be paid per Common Share are subject to adjustment from time to
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time as set forth in this Warrant. The Common Shares to be issued by the Company upon exercise of this Warrant, as such number is adjusted from time to time, are hereinafter also referred to as "**Warrant Shares**".

- (D) On \_\_\_\_\_ 2016, the management board of the Company approved the granting of this Warrant and, upon exercise of this Warrant the issuance of the Warrant Shares, to the Holder.

*1 GRANT AND EXERCISE OF WARRANT*

- 1.1** The Company grants the Holder the right, subject to the provisions of this Warrant, to subscribe for \_\_\_\_\_ fully paid Common Shares, subject to adjustment as hereinafter provided.
- 1.2** The exercise price per Warrant Share under this Warrant is USD \_\_\_\_ (\_\_\_ US dollars and \_\_\_ US dollar cents), payable (i) in cash, (ii) by way of net-issuance as set out in Clause 1.9, or (iii) in kind (subject to section 2:94b of the Dutch Civil Code), and whether or not by means of set-off by the Company (the "**Exercise Price**"). The Exercise Price shall always be equal to an amount of at least the nominal value of the Common Shares. For the purposes of this Clause 1.2, "NASDAQ" means the NASDAQ Stock Market operated by Nasdaq, Inc.
- 1.3** This Warrant may be exercised in whole or in part prior to the Expiration Date (as hereinafter defined) by completing the form set out in Schedule 1 (an "**Exercise Notice**"), by duly executing such Exercise Notice, and by delivering such Exercise Notice, together with this Warrant and payment in full of the aggregate Exercise Price, to the Company.
- 1.4** An Exercise Notice, once issued, shall be irrevocable and shall constitute a binding agreement between the Holder and the Company, enforceable in accordance with its terms. The Exercise Notice must state the number of Warrant Shares to which it relates.
- 1.5** If this Warrant should be exercised in part only, the Company shall, upon delivery of this Warrant, execute and deliver a new Warrant evidencing the rights of the Holder thereof to purchase the balance of the Warrant Shares that can be subscribed for hereunder.
- 1.6** Upon the exercise of this Warrant, the Company shall, within five (5) Business Days after the date of delivery of the Exercise Notice to the Company, subject to receipt by the Company of the aggregate Exercise Price for the Warrant Shares subscribed for pursuant to such exercise, issue the corresponding number of Warrant Shares (as specified in the Exercise Notice) to the Holder.
- 1.7** The Company undertakes to do at all times such things and to do all such acts and to execute all such documents, to the extent required to give effect to this Warrant and the exercise of this Warrant by the Holder in accordance with the terms hereof.
- 1.8** To the extent this Warrant has not been exercised at or before the Expiration Date, it shall become null and void, and all rights of the Holder hereunder shall cease.
- 1.9** Payment may be made, at the option of the Holder as specified in the relevant Exercise Notice, on a net issuance basis, whereby the Holder will receive a reduced number of Warrant Shares, in lieu of paying the
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aggregate Exercise Price in cash or in kind for all the Warrant Shares forming the subject matter of an Exercise Notice. The number of Warrant Shares the Holder shall receive shall be determined as follows:

$$X = \frac{N \times (FMV - EP)}{(FMV - NV)}$$

Where:

X = the number of Warrant Shares, rounded down to the nearest whole number, to be issued to the Holder

EP = the Exercise Price

FMV = the Fair Market Value of one Warrant Share

N = the number of Warrant Shares subject to the relevant Exercise Notice

NV = the nominal value of one Warrant Share

- (a) For the purposes of this Clause 1.9, "Fair Market Value" shall be the average of the middle market quotations of the Common Shares listed on NASDAQ (as defined in Clause 1.2 above) over a five day period ending three days before the date the current fair market value of the Warrant Shares is being determined.
  - (b) For avoidance of doubt:
    - (i) the Warrant Shares available to the Holder following payment of the Exercise Price and allotment of the Warrant Shares in accordance with this Clause 1.9 shall be reduced by the number of Warrant Shares subject to the relevant Exercise Notice; and
    - (ii) nothing in this Clause 1.9 shall cause the Holder not to be liable for separately paying the
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nominal value for all such Warrant Shares subject to the relevant Exercise Notice in cash prior to the issue of such Warrant Shares.

## 2 SET-OFF

The Holder may upon the exercise of this Warrant in accordance with Clause 1.1 set-off any obligation that is due and payable (*opeisbaar*) and not contingent (*niet voorwaardelijk*) of the Company to the Holder under the Loan Agreement against the obligation of the Holder to pay the aggregate Exercise Price for the Warrant Shares subscribed for pursuant to such exercise.

## 3 ISSUE OF COMMON SHARES

On 12 September 2014, with effect from 17 September 2014, the management board of the Company was authorised by the general meeting of shareholders to issue, and to grant the right to subscribe for, Common Shares, and to exclude pre-emptive rights. The Company hereby agrees that upon due exercise of this Warrant by the Holder it shall issue Common Shares in accordance with this Warrant and all such Common Shares, when issued upon such exercise in accordance with the terms of this Warrant, shall be validly issued, fully paid and non-assessable.

## 4 REPRESENTATIONS

The Company represents and warrants to the Holder that each of the following statements set out below is true, accurate and not misleading at the date of this Warrant:

- a. The Company is duly organised and validly existing under the laws of the Netherlands and has full corporate power and authority to perform the transactions contemplated in this Warrant and has no conflict to enter into this Warrant and each other document or instrument delivered in connection with this Warrant.
  - b. This Warrant and each other document or instrument delivered in connection with this Warrant constitute binding obligations of, and are enforceable against, the Company in accordance with their respective terms.
  - c. The Company currently has an authorised share capital of one million one hundred thousand euro (EUR 1,100,000), consisting of fifty-five million (55,000,000) Common Shares and fifty-five million (55,000,000) cumulative preference shares, each having a nominal value of one eurocent (EUR 0.01).
  - d. No warrants, options, rights to participate in profits and similar instruments or rights, to subscribe for shares in the share capital of the Company are outstanding to any party, pursuant to a grant by the Company other than (i) 578,487 options granted in regard to the ESOP 2014 and ESOP 2007 equity plans, and (ii) 106,250 options granted to Perceptive Credit Opportunities Fund, LP pursuant to a warrant agreement dated 6 October 2014.
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5 *UNDERTAKINGS*

- 5.1 The Company undertakes that, upon the exercise by the Holder of the Warrant, each Warrant Share thereby issued shall:
- (a) be validly issued and fully paid-up and free from any existing pre-emptive rights under the articles of association of the Company ("**Articles of Association**");
  - (b) participate in all dividends allocated to the dividend reserves maintained for the Common Shares; and
  - (c) entitle the holder thereof to the shareholder's rights conferred upon shareholders pursuant to the Articles of Association and Netherlands Law.
- 5.2 The Company furthermore undertakes, save with the consent of the Holder, which shall not be unreasonably withheld, conditioned or delayed:
- (a) that if any offer is made to all holders of Common Shares to acquire the whole of or a portion of the Common Shares, the Company will as soon as possible give notice of such offer to the Holder and use its reasonable best endeavours to procure that a full and adequate opportunity is given to the Holder to exercise its Warrant and that a like offer (being one pari passu with the terms offered in respect of the other Common Shares) is extended in respect of any Common Shares issued upon the exercise of Warrant;
  - (b) that it will pay (i) all taxes, stamp and other duties and charges in respect of the creation and issue of the Warrant and (ii) the Holder's documented and reasonable out of pocket costs in relation to any amendment, waiver or consent requested by or on behalf of the Company and (iii) reasonable out of pocket costs in relation to the enforcement of, or the preservation of any rights of a Holder under this Warrant.
- 5.3 The Company agrees to procure that such number of Warrant Shares issuable from time to time shall be reserved out of the Company's authorised share capital for issue to the Holder upon the exercise of the Warrant in accordance with Clause 1.

6 *TRANSFER AND ASSIGNMENT*

- 6.1 Holder acknowledges that the Warrant and underlying Warrant Shares must be held indefinitely unless subsequently registered under the Securities Act or unless an exemption from such registration is available. It is aware of the provisions of Rule 144 promulgated under the Securities Act which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions. Holder understands that the transfer of the Warrant and underlying Warrant Shares, once issued, is restricted by applicable U.S. state and Federal securities laws and that any such transfer can only be effected subject to the
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terms of this Warrant, and that the certificates representing the Warrant and underlying Warrant Shares, once issued, will be imprinted with legends restricting transfer except in compliance therewith. The Company need not register a transfer of the legended Warrant or underlying Warrant Shares, and may also instruct its transfer agent not to register the transfer of the warrants or underlying Warrant Shares, unless the conditions specified in each of these legends is satisfied.

- 6.2** This Warrant and all rights hereunder are subject to Section 6.1 transferable in whole or in part by Holder and any successor transferee to any person, except for customers, suppliers or competitors of the Company or the Company's group. Holder shall give five (5) Business days prior written notice (a "**Transfer Notice**") of any such transfer to the Company. The Company agrees and confirms, for the avoidance of doubt, that it in advance provides its cooperation and consent to any transfer as described herein.
- 6.3** Subject to compliance with applicable U.S. state and Federal securities laws and conditional upon the receipt by Holder of the executed Warrant, the Holder transfers by means of contract transfer in accordance with section 6:159 of the Dutch Civil Code to its parent company SVB Financial Group, a corporation incorporated under the law of California, United States of America, with registered address at 3003 Tasman Drive, Santa Clara, California, United States of America ("**Parent**"), its legal relationship, being all its rights, including any receivables, irrespective whether or not arisen prior to the date hereof and whether contingent or future, secondary or due and payable and obligations, under this Warrant, in this deed. Parent accepts this transfer of the legal relationship under the Warrant from the Holder, under the condition of receipt of the Holder of the executed Warrant. As a consequence of this transfer, Parent will automatically be bound by the terms and conditions of this Warrant as if it were the original Holder named herein. The Company provides its cooperation and consents to this transfer.

**7** *RIGHTS OF HOLDER.*

Holder shall not, by virtue hereof, be entitled to any rights of a shareholder in the Company, and the rights of Holder are limited to those expressed in this Warrant. Nothing contained in this Warrant shall be construed as conferring upon Holder hereof the right to vote or to consent or to receive notice as a shareholder of the Company on any matters or with respect to any rights whatsoever as a shareholder of the Company. No dividends or interest shall be payable or accrued in respect of this Warrant or the interest represented hereby.

**8** *ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF SHARES.*

The Exercise Price and the number of the Warrant Shares that can be subscribed for upon the exercise of the Warrant shall be subject to adjustment from time to time upon the occurrence of certain events, as follows:

- (a) *Stock Splits.* If the outstanding Common Shares are to be subdivided into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision shall simultaneously with the effectiveness of such subdivision be proportionately reduced. If outstanding Common Shares shall be combined into a smaller number of shares, the Exercise Price in effect immediately prior to such
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combination shall, simultaneously with the effectiveness of such combination, be proportionately increased. When any adjustment is required to be made in the Exercise Price, the number of Warrant Shares that may be subscribed for upon the exercise of this Warrant shall be changed to the number determined by dividing (i) an amount equal to the number of Common Shares issuable upon the exercise of this Warrant immediately prior to such adjustment, multiplied by the Exercise Price in effect immediately prior to such adjustment, by the Exercise Price in effect immediately after such adjustment.

- (b) *Reclassification, etc.* In case there occurs any reclassification or change of the outstanding Common Shares of the Company or of any reorganisation of the Company or any similar corporate reorganisation on or after the date hereof, then, upon the exercise of this Warrant at any time after the consummation of such reclassification, change, or reorganisation, Holder shall be entitled to receive, in lieu of the Warrant Shares or other securities receivable upon the exercise hereof prior to such consummation, the shares or other securities to which such Holder would have been entitled upon such consummation if such Holder had exercised this Warrant immediately prior thereto.
- (c) *Adjustment Certificate.* When any adjustment is required to be made to the number of Warrant Shares or the Exercise Price pursuant to this Clause 8, the Company shall promptly mail to Holder a certificate setting forth (i) a brief statement of the facts requiring such adjustment, (ii) the Exercise Price after such adjustment and (iii) the kind and amount of shares or other securities into which this Warrant shall be exercisable after such adjustment.

9

*PIGGYBACK REGISTRATION RIGHTS.*

- (a) *Piggyback Registration.* Whenever any of the Company's Common Shares are proposed to be registered under the Securities Act (other than a registration effected solely to implement an employee benefit plan or a transaction to which Rule 145 of the Securities Act is applicable, or a Registration Statement on Form F-4, S-4, S-8 or any successor form thereto or another form not available for registering the Registrable Securities for sale to the public), whether for its own account or for the account of one or more shareholders of the Company and the form of Registration Statement to be used may be used for any registration of Warrant Shares (a "**Piggyback Registration**"), the Company shall give prompt written notice (in any event no later than five (5) business days prior to the filing of such Registration Statement) to the Holder of its intention to effect such a registration and shall include in such registration, on a pro rata basis with all other persons and entities participating in such registration, the Warrant Shares with respect to which the Company has received written requests for inclusion from the Holder within two (2) business days after the Company's notice has been given to the Holder. For purposes of determining the Holder's pro rata participation in any registration of the Company's Common Shares, the Holder shall be deemed to be a "Requesting Shareholder", as defined in the RRA (defined below), if the registration is of the type described in Section 2.01 of the RRA, and the Holder shall be deemed to be "Shareholder", as defined in the RRA, if the registration is of the type described in Section 2.02 of the RRA. With respect to any such registration of Company Common Shares, the Company shall be liable for all Registration Expenses, as defined in the RRA, whether or not such registration is effected
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- (b) *Registration Procedures.* If and whenever the Holder requests that any Warrant Shares be registered pursuant to the provisions of this Warrant, the Company shall use its best efforts to effect the registration and the sale of such Warrant Shares in accordance with the intended method of disposition thereof, and pursuant thereto the Company shall as soon as practicable:
- (i) prior to the filing of any Registration Statement, Prospectus or amendments or supplements thereto, furnish to counsel of the Holder copies of such documents proposed to be filed, which documents shall be subject to the review, comment and approval of such counsel;
  - (ii) notify the Holder, promptly after the Company receives notice thereof, of the time when such Registration Statement has been declared effective or a supplement to any Prospectus forming a part of such Registration Statement has been filed;
  - (iii) furnish to the Holder such number of copies of the Prospectus included in such Registration Statement (including each preliminary Prospectus) and any supplement thereto (in each case including all exhibits and documents incorporated by reference therein) and such other documents as the Holder may request in order to facilitate the disposition of the Warrant Shares;
  - (iv) use commercially reasonable efforts to register or qualify such Warrant Shares under such other securities or "blue sky" laws of such jurisdictions as may be required and do any and all other acts and things which may be necessary or advisable to enable the Holder to consummate the disposition; provided, that the Company shall not be required to qualify generally to do business, subject itself to general taxation or consent to general service of process in any jurisdiction where it would not otherwise be required to do so but for this Section 9(b)(iv);
  - (v) notify the Holder, at any time when a Prospectus relating thereto is required to be delivered under the Securities Act, of the occurrence of any event as a result of which the Prospectus included in such Registration Statement contains an untrue statement of a material fact or omits any fact necessary to make the statements therein not misleading, and, at the request of the Holder, the Company shall prepare a supplement or amendment to such Prospectus so that, as thereafter delivered to the purchasers of such Warrant Shares, such Prospectus shall not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading;
  - (vi) upon execution of confidentiality agreements in form and substance reasonably satisfactory to the Company, make available for inspection by the Holder, any underwriter participating in any disposition pursuant to such Registration Statement and any attorney, accountant or other agent retained by the Holder or any such underwriter, all financial and other records, pertinent corporate documents and properties of the Company, and cause the Company's officers, directors and employees to supply all information requested by any such inspector, as shall be reasonably necessary to exercise its due diligence responsibility in connection with such Registration Statement; the Holder agrees that the information obtained by it shall
-

be deemed confidential and shall not be used by it or its affiliates as the basis for any market transactions in Common Shares unless and until such information is made generally available to the public;

- (vii) use its best efforts to cause such Warrant Shares to be listed on each securities exchange on which the Common Shares are then listed or, if the Common Shares are not then listed, on a national securities exchange selected by the Holder;
- (viii) notify the Holder promptly of any request by the U.S. Securities and Exchange Commission (the "**Commission**") for the amending or supplementing of such Registration Statement or Prospectus or for additional information; and
- (ix) without limiting Section 6(c)(vi) above, use its best efforts to cause the Warrant Shares to be registered with or approved by such other governmental agencies or authorities as may be necessary by virtue of the business and operations of the Company to enable the Holder to consummate the disposition of such Warrant Shares in accordance with their intended method of distribution thereof;
- (x) advise the Holder, promptly after it shall receive notice or obtain knowledge thereof, of the issuance of any stop order by the Commission suspending the effectiveness of such Registration Statement or the initiation or threatening of any proceeding for such purpose and promptly use its best efforts to prevent the issuance of any stop order or to obtain its withdrawal at the earliest possible moment if such stop order should be issued; and otherwise use its best efforts to take all other steps necessary to effect the registration of such Warrant Shares contemplated hereby.

(c) For purposes of this Warrant, when used herein the following terms shall have the following meanings:

"Prospectus" means the prospectus or prospectuses included in any Registration Statement, as amended or supplemented by any prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement and by all other amendments and supplements to the prospectus, including post-effective amendments and all material incorporated by reference in such prospectus or prospectuses.

"Registrable Securities" means (x) any shares of Common Stock held by any Person or issuable upon conversion, exercise or exchange of any

securities owned by any person or entity at any time (including Warrant Shares exercisable upon exercise of this Warrant), and (y) any shares of Common Stock issued or issuable with respect to any shares described in subsection (x) above by way of a stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization (it being understood that for purposes of this Warrant, a person or entity shall be deemed to be a holder of Registrable Securities whenever such person or entity has the right to then acquire or obtain from the Company any Registrable Securities, whether or not such acquisition has actually been effected).

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As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when (i) a Registration Statement covering such securities has been declared effective by the Commission and such securities have been disposed of pursuant to such effective Registration Statement, (ii) such securities are sold under circumstances in which all of the applicable conditions of Rule 144 (or any similar provisions then in force) under the Securities Act are met, (iii) such securities are otherwise transferred and such securities may be resold without subsequent registration under the Securities Act, or (iv) such securities shall have ceased to be outstanding.

"Registration Statement" means any registration statement of the Company which covers any of the Registrable Securities pursuant to the provisions of this Warrant, including the Prospectus, amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits and all materials incorporated by reference in such Registration Statement.

"RRA" means the Registration Rights Agreement, dated as of 17 September 2014, among the Company and the shareholders party thereto.

- (d) *Information.* The Company shall make and keep available public information, as such term is contemplated by Rule 144 under the Securities Act until all Warrant Shares have been sold pursuant to Rule 144 or under a Registration Statement.
- (e) Notwithstanding anything to the contrary in this Section 9, the Company shall not be required to file any Registration Statement or amend any Registration Statement, if such filing or amendment would impair the ability of the Company to effect a primary registered sale of its Common Stock or other securities.

## **10**      *TERMINATION*

This Warrant (and the right to subscribe for Warrant Shares upon the exercise hereof) shall terminate upon the earliest to occur of the following (the "**Expiration Date**"):

- (a) \_\_\_\_\_ 2026, being ten (10) years after the date of the issuance; or
- (b) a Change of Control (as defined below) of which notice has been sent to the Holder in conformity with Clause 11.1. provided that the Holder prior to closing of the transaction constituting such Change of Control (i) has failed to give notice that it wishes to exercise the Warrant or (ii) has given notice that it does not wish to exercise the Warrant.

## **11**      *CHANGE OF CONTROL*

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**11.1** The Company will notify the Holder of any proposed Change of Control at least twenty (20) Business Days prior to the expected closing of the transaction constituting such Change of Control by completing the form set out in Schedule 2 (a "Change of Control Notice")

**11.2** A "Change of Control" means:

- (i) any sale, transfer or other disposition to another company of all or substantially all of the Company's assets;
- (ii) the sale of shares of the Company resulting in more than 50% of the voting power of the Company or of the surviving entity being vested in persons or entities other than the persons or entities who own 50% or more of the voting power of the Company immediately prior to the effectiveness of such transaction; or
- (iii) a merger or consolidation of the Company resulting in more than 50% of the voting power of the Company or of the surviving entity being vested in persons or entities other than the persons or entities who own 50% or more of the voting power of the Company immediately prior to the effectiveness of such transaction;
- (iv) a voluntary liquidation of the Company; or
- (v) a legal demerger of the Company resulting in more than 50% of the voting power of the Company or of the demerging entity being vested in persons or entities other than the persons or entities who own 50% or more of the voting power of the Company immediately prior to the effectiveness of such transaction.

**11.3** If the Holder intends to exercise its Warrant in the event of a Change of Control, the Holder shall have the option to exercise this Warrant to receive, to the extent legally and practically possible, the relevant pro rata part of the cash or other assets comprising the proceeds of the Change of Control, if any, that it would have acquired (whether directly or indirectly) had it exercised the Warrant immediately prior to such Change of Control.

**12** *MODIFICATION AND WAIVER, SEVERABILITY*

**12.1** Neither this Warrant nor any term hereof may be changed, waived, discharged or terminated other than by an instrument in writing signed by the Company and by Holder.

**12.2** In the event any one or more of the provisions of this Warrant shall for any reason be held invalid, illegal or unenforceable, the remaining provisions of this Warrant shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable valid, legal and enforceable provision, which comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.

**13** *NOTICES; PLACE OF RESIDENCE*

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**13.1** Any notice or other communication in connection with this Warrant must be in writing in the English language and must be:

(i) delivered personally; or

(ii) sent by registered letter,

to the party due to receive the notice or communication at its address set out at the start of this Warrant.

**13.2** In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:

(i) if delivered personally, when left at the address referred to in Clause 13.1;

(ii) if sent by registered letter, three days after posting it.

**13.3** Each party hereto can specify another address to the others by notice in writing.

**14** *GOVERNING LAW; COMPETENT COURT*

**14.1** This Warrant shall be governed exclusively by Dutch law.

**14.2** The district court of Amsterdam, The Netherlands shall have exclusive jurisdiction in first instance for any dispute which may arise in connection with this Warrant. For the avoidance of doubt, Dutch law applies to this Section 14.2.

*[The remainder of this page has been left blank intentionally]*

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**Affimed N.V.**

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By:  
Title:

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By:  
Title:

**Silicon Valley Bank**

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By:  
Title:

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By:  
Title:

**SVB Financial Group, for the purpose of clause 6.3**

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By:  
Title:

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By:  
Title:

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Affimed N.V.

Im Neuenheimer Feld 582 D-69120 Heidelberg Germany

Date: [ ]

Re: Warrant Exercise Notice Dear Sirs,

Reference is made to the warrant for the subscription of common shares in the capital of Affimed N.V., date [ ] 2016 (the "**Warrant** "). Terms defined in the Warrant shall have the same meaning in this exercise notice.

=====

*[Exercise in full / payment in cash] [delete if appropriate]*

The Holder hereby irrevocable elects to exercise the Warrant in full, to subscribe for all Warrant Shares, being [ ] Warrant Shares, at the Exercise Price. As per the date of this exercise notice, the Holder shall pay the aggregate Exercise Price for the Warrant Shares by wire transfer into the bank account of the Company.

The original of the Warrant is attached to this notice.

=====

*[Exercise in full / payment by reduction of number of Warrant Shares under Clause 1.9] [delete if appropriate]*

The Holder hereby irrevocable elects to exercise the Warrant in full, and elects to receive a reduced number of Warrant Shares in accordance with Clause 1.9, leading to subscribing for

[ ] Warrant Shares and paying the nominal value for such Warrant Shares in cash by wire transfer into the bank account of the Company.

The original of the Warrant is attached to this notice.

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*[Partial Exercise] [delete if appropriate]*

The Holder hereby irrevocable elects to exercise the Warrant in part, to subscribe for [ ] Warrant Shares at the Exercise Price. As per the date of this exercise notice, the Holder shall pay the aggregate Exercise Price for the Warrant Shares by wire transfer into the bank account of the Company.

The original of the Warrant is attached to this notice. Subject to the issue of the Warrant Shares in accordance with the preceding sentence, the Company is hereby requested to issue a replacement Warrant for the remaining Warrant Shares under the Warrant, in accordance with Clause

1.5 of the Warrant.

=====

*[Exercise in full / payment by reduction of number of Warrant Shares under Clause 1.9] [delete if appropriate]*

The Holder hereby irrevocable elects to exercise the Warrant in part, and elects to receive a reduced number of Warrant Shares in accordance with Clause 1.9, leading to subscribing for

[ ] Warrant Shares and paying the nominal value for such Warrant Shares in cash by wire transfer into the bank account of the Company.

The original of the Warrant is attached to this notice. Subject to the issue of the Warrant Shares in accordance with the preceding sentence, the Company is hereby requested to issue a replacement Warrant for the remaining Warrant Shares under the Warrant, in accordance with Clause

1.5 of the Warrant.

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The undersigned hereby represents and warrants to the Company as follows:

- (a) The undersigned is an “accredited investor” within the meaning of Regulation D, Rule 501(a), under the Securities Act.
  - (b) The undersigned is acquiring the Warrant Shares for investment for its own account, not as a nominee or agent, and not with the view to, or for resale in connection with, any distribution thereof, other than the transfer of shares to an affiliated investment fund under common control with the undersigned. It understands that the issuance of the Warrant Shares has not been, and will not be, registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act, the availability of which depends upon, among other things, the bona fide nature of the undersigned’s investment intent and the accuracy of the undersigned’s representations as expressed herein. The undersigned’s address set forth below represents the purchaser’s true and correct state of domicile, upon which the Company may rely for the purpose of complying with applicable “Blue Sky” laws.
  - (c) The undersigned acknowledges that the Warrant Shares must be held indefinitely unless subsequently
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registered under the Securities Act or unless an exemption from such registration is available. It is aware of the provisions of Rule 144 promulgated under the Securities Act which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions.

Please issue the Warrant Shares in the name of the Holder in accordance with the Warrant and this exercise notice.

Yours faithfully, [name Holder]

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

Title:

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[name Holder] [address Holder]

Date: [ ]

Re: Change of Control Notice Dear Sirs,

Reference is made to the warrant for the subscription of common shares in the capital of Affimed N.V., date [ ] 2016 (the "**Warrant**"). Terms defined in the Warrant shall have the same meaning in this exercise notice.

We hereby notify you of the following proposed Change of Control: [*description of Change of Control*]. The closing of the transaction constituting such Change of Control is expected to take place on [*closing date*].

Please note that the Warrant (and the right to subscribe for Warrant Shares upon the exercise hereof) shall terminate upon occurrence of this Change of Control if prior to closing of the transaction constituting such Change of Control the Holder (i) has failed to give notice that it wishes to exercise the Warrant or (ii) has given notice that it does not wish to exercise the Warrant.

Yours faithfully, [name Company]

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

Title:

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Date: 30 November 2016

**AFFIMED N.V.**

as guarantor

**SILICON VALLEY BANK**

as bank

## Deed of Guarantee and Indemnity

**Fieldfisher** Riverbank House 2 Swan Lane London EC4R 3TT

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## **Contents**

<b>No. Heading</b>	<b>Page</b>
<b>1. Definitions and interpretation</b>	<b>1</b>
<b>2. Guarantee and indemnity</b>	<b>2</b>
<b>3. Nature of guarantee</b>	<b>2</b>
<b>4. Representations and warranties</b>	<b>3</b>
<b>5. Affirmative Covenants</b>	<b>6</b>
<b>6. Negative Covenants</b>	<b>10</b>
<b>7. Interest</b>	<b>11</b>
<b>8. Opening of new accounts</b>	<b>12</b>
<b>9. No discharge of Guarantor</b>	<b>12</b>
<b>10. Guarantor intent</b>	<b>13</b>
<b>11. Reinstatement</b>	<b>13</b>
<b>12. Deferral of Guarantor's Rights</b>	<b>13</b>
<b>13. Suspense account</b>	<b>14</b>
<b>14. Other means of payment</b>	<b>14</b>
<b>15. Expenses</b>	<b>14</b>
<b>16. Tax gross-up</b>	<b>15</b>
<b>17. Miscellaneous</b>	<b>15</b>
<b>18. Benefit of this Deed</b>	<b>17</b>
<b>19. Notices</b>	<b>17</b>
<b>20. Governing law and jurisdiction</b>	<b>18</b>

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THIS DEED OF GUARANTEE AND INDEMNITY is made the 30th day of November 2016

**BETWEEN:**

- (1) **AFFIMED N.V.** (the "**Guarantor**") a public company (*naamloze vennootschap*) incorporated in the Netherlands, having Dutch Trade Register number 60673389 and whose statutory seat is in Amsterdam and whose registered address is at Im Neuenheimer Feld 582, 69120, Heidelberg, Germany; and
- (2) **SILICON VALLEY BANK** (the "**Bank**") a California corporation, with its principal place of business at 3003 Tasman Drive, Santa Clara, California 95054.

**IT IS AGREED** as follows:

**1. Definitions and interpretation**

**1.1 Definitions**

In this Deed:

**"Borrower"** means Affimed GmbH, a limited liability company, incorporated under the laws of Germany registered with the Commercial Register of the local court of Mannheim under registration number HRB 721206 and whose registered office is at Im Neuenheimer Feld 582, 69120, Heidelberg;

**"Loan Agreement"** means a loan agreement dated on or about the date of this Deed and made between the Borrower and the Bank; and

**"Insolvency"** includes any form of insolvency, bankruptcy, liquidation, receivership, administration, suspension of payments or arrangement or composition with creditors under any corporate or insolvency law of any country (including but not limited to the filing of a notice under Section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*)).

**1.2 Construction**

- (a) This Deed is a Loan Document.
- (b) The provisions of Clauses 13.1 (*Definitions*) (to the extent such words or terms are not otherwise defined in this Deed), 13.2 (*Interpretation*) and 13.3 (*Dutch terms*) of the Loan Agreement shall be deemed to be incorporated into this Deed.
- (c) Any reference in this Deed to:
  - (i) this "**Deed**", the "**Loan Agreement**", any "**Loan Document**" or any other **agreement** or **instrument** is a reference to this Deed, the Loan Agreement, such Loan Document or such other agreement or instrument as the same may have been, or may from time to time be, amended, varied, supplemented, novated, extended or restated;
  - (ii) the "**Bank**" or the "**Guarantor**" or any other person includes its respective successors in title, permitted assigns and/or permitted transferees;

- (iii) a "**person**" includes any individual, firm, company (including but not limited to a legal person within the meaning of articles 2:1 to 2:3 inclusive of the Dutch Civil Code), corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership (including but not limited to a general partnership (*vennootschap onder firma*), a limited partnership (*commanditaire vennootschap*), a partnership (*maatschap*)), or other entity (whether or not having a separate legal personality);
  - (iv) a provision of law is a reference to that provision as amended or re-enacted and includes any subordinate legislation; and
  - (v) words in the singular include the plural and vice versa and words in one gender include any other gender.
- (d) A person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

## 2. Guarantee and indemnity

The Guarantor irrevocably and unconditionally:

- (a) guarantees to the Bank punctual performance by the Borrower of its obligations and liabilities under or in connection with the Loan Documents;
- (b) undertakes with the Bank that whenever the Borrower does not pay any amount when due under or in connection with any Loan Document, the Guarantor shall immediately on demand pay that amount as if it were the principal obligor; and
- (c) agrees with the Bank, as an independent and primary obligation, to indemnify the Bank immediately on demand against any cost, loss or liability suffered by the Bank if any obligation or liability guaranteed by it is or becomes, for any reason, unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which the Bank would otherwise have been entitled to recover,

provided that any guarantee in this Deed does not apply to any liability to the extent that it would result in such guarantee constituting unlawful financial assistance within the meaning of article 2:98c of the Dutch Civil Code or any equivalent and applicable provisions under the laws of the jurisdiction of incorporation of the relevant Guarantor.

## 3. Nature of guarantee

### 3.1 Continuing security

This Deed is a continuing guarantee and indemnity and will extend to the ultimate balance of sums payable by the Borrower under the Loan Documents, regardless of any intermediate discharge or payment in whole or in part.

### 3.2 Demands

No demand made by the Bank under this Deed shall restrict the right of the Bank to make further or other demands.

### 3.3 No termination by Guarantor

The Guarantor will have no right to terminate its obligations under this Deed and any such rights are excluded.

## 4. Representations and warranties

The Guarantor makes the representations and warranties set out in this Clause 4 to the Bank on the date of this Deed.

### 4.1 Due Incorporation and Authorisation; Power and Authority

Guarantor is a public company (*naamloze vennootschap*), duly incorporated and validly existing under the laws of the Netherlands and has the power to carry on its business as it is now being conducted and to own its property and other assets. In connection with this Deed, Guarantor has delivered to Bank a Perfection Certificate. Guarantor represents and warrants to Bank that: (a) Guarantor's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; and (b) Guarantor is an organisation of the type, and is incorporated in the jurisdiction, set out in the Perfection Certificate; and (c) the Perfection Certificate accurately sets out Guarantor's registered number or accurately states that Guarantor has none; and (d) the Perfection Certificate accurately sets out Guarantor's place of business and its registered office as well as Guarantor's postal address if different from its registered office, and (e) all other information set out in the Perfection Certificate pertaining to Guarantor and each of its Subsidiaries is accurate and complete (it being understood and agreed that Guarantor may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one or more specific provisions in this Deed).

The execution, delivery and performance of this Deed and the other Loan Documents to which Guarantor is a party are within the corporate powers of Guarantor, have been duly authorised by all necessary corporate and other action and do not and will not conflict with (i) any law or regulation applicable to it; (ii) the constitutional documents of Guarantor or any other organisational documents; (iii) any agreement or instrument binding on Guarantor or (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) other than the filing with the competent Dutch tax authorities or (v) constitute an event of default under any material agreement by which Guarantor is bound. Guarantor is not in default under any agreement to which it is a party or by which it or its assets are bound in which the default could reasonably be expected to have a material adverse effect on Guarantor's business.

### 4.2 Collateral

Guarantor has good title to the Collateral, free of Liens except Permitted Liens. Guarantor has no deposit accounts other than the deposit accounts with Bank, the deposit accounts, if any, described in the Perfection Certificate delivered to Bank in connection herewith, or of which Guarantor has given Bank notice and taken such actions as are necessary to give Bank a perfected security interest therein.

The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate. None of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Clause 6.5 (*Encumbrance*).

Guarantor is the sole owner of the Intellectual Property which it owns or purports to own except for (a) non-exclusive licences granted to its customers in the ordinary course of business, (b) over-the-counter software that is commercially available to the public, and (c) Intellectual Property licensed to Guarantor and noted on the Perfection Certificate. Each Patent which it owns or purports to own and which is material to Guarantor's business is valid and enforceable, and no part of the Intellectual Property which Guarantor owns or purports to own and which is material to Guarantor's business has been adjudged invalid or unenforceable, in whole or in part. To the best of Guarantor's knowledge, no claim has been made that any part of the Intellectual Property infringes the rights of any third party except to the extent such claim would not reasonably be expected to have a material adverse effect on Guarantor's business.

Except as noted on the Perfection Certificate, Guarantor is not a party to, nor is it bound by, any Restricted Licence.

#### **4.3 Litigation**

Other than as disclosed in writing by the Borrower (i) on or prior to the date of this Deed as set out in Exhibit D to the Loan Agreement, (ii) after the date of this Deed (1) prior to any drawdown by the Borrower of Tranche 2 and (2) in any Compliance Certificate delivered to the Bank after the date of this Deed by the Borrower under the Loan Agreement, there are no actions or proceedings pending or, to the knowledge of Guarantor's Responsible Officers, threatened by or against Guarantor or any of its Subsidiaries or Affiliates, involving more than, individually or in the aggregate, Two Hundred and Fifty Thousand Euro (€250,000) (or its equivalent in any other currency).

#### **4.4 Financial Statements; Financial Condition.**

All audited financial statements for Guarantor and any of its Subsidiaries and/or Affiliates delivered to Bank fairly represent Guarantor's (such Subsidiaries/Affiliates) financial condition and Guarantor's results of operations.

All other financial statements consolidated or otherwise for Guarantor and any of its Subsidiaries and/or Affiliates delivered to Bank fairly represent in all material respects Guarantor's (such Subsidiaries/Affiliates) financial condition and Guarantor's results of operations.

There has not been any material deterioration in Guarantor's financial condition (or that of its Subsidiaries/Affiliates) since the date of the most recent financial statements submitted to Bank

#### **4.5 Solvency**

The fair saleable value of Guarantor's assets (including goodwill minus disposition costs) exceeds the amount of its liabilities (taking into account its actual and contingent liabilities); Guarantor is not left with unreasonably small capital after the transactions in this Agreement, in particular but without limitation the fair value of Guarantor's net assets (assets minus existing and deferred liabilities) exceeds Guarantor's stated share capital; Guarantor is not unable to pay its debts (including trade debts) and has not stopped paying its debts as they fall due; and Guarantor has not suspended (or threatened to suspend) the making of any payment of any of its debts or announced an intention to do so.

#### **4.6 Regulatory Compliance**

Guarantor has not breached any laws, ordinances or rules or regulations, the breach of which could reasonably be expected to cause a Material Adverse Change. None of Guarantor's (or

any of its Subsidiaries/Affiliates) property or assets have been used by Guarantor or, to the best of Guarantor's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Guarantor (and each of its Subsidiaries/Affiliates) has obtained all consents, approvals and authorisations of, made all declarations or filings with, and given all notices to, all Government Authorities that are necessary to continue its business as currently conducted, except where the failure to do so could not reasonably be expected to be detrimental to Guarantor's business.

#### **4.7 Subsidiaries; Investments**

Guarantor does not own any stock, partnership interest or other equity securities except for Permitted Investments.

#### **4.8 Taxation**

Guarantor has complied in all material respects with all Taxation laws in all jurisdictions in which it is subject to Taxation and has paid all Taxes due and payable by it and no claims are being asserted against it in respect of Taxes save for assessments in relation to the ordinary course of the business of Guarantor or claims contested in good faith and in respect of which adequate provision has been made and disclosed in the latest accounts of Guarantor or information delivered to Bank under this Agreement.

#### **4.9 Full Disclosure**

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

#### **4.10 No winding-up**

Guarantor has not taken any corporate or other action nor has any application been made or have any other steps been taken or legal proceedings been started or (to the best of Guarantor's knowledge and belief having made due and proper enquiry) threatened against Guarantor or any of its Subsidiaries/Affiliates for its winding-up or for the appointment of a trustee, liquidator, receiver, administrative receiver, administrator or similar officer of it or of any or all of its assets.

#### **4.11 Licences**

Guarantor is not a party to, nor is bound by, any licence (other than over the counter software that is commercially available to the public) or other agreement with respect to which Guarantor is the licensee that prohibits or otherwise restricts Guarantor from granting a charge in Guarantor's interest in such licence or agreement or any other property, save as disclosed in the Perfection Certificate or, after the date of this Deed, in any Compliance Certificate provided by the Borrower to the Bank prior to any drawdown of Tranche 2. Guarantor shall provide written notice to Bank within ten (10) days of entering or becoming bound by, any such licence or agreement which is reasonably likely to have a material impact on Guarantor's business or financial condition. Guarantor shall take such steps as Bank reasonably requests to obtain the

consent of, authorisation by or waiver by, any Person whose consent or waiver is necessary for all such licences or contract rights to be deemed Collateral and for Bank to have a charge in it that might otherwise be restricted or prohibited by law or by the terms of any such licence or agreement, whether now existing or entered into in the future.

#### **4.12 Subordinated Debt**

All loan amounts due to officers, directors, shareholders and any secured creditors (other than Bank) of Guarantor have been subordinated to the Obligations.

#### **4.13 Definition of "Knowledge."**

For purposes of the Loan Documents, whenever a representation or warranty is made to Guarantor's knowledge or awareness, to the "best of" Guarantor's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

#### **4.14 Provisions of Loan Agreement**

The Guarantor is fully familiar with and agrees with all provisions of the Loan Agreement and the other Loan Documents.

#### **4.15 No waiver**

No oral or written statement has been made to the Guarantor by or on behalf of the Bank or any other person which could be construed as a waiver of any provisions of this Deed or a statement of intention not to enforce this Deed in accordance with its terms.

#### **4.16 Central Works Council.**

No (central) works' council ((*centrale*) *ondernemingsraad*) has jurisdiction in respect of any transaction contemplated by any Loan Document.

#### **4.17 Repetition**

The representations and warranties set out in this Clause 4 are deemed to be repeated by the Guarantor on each day on which the Borrower makes or is deemed to make any representations and warranties in the Loan Agreement in relation to the then existing circumstances.

### **5. Affirmative Covenants**

The Guarantor shall do the following:

#### **5.1 Government Compliance.**

- (a) Maintain its legal existence and good standing in its jurisdiction of incorporation or formation and maintain qualification in each jurisdiction in which the failure to do so would reasonably be expected to be detrimental to Guarantor's business or operations. Guarantor shall and shall procure that each of its Subsidiaries/Affiliates shall comply with all laws, ordinances and regulations to which it is subject, noncompliance with which could be detrimental to Guarantor's business or operations or would reasonably be expected to cause a Material Adverse Change.

- (b) Obtain all of the Governmental Approvals (if any) necessary to carry on its business and for the performance by Guarantor of its obligations under the Loan Documents to which it is a party and the grant of a security interest to Bank in all of its present and future property and assets, including the Governmental Approvals for any drug trials carried out by it or on its behalf. Guarantor shall promptly provide copies of any such obtained Governmental Approvals to Bank.

## 5.2 Financial Statements, Reports, Certificates.

Guarantor shall deliver to Bank:

- (a) Monthly Financial Statements. As soon as available, but no later than thirty (30) days after the last day of each month, a company prepared financial report as mutually agreed between the Parties prior to the date of this Deed covering Guarantor's and each of its Subsidiary's operations for such month certified by a Responsible Officer and in a form acceptable to Bank (the "Monthly Financial Statements");
- (b) Annual Audited Financial Statements. As soon as available, but no later than 180 days after Guarantor's financial year end, audited consolidated financial statements prepared under GAAP, consistently applied, with an unqualified opinion on the financial statements from Guarantor's Auditors;
- (c) Other Statements. Within five (5) days of delivery, copies of all statements, reports and notices made available to Guarantor's security holders or to any holders of Subordinated Debt;
- (d) Legal Action Notice. A prompt report of any legal actions pending or threatened in writing against Guarantor or any of its Subsidiaries/Affiliates that could result in damages or costs to Guarantor or any of its Subsidiaries/Affiliates of, individually or in the aggregate, Two Hundred and Fifty Thousand Euro (€250,000) (or its equivalent in any other currency) or more;
- (e) Intellectual Property Notice. Prompt written notice of (i) any material change in the composition of the Intellectual Property, (ii) the registration of any copyright, including any subsequent ownership right of Guarantor in or to any Intellectual Property not previously disclosed in writing to Bank, and/or (iii) Guarantor's knowledge of an event that could reasonably be expected materially and adversely to affect the value of the Intellectual Property;
- (f) Operating Plan. Within 30 days after completion of a fiscal year and also promptly following the same being updated, an operating plan, approved by the board of directors of the Guarantor, to include, without limitation, balance sheet and income statement and to reflect projections on a quarterly or monthly basis for the upcoming financial year;
- (g) Other Information. Budgets, sales projections, and other financial information and any other information requested by Bank (unless disclosure of such information to Bank is prohibited by law); and
- (h) Board Minutes and Agenda. As soon as available but no later than thirty (30) days after the date of any of the Guarantor's board meetings, a copy of the agenda provided for such board meeting and minutes of such meeting.

**5.3 Taxes**

Guarantor shall make, and cause each of its Subsidiaries/Affiliates to make, timely payment of all material Taxes or assessments (other than taxes and assessments which Guarantor or a Subsidiary/Affiliate of Guarantor is contesting in good faith, with adequate reserves maintained in accordance with GAAP) and will deliver to Bank, on demand, appropriate certificates attesting to such payments.

**5.4 Insurance**

Guarantor shall keep its business and the Collateral insured for risks (including third party liability appropriate to a company undertaking clinical trials) and in amounts as Bank may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are satisfactory to Bank in its reasonable discretion as are typical for the industry in the relevant jurisdiction of Guarantor, for companies similar to Guarantor. All non-German property policies shall have a lender's loss payee endorsement showing Bank as first loss payee. All non-German policies (or their respective endorsements) shall provide that the insurer shall give Bank at least twenty (20) days' notice before cancelling its policy. At Bank's request, Guarantor shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy taken out by or otherwise vested in Guarantor shall, at Bank's option, be payable to Bank on account of the Obligations. If Guarantor fails to obtain insurance as required under this Clause 5.4 (*Insurance*) or to pay any amount or furnish any required proof of payment to third persons and Bank, Bank may make all or part of such payment or obtain such insurance policies required in this Clause 5.4 (*Insurance*), and take any action under the policies Bank deems prudent.

**5.5 Bank Accounts.**

- (a) To permit Bank to monitor Guarantor's financial performance and condition, Guarantor shall, within 90 (ninety) days of the Effective Date, open and maintain all of Guarantor's UK depository and operating accounts and securities/investment accounts and excess funds (if any) with Bank's UK branch. All of Guarantor's UK depository and operating accounts maintained outside the UK shall be maintained with the banks disclosed to Bank in the Perfection Certificate of the Guarantor or any other bank or financial institution acceptable to Bank.
- (b) Guarantor shall promptly notify Bank, in writing, of any deposit, operating or securities/investment account proposed to be opened by Guarantor with any institution other than Bank or an Affiliate of Bank. In addition, for each such account that Guarantor at any time opens or maintains, Guarantor shall, at Bank's request and option, pursuant to an agreement in form and substance acceptable to Bank, cause the bank or securities intermediary to agree that such account is the collateral of Bank pursuant to the terms of the Loan Documents, which control agreement may not be terminated without the prior written consent of Bank. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Guarantor's employees.

**5.6 Protection and Registration of Intellectual Property Rights.**

- (a) Guarantor shall: (i) protect, defend and maintain the validity and enforceability of the Intellectual Property; (ii) promptly advise Bank in writing of material infringements of the Intellectual Property; and (iii) not allow any Intellectual Property material to Guarantor's



business to be abandoned, forfeited or dedicated to the public without Bank's prior written consent.

- (b) Guarantor shall provide written notice to Bank within ten (10) days of entering or becoming bound by any Restricted Licence (other than over-the-counter software that is commercially available to the public). Guarantor shall take such steps as Bank requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted Licence to be deemed "Collateral" and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted Licence, whether now existing or entered into in the future, and (ii) Bank to have the ability in the event of a realisation of any Collateral to dispose of such Collateral in accordance with Bank's rights and remedies under this Agreement and the other Loan Documents.

## 5.7 Studies

Guarantor shall use all commercially reasonable efforts to ensure that all studies and/or clinical trials conducted by it or on its behalf strictly comply with the following as they are applicable in the country/ countries in which the studies and/ or clinical trials are conducted:

- (a) laws and regulations and government guidelines relating to studies/ clinical trials;
- (b) all Government Approvals and good clinical practice;
- (c) ethics committee approval(s);
- (d) the terms of the applicable protocols; and
- (e) any other requirements of the responsible regulatory or competent authorities,

and (if requested by Bank) shall provide reasonable evidence of such compliance (save where provision of such evidence would involve Guarantor contravening the law, in particular, data privacy laws).

## 5.8 Litigation Cooperation

From the date hereof and continuing until all Obligations have been irrevocably discharged and Bank has no commitment or liability hereunder, make available to Bank, without expense to Bank, Guarantor and its officers, employees and agents and Guarantor's books and records, to the extent that Bank may deem them reasonably necessary to institute or defend any third-party action or proceeding instituted by or against Bank with respect to any Collateral or relating to Guarantor.

## 5.9 Access to Collateral Books and Records

Allow Bank, or its agents, at reasonable times, on five (5) Business Days' notice (provided no notice is required if an Event of Default has occurred and is continuing), to inspect the Collateral and audit and copy Guarantor's Books. Such inspections or audits shall be conducted no more often than once every twelve (12) months unless an Event of Default has occurred and is continuing and shall be carried out at the expense of the Guarantor.

**5.10 Further Assurances**

Guarantor shall execute any further instruments and take further action as Bank reasonably requests to perfect or continue Bank's security interest in the Collateral or to effect the purposes of this Agreement.

**6. Negative Covenants**

Guarantor shall not do any of the following without Bank's prior written consent:

**6.1 Dispositions**

Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers: (a) of Inventory in the ordinary course of business; (b) of worn-out or obsolete Equipment; (c) required to effect of comply with the terms of any Permitted Liens and Permitted Investments; (d) of licences for the use of the property of Guarantor or its Subsidiaries in the ordinary course of business. Guarantor shall not enter into an agreement with any Person other than Bank which restricts the subsequent granting of a security interest in the Intellectual Property.

**6.2 Changes in Business, Ownership, Management or Business Locations.**

(a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Guarantor or such Subsidiary or reasonably related thereto as at the Effective Date, (b) liquidate or dissolve; or (c) permit or suffer any Change in Control.

Guarantor shall not, without at least ten (10) days prior written notice to Bank: (1) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Twenty Thousand Euros (€20,000 (or its equivalent in any other currency)) in Guarantor's assets or property) or deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Fifty Thousand Euros (€50,000) (or its equivalent in any other currency) to a bailee at a location other than to a bailee and at a location already disclosed in the Perfection Certificate, (2) change its jurisdiction of organisation, registration or incorporation, (3) change its organisational structure or type or; (4) change its legal name. If Guarantor intends to deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Fifty Thousand Euros (€50,000) (or its equivalent in any other currency) to a bailee, and Bank and such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Guarantor intends to deliver the Collateral, then Guarantor will first receive the written consent of Bank, and such bailee shall execute and deliver a bailee agreement in form and substance satisfactory to Bank in its sole discretion.

**6.3 Mergers or Acquisitions**

Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the share capital or property of another Person. A Subsidiary of the Guarantor may merge or consolidate into another Subsidiary of Guarantor or into Guarantor.

**6.4 Indebtedness**

Create, incur, assume, or be liable for any Indebtedness, or permit any of its Subsidiaries to do so, other than the Permitted Indebtedness.

**6.5 Encumbrance**

Create, incur, allow, or suffer any Lien on any of, the Collateral, or assign or convey any right to receive income, or permit any of its Subsidiaries to do so, except for Permitted Liens, permit any Collateral not to be subject to the first priority security interest granted by the Security Documents, except as is otherwise permitted in Clause 6.1 (*Dispositions*) and the definition of "Permitted Liens".

**6.6 Distributions; Investments**

(a) Directly or indirectly acquire or own any Person, or make any Investment in any Person, other than Permitted Investments, or permit any of its Subsidiaries to do so; or (b) pay any dividends or make any distribution or payment or redeem, or purchase any of its share capital or give any financial assistance in respect of the purchase of any of its share capital.

**6.7 Transactions with Affiliates**

Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Guarantor, except for transactions that are in the ordinary course of Guarantor's business, upon fair and reasonable terms that are no less favourable to Guarantor than would be obtained in an arm's length transaction with a non-affiliated Person and transactions permitted pursuant to the terms of Clause 6.1 (*Dispositions*).

**6.8 Subordinated Debt**

(a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) without Bank's prior written consent, amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to the Obligations owed to Bank.

**6.9 Opening of New Bank Accounts**

Guarantor undertakes not to open any new bank accounts that are not the subject of a first priority security interest under the German Security Documents either in Germany or elsewhere unless (i) with the prior written consent of Bank and (ii) under the proviso that Bank will obtain, contemporaneously with the opening of any such account, a first priority security interest over such account in accordance with the requirements of the applicable local laws (in particular Germany) and in each case under terms and conditions acceptable to Bank.

**6.10 Joint Ventures**

Guarantor shall not enter into any joint venture or partnership, whether with another company, unincorporated firm, undertaking, association or any other entity other than in the ordinary course of business and on arms-length terms or with the prior written consent of the Bank (such consent not to be unreasonably conditioned, withheld or delayed).

**7. Interest****7.1 Interest on unpaid sums**

The Guarantor shall on demand pay to the Bank interest on any amount for the time being due from the Guarantor to the Bank under this Deed (both before and after judgement) provided that

such interest will not be payable if and to the extent that interest is already accruing under a Loan Document *and can be claimed under this Deed*.

## 7.2 Calculation and accrual of interest

Interest payable pursuant to Clause 7.1 (*Interest on unpaid sums*) shall be calculated and accrue in the same way as interest under Clause 2.2(b) (*Default Rate*) of the Loan Agreement.

## 8. Opening of new accounts

If for any reason this Deed ceases to be a continuing security, the Bank may open a new account for the Borrower. If the Bank does not open a new account, it shall nevertheless be treated as if it had done so at the time this Deed ceased to be a continuing security. As from that time all payments made to the Bank will be credited or treated as having been credited to the new account and will not operate to reduce the obligations of the Guarantor under this Deed.

## 9. No discharge of Guarantor

### 9.1 Principal debtor

The liability of the Guarantor under this Deed shall be that of a principal and independent debtor. The Guarantor shall not have any of the rights or defences of a surety in relation to its obligations or liabilities under this Deed.

### 9.2 Waiver of defences

Without limiting Clause 9.1 (*Principal debtor*) the obligations and liabilities of the Guarantor under this Deed will not be affected by an act, omission, matter or thing which, but for this Clause 9, would reduce, release or prejudice any of its obligations and liabilities under this Deed (without limitation and whether or not known to it or the Bank) including:

- (a) any time, waiver or consent granted to, or composition with, the Borrower or any other Obligor or other person;
- (b) the release of the Borrower or any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Borrower, any other Obligor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or any Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Loan Document or any other document or security including, but not limited to, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Loan Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Loan Document or any other document or security; or

- (g) any Insolvency or similar proceedings.

### 9.3 Foreign law waiver

The Guarantor further waives all the rights, remedies, defences or exceptions which are or may be given to the Guarantor under Dutch law.

### 10. Guarantor intent

Without prejudice to the generality of Clause 9 (*No discharge of Guarantor*) the Guarantor expressly confirms that it intends that this Deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any Loan Document and/or any facility or amount made available under any Loan Document for the purposes of or in connection with any of the following: business or asset acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

### 11. Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of the Borrower or any other person or any security for those obligations or otherwise) is made by the Bank in whole or in part on the faith of any payment, security or other disposition which is avoided or must be restored in Insolvency or otherwise, without limitation, then the liability of the Guarantor under this Deed will continue or be reinstated as if the discharge, release or arrangement had not occurred.

### 12. Deferral of Guarantor's Rights

#### 12.1 Restriction on rights or claims

Until all amounts which may be or become payable by the Borrower under the Loan Documents have been irrevocably paid or discharged in full, the Guarantor will not, unless the Bank otherwise directs, exercise any rights which it may have by reason of performance by it of its obligations under this Deed or by reason of any amount being payable, or liability arising, under this Deed:

- (a) to be indemnified by the Borrower or any other person;
- (b) to claim any contribution from any other guarantor of any of the Borrower's obligations and liabilities under the Loan Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Bank under any Loan Document or of any other security or guarantee or indemnity at any time taken pursuant to, or in connection with, the Loan Documents by the Bank;
- (d) to bring legal or other proceedings for an order requiring the Borrower or any other person to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under this Deed;
- (e) to exercise any right of set-off against the Borrower or any other person; and/or

(f) to claim or prove as a creditor of the Borrower or any other person in competition with the Bank.

## **12.2 Turnover**

If the Guarantor receives any benefit, payment or distribution in relation to the rights mentioned in Clause 12.1 (*Restriction on rights or claims*) it shall hold that benefit, payment or distribution to the extent necessary to enable the Borrower's obligations and liabilities under the Loan Documents to be repaid in full on trust for the Bank and shall promptly pay or transfer the same to the Bank for application in or towards discharge of the obligations and liabilities of the Guarantor under this Deed.

## **13. Suspense account**

The Bank may at any time place and keep to the credit of a separate interest bearing suspense account any monies received under this Deed for so long and in such manner as the Bank may determine without any obligation to apply such monies or any part of them in or towards the discharge of the Borrower's obligations and liabilities under the Loan Documents. In the event of any proceedings in or analogous to Insolvency of or concerning the Borrower, the Bank may notwithstanding any payment made under this Deed prove for a claim and agree to accept any dividend or composition in respect of the whole or any part of the Borrower's obligations and liabilities under the Loan Documents as if this Deed had not been given.

## **14. Other means of payment**

The Bank may (irrespective of any law or any provision of any Loan Document to the contrary) make a demand under this Deed:

- (a) before making any demand on the Borrower or the Borrower's estate or any other person or enforcing any other guarantee or security for the Borrower's obligations and liabilities under the Loan Documents; and
- (b) for the payment of the ultimate balance after resorting to other means of payment, or for the balance due at any time notwithstanding that the Bank has not resorted to other means of payment (in which case the Guarantor shall not be entitled to any benefit from such other means of payment so long as the Borrower's obligations and liabilities under the Loan Documents remain outstanding).

## **15. Expenses**

### **15.1 Costs**

The Guarantor shall pay to the Bank on demand all costs and expenses (including, but not limited to, legal fees) from time to time paid or incurred by the Bank in connection with perfecting, preserving, defending or enforcing this Deed or in exercising any right or power under or in connection with this Deed, and shall indemnify the Bank against all such costs and expenses.

### **15.2 Stamp duty**

The Guarantor shall pay on demand all stamp, documentary, registration and other similar duties and taxes, if any, to which this Deed may be subject or give rise and shall indemnify the Bank against any and all liability with respect to or resulting from any delay or failure by the Guarantor in making such payment.

**15.3 Value Added Tax**

Where this Deed requires the Guarantor to reimburse the Bank for any costs or expenses the Guarantor shall at the same time pay and indemnify the Bank against all Value Added Tax (or any tax of a similar nature) incurred by the Bank in respect of the costs and expenses to the extent that the Bank determines that it is not entitled to credit or repayment of the Value Added Tax (or other tax of a similar nature).

**15.4 Currency**

Each payment by the Guarantor in respect of costs, expenses or Tax shall be made in the currency in which the costs, expenses or Tax are incurred.

**16. Tax gross-up****16.1 Payments without Tax Deduction**

The Guarantor shall make all payments to be made by it under this Deed without any deduction or withholding for or on account of Tax (a "**Tax Deduction**") unless a Tax Deduction is required by law.

**16.2 Notification of Tax Deduction**

The Guarantor shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Bank accordingly.

**16.3 Gross-up of payments**

If a Tax Deduction is required by law to be made by the Guarantor, the amount of the payment due from the Guarantor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

**16.4 Payment in connection with Tax Deduction**

If the Guarantor is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

**16.5 Evidence of payment**

Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Guarantor shall deliver to the Bank evidence satisfactory to the Bank that the Tax Deduction has been made or (as applicable) any appropriate payment has been paid to the relevant taxing authority.

**17. Miscellaneous****17.1 Additional security**

This Deed is in addition to and is not in any way prejudiced by any bill, note, guarantee or security now or subsequently held by the Bank for any of the Borrower's obligations and liabilities under the Loan Documents.

**17.2 No set-off by Guarantor**

All payments made by the Guarantor to the Bank under this Deed shall (save insofar as required by law to the contrary) be paid in full without set-off or counterclaim.

**17.3 Set-off**

The Bank may set off any matured obligation owed by the Guarantor to the Bank against any obligation (whether or not matured) owed by the Bank to the Guarantor regardless of the place of payment, or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange for the purpose of the set-off in an amount estimated by it in good faith to be the amount of that obligation.

**17.4 Remedies and waivers**

No delay or omission of the Bank in exercising any right or remedy under this Deed or otherwise available to it at law shall impair such right or remedy, or be construed as a waiver of such right or remedy nor shall any single or partial exercise of any such right or remedy preclude its further exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law and may be waived only in writing and specifically.

**17.5 Severability**

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Deed or affecting the validity or enforceability of such provision in any other jurisdiction.

**17.6 Certificates and determinations**

A certificate or determination by the Bank of the amount of the Borrower's obligations and liabilities outstanding under the Loan Documents at any time or of any other amount payable by the Guarantor under this Deed is, in the absence of manifest error, conclusive evidence for all purposes of this Deed as against the Guarantor.

**17.7 Deed the property of the Bank**

This Deed is and will at all times remain the property of the Bank.

**17.8 Loan Agreement provisions binding**

The Guarantor shall be bound by all provisions of the Loan Agreement which are expressed to be applicable to the Obligor in the same way as if they were expressly incorporated and set out in this Deed with appropriate and necessary modifications.

**17.9 Currency indemnity**

(a) The Guarantor's liability under this Deed is to pay to the Bank the full amount of the Borrower's obligations and liabilities under the Loan Documents in the currency in which they are for the time being denominated. If, for any reason, any payment due from the Guarantor under or in connection with this Deed is made or is satisfied in a currency (the "**Other Currency**") other than the currency in which the relevant payment is due (the "**Contractual Currency**"), then to the extent that the payment (when



converted into the Contractual Currency at the rate of exchange on the date of payment or, in the case of the Insolvency of the Guarantor, at the rate of exchange on the latest date permitted by applicable law for the determination of liabilities in such Insolvency) actually received by the Bank falls short of the amount expressed to be due under the terms of this Deed, the Guarantor shall, as a separate and independent obligation, indemnify the Bank and hold the Bank harmless against the amount of such shortfall.

- (b) For the purpose of this Clause "**rate of exchange**" means the rate at which the Bank is able on the relevant date to purchase the Contractual Currency with the Other Currency and shall take into account any premium and other costs of exchange.

## **18. Benefit of this Deed**

### **18.1 Assignment by the Bank**

The Bank may assign or transfer all or any part of its rights under this Deed in accordance with Clause 12.1 (*Successors and Assigns*) of the Loan Agreement. The Guarantor shall enter into any documents specified by the Bank to be necessary to give effect to such assignment or transfer.

### **18.2 No assignment by the Guarantor**

The Guarantor may not assign or transfer all or any part of its rights and/or obligations under this Deed.

### **18.3 Disclosure of information**

The Bank may disclose such information about the Guarantor as the Bank thinks fit to a potential assignee or transferee of all or any part of its rights under this Deed, or to any person who may otherwise enter into contractual relations with the Bank in relation to any of the Borrower's obligations and liabilities under the Loan Documents, or to any person to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation, or to any person in connection with the protection or enforcement of the Bank's rights under this Deed.

## **19. Notices**

### **19.1 Address**

The Guarantor's address and email address for any notice, demand or other communication under or in connection with this Deed are:

Address: Affimed N.V.

Im Neuenheimer Feld 582  
69120 Heidelberg  
Germany

Attn: Dr Florian Fischer

Email: F.Fischer@affimed.com

or any substitute address or email address as the Guarantor may notify to the Bank by not less than five days written notice. Any such notice, demand or other communication shall also be

effective if sent to the Guarantor's registered office or the address or email address of the Guarantor last known to the Bank.

## 19.2 Method and receipt

The provisions of Clause 10 (*Notices*) of the Loan Agreement shall apply to this Deed as if they were expressly incorporated and set out in this Deed with appropriate and necessary modifications.

## 19.3 English language

Any notice given under or in connection with this Deed must be in English.

## 20. Governing law and jurisdiction

### 20.1 Governing law

This Deed and any non-contractual obligation arising out of or in connection with it are governed by English law.

### 20.2 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute (a "**Dispute**") arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed).
- (b) It is agreed that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- (c) This Clause 20.2 is for the benefit of the Bank only. As a result, the Bank shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Bank may take concurrent proceedings in any number of jurisdictions.

### 20.3 Service of process

Without prejudice to any other mode of service allowed under any relevant law, the Guarantor:

- (a) irrevocably appoints Law Debenture Corporate Services Limited of Fifth Floor, 100 Wood Street, London EC2V 7EX, attention: Kristy Buchan, Senior Service of Process Officer as its agent for service of process in relation to any proceedings before the English courts in connection with this Deed; and
- (b) agrees that failure by a process agent to notify the Guarantor of the process will not invalidate the proceedings concerned.

EXECUTED as a Deed and delivered on the date stated at the beginning of this document.

**EXECUTED** as a **DEED** on behalf of **AFFIMED N.V.** a company incorporated in The Netherlands, by Florian Fischer and Jörg Windisch, being persons who, in accordance with the laws of that territory, are acting under the authority of the company:

/s/ Florian Fischer \_\_\_\_\_ Authorised signatory

/s/ Jörg Windisch \_\_\_\_\_ Authorised signatory

**EXECUTED** as a **DEED** on behalf of **SILICON VALLEY BANK** a California corporation, by Nooman Haque, being a person who, in accordance with the laws of that territory, is acting under the authority of the corporation:

/s/ Nooman Haque \_\_\_\_\_ Authorised signatory

**OMNIBUS DEED OF PLEDGE**

dated 30 November 2016

between

**Affimed N.V.**

as Pledgor

and

**Silicon Valley Bank**

as Pledgee

in connection with a Loan Agreement and any other related loan documents

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## THE UNDERSIGNED

- (1) **AFFIMED N.V.**, a public company (*naamloze vennootschap*) incorporated under the laws of the Netherlands, having its corporate seat in Amsterdam, the Netherlands, with registered address at Im Neuenheimer Feld 582, D-69120 Heidelberg, Germany and registered with the Dutch Commercial Register under number 60673389, as pledgor (the "**Pledgor**"); and
- (2) **SILICON VALLEY BANK**, a corporation incorporated under the laws of California, United States of America, with registered address at 3003 Tasman Drive, Santa Clara, California 95054, United States of America, as pledgee (the "**Pledgee**").

## WHEREAS:

- (A) by a loan agreement between Affimed GmbH as Borrower and Silicon Valley Bank as bank (hereinafter the "**Loan Agreement**"), the Pledgee has agreed to provide the Facilities (as defined therein) to Affimed GmbH; and
- (B) the Pledgor has entered into this Deed to secure the payment and performance in full of all Secured Obligations.

## HAVE AGREED as follows:

### 1. Definitions And Interpretation

#### 1.1 Definitions

In this Deed:

"**Agreements**" means the Insurance Agreements and the Licences.

"**Bank Account**" means any present or future bank account of the Pledgor with a bank or financial institution in the Netherlands, including but not limited to a bank account listed under "List of Bank Accounts" in Part I of Annex 1 (*Overview of Collateral*).

"**Bank Rights**" means all present and future rights, claims and receivables of the Pledgor against any Debtor with whom a Bank Account is or will be maintained, including under or in connection with the balance of any Bank Account.

"**Collateral**" means all Rights, Movables and IP Rights.

"**DCC**" means the Dutch Civil Code.

"**Debtor**" means

- (a) any bank or financial institution with whom a Bank Account is or will be maintained by the Pledgor;
- (b) any insurer or broker under an Insurance Agreement to which the Pledgor is or may become a party;
- (c) any member of the Group;
- (d) any licensee to which a License has been or will be granted by the Pledgor; and

(e) any licensor which has granted or will grant a License to the Pledgor.

"**Deed**" means this deed of pledge.

"**Enforcement Event**" means an Event of Default which is continuing, provided that it is also a default (*verzuim*) in accordance with article 3:248 DCC.

"**Existing Debtor**" means

- (a) any bank or financial institution with whom a Bank Account is maintained by the Pledgor as the date of this Deed;
- (b) any insurer or broker under an Insurance Agreement existing on the date of this Deed;
- (c) any member of the Group as at the date of this Deed;
- (d) any licensee to which a License has been granted by the Pledgor as the date of this Deed; and
- (e) any licensor which has granted a License to the Pledgor as at the date of this Deed.

"**Future Receivables**" means all rights, claims and receivables of the Pledgor against any debtor which come into existence after the date of this Deed (or in case of any Supplemental Deed, the date of such Supplemental Deed) but excluding (i) receivables pledged under any Security Document (including this Deed and any Supplemental Deed) and (ii) any Bank Right, Intercompany Right, Insurance Right, Licensor Right and Licensee Right, if and to the extent the Debtor in respect of such receivable is notified of the (disclosed) Right of Pledge.

"**Group**" means Affimed N.V. and each of its subsidiaries within the meaning of article 2:24a DCC.

"**Insurance Agreements**" means all insurance agreements under which the Pledgor is or may become entitled to claim including, but not limited to, the insurance agreements listed under "List of Insurance Agreements" in Part I of Annex 1 (*Overview of Collateral*) to the extent these agreements are governed by Netherlands law.

"**Insurance Rights**" means all present and future rights, claims and receivables of the Pledgor against the relevant Debtors under or in connection with an Insurance Agreement, except to the extent any such receivable relating to an Insurance Agreement is restricted from being pledged under section 7:954(4) DCC.

"**Intercompany Rights**" means all present and future rights, claims and receivables of the Pledgor against a Debtor which at any time is a member of the Group.

"**Internet Domain Name Receivables**" means all present and future rights, claims and receivables owed to the Pledgor by any internet domain name register (including but not limited to Stichting Internet Domeinregistratie), including rights, claims and receivables under or in connection with an Internet Domain Name (as defined in Part II of Annex 1 (*Overview of Collateral*)).

"**IP Movables**" means all data carriers on which data are stored relating to the Copyrights and all manuals and other documentation relating to the Copyrights, including but not limited, to the extent the Copyrights relate to software, to data carriers, manuals and other documentation relating to source codes, owned by the Pledgor or which that Pledgor may acquire in the future.

"**IP Rights**" means all present and future intellectual property including but not limited to Copyrights, Database Rights, Designs, Internet Domain Names, Licensee Rights, Neighbouring Rights, Patents, Trade Marks and Trade Names of the Pledgor, in each case as defined in Part II of Annex 1 (*Overview of Collateral*) and in each case to the extent these intellectual property rights are not personal to it and are capable of being pledged.

"**License**" means all permissions of any kind whatsoever, whether or not registered or in writing (i) granted or to be granted by the Pledgor to any person entitling that person to use any IP Rights whether or not in return for any financial or other remuneration, including, but not limited to, the licences listed under "List of Licenses" in Part I of Annex 2 (*Overview of Collateral*) or (ii) granted or to be granted to the Pledgor by any person entitling the Pledgor to use any intellectual property rights whether or not in return for any financial or other remuneration, including, but not limited to, the licences listed under "Licensee Rights" in Part II of Annex 2 (*Overview of Collateral*).

"**Licensor Rights**" means all present or future rights of the Pledgor to receive payment of an amount or other remuneration/consideration under or arising from any Licence.

"**Movables**" means (i) all movable assets including but not limited to equipment, inventory, stock and IP Movables and (ii) all rights to bearer of the Pledgor, in each case owned or conditionally owned (*voorwaardelijk eigendom*) by the Pledgor on the date of the registration of this Deed or which the Pledgor may acquire in the future and to the extent these movable assets and rights to bearer are located in the Netherlands at any time.

"**Present Receivables**" means all rights, claims and receivables of the Pledgor against any debtor:

- (a) which exist (*bestaan*) on the date of registration of this Deed (or, in case of any Supplemental Deed, the date of such Supplemental Deed);  
or
- (b) which are, after the date of registration of this Deed (or, in case of any Supplemental Deed, the date of such Supplemental Deed), directly acquired pursuant to a legal relationship in existence (*rechtstreeks zullen worden verkregen uit een bestaande rechtsverhouding*) on the date of registration of this Deed (or, in case of any Supplemental Deed, the date of such Supplemental Deed),

excluding any Bank Right, Intercompany Right, Insurance Right, Licensor Right and Licensee Right, if and to the extent the Debtor in respect of such Right is notified of the (disclosed) Right of Pledge.

"**Receivables**" means the Present Receivables and the Future Receivables.

"**Right of Pledge**" means a right of pledge created or purported to be created under this Deed or any Supplemental Deed.

"**Rights**" means the Bank Rights, Intercompany Rights, Insurance Rights, Licensor Rights, Licensee Rights and Receivables.

"**Secured Obligation**" means any payment obligation (*verbintenis tot betaling van een geldsom*) in favour of the Pledgee under:

- (a) the Finance Documents; and
- (b) this Deed, including in respect of any costs and expenses related to the foreclosure (*kosten van executie*) of any Right of Pledge,

whether present or future, whether actual or contingent, whether as primary obligor or as surety and whether for principal, interest, costs or otherwise, provided that the security does not apply to any liability to the extent that it would result in such security constituting unlawful financial assistance within the meaning of article 2:98c DCC or any subsequent legislation in respect of unlawful financial assistance or any equivalent and applicable provisions under the laws of the jurisdiction of incorporation of the relevant provider of security.

"**Supplemental Deed**" means a deed substantially in the form of Schedule 2 (*Form of Supplemental Deed*) or such other form as the Pledgee deems appropriate, including for the avoidance of doubt, an unspecified collective deed of pledge (*verzamel pandakte*) and any notice sent to a Debtor notifying such Debtor of the Right of Pledge.

## 1.2 Interpretation

- (a) Unless otherwise defined in this Deed, words and expressions defined in the Loan Agreement have the same meanings when used in this Deed. The principles of construction set out in the Loan Agreement will have effect as if set out in this Deed.
- (b) A reference to an "**Annex**", a "**Clause**", a "**Party**" or a "**Schedule**" is a reference to an annex, or a clause of this Deed or a party or a schedule to this Deed.
- (c) Words denoting the singular include the plural and vice versa.
- (d) English language words used in this Deed intend to describe Dutch legal concepts only and the consequences of the use of those words in English law or any other foreign law are to be disregarded.
- (e) References in this Deed to any Finance Document or other document include such document as amended, restated, novated, supplemented or otherwise modified from time to time and expressly including any increases and/or amendments of credit, loans and/or other commitments under the Loan Agreement or other Finance Document irrespective of the amounts involved and irrespective of the manner of implementation of such increases and/or amendments and as parties may accede to any Finance Document or retire from any Finance Document.
- (f) A reference to "**registration**" of this Deed or any Supplemental Deed means registration by the appropriate department of the tax authorities or notary in the



Netherlands or, in case of IP Rights, the relevant intellectual property register in accordance with the relevant intellectual property laws.

- (g) References in this Deed to the Pledgee, the Pledgor and any other person shall be construed so as to include its or their respective permitted successors, transferees and assignees pursuant to the terms of the Finance Documents from time to time and any successor of such a successor, transferee or assignee.

## 2. CREATION AND PERFECTION OF PLEDGE

### 2.1 Undertaking to pledge

The Pledgor agrees with the Pledgee and undertakes to grant (where relevant in advance (*bij voorbaat*)) a right of pledge (*pandrecht*) over the Collateral.

### 2.2 Secured Obligations

- (a) Each Right of Pledge is created as security for the payment when due of the Secured Obligations.
- (b) Each Right of Pledge shall secure the Secured Obligations as they may be amended from time to time as a result of a modification, amendment, release or waiver of any of the terms and conditions of any Finance Document or any other documentation documenting, guaranteeing or securing the Secured Obligations (however fundamental, including any increase of any of the Facilities under the Loan Agreement, any extension or addition of or to any of the Facilities made available under any Finance Document and/or any additional facility or amount made available under any Finance Document for any purpose, including in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; any increase or other way of calculating interest in respect of any Facilities and any fees, costs and/or expenses associated with any of the foregoing) and no such amendment shall discharge or otherwise prejudice or affect any Right of Pledge and/or any right of the Pledgee under this Deed or any Supplemental Deed.

### 2.3 Creation of pledge

- (a) The Pledgor hereby grants (as the case may be (i) in advance (*bij voorbaat*) and/or (ii) by means of a third party right of pledge (*derden-pandrecht*) as referred to in article 3:231(1) DCC), in favour of the Pledgee:
  - (i) a disclosed right of pledge (*openbaar pandrecht*) on the Bank Rights, the Intercompany Rights, the Insurance Rights;
  - (ii) an undisclosed right of pledge (*stil pandrecht*) on the Present Receivables and Licensor Rights (for the avoidance of doubt, Parties note that at the date of this Deed, the Pledgor does not have any Present Receivables or Licensor Rights);

(iii) a non-possessory right of pledge (*vuistloos pandrecht*) on the Movables (for the avoidance of doubt, Parties note that at the date of this Deed, the Pledgor does not have any Movables); and

(iv) a right of pledge (*pandrecht*) on the IP Rights (including a undisclosed right of pledge (*openbaar pandrecht*) on the Licensee Rights) (for the avoidance of doubt, Parties note that at the date of this Deed, the Pledgor does not have any IP Rights).

(b) The Pledgor shall grant (as the case may be (i) in advance (*bij voorbaat*) and/or (ii) by means of a third party right of pledge (*derden-pandrecht*) as referred to in article 3:231(1) DCC), in favour of the Pledgee an undisclosed right of pledge on the Future Receivables, future Licensor Rights and future Licensee Rights by:

executing a Supplemental Deed (1) every quarter on the last Business Day of that period and (2) promptly upon request of the Pledgee; and

(c) In respect of movables owned by the Pledgor which are located outside the Netherlands at the date of this Deed (or, if later, when the Pledgor acquires such movables), the pledge is entered into under the suspensive condition (*opschortende voorwaarde*) of such movables being located in the Netherlands at which time they will be (i) Movables within the meaning of this Deed and (ii) subject to a Right of Pledge.

(d) The Pledgee hereby accepts (where relevant in advance (*bij voorbaat*)) each Right of Pledge.

#### 2.4 **Scope of pledge over Rights**

Each Right of Pledge in respect of a Right:

(a) captures only rights, claims and receivables which are capable of being pledged under applicable law;

(b) extends to rights, claims and receivables whether jointly or individually held;

(c) extends, to the fullest extent possible under applicable law, to all rights attached to that Right, including, but not limited to, dependent rights (*afhankelijke rechten*) and ancillary rights (*nevenrechten*); and

(d) extends to rights, claims and receivables acquired by way of recourse (*regres*) or subrogation (*subrogatie*) and rights, claims and receivables arising from declarations of joint and several liability on the basis of article 2:403(f) DCC.

#### 2.5 **Perfection**

The Pledgor shall:

(a) no later than 2 Business Days after the date of this Deed (or 5 Business Days after the date of any Supplemental Deed), register this Deed (or Supplemental Deed, as the case may be) with the Dutch tax authorities (other than the registers as referred to under sub (d) of this Clause) and provide a copy of evidence of receipt by the

relevant authorities and the registered Deed (or Supplemental Deed) to the Pledgee, in each case promptly upon receipt;

- (b) no later than 2 Business Days after the date of this Deed send a notice substantially in the form of Schedule 1 (*Form of Notification Letter*), to each Existing Debtor (other than Existing Debtors already notified pursuant to Clause 2.9 (*Notification of disclosed pledge to Parties*)) and promptly provide the Pledgee with a copy of such notice together with evidence of receipt (*ontvangstbevestiging*) of such notice or fax communication and, promptly upon receipt, with a copy of the acknowledgement of the Right of Pledge by the Existing Debtors;
- (c) within 5 Business Days after the entry into of any Agreement or intercompany relation with a Debtor not previously notified of the Right of Pledge send a notice substantially in the form of Schedule 1 (*Form of Notification Letter*) to the relevant Debtor and promptly provide the Pledgee with a copy of such notice together with evidence of receipt (*ontvangstbevestiging*) of such notice or fax communication and, promptly upon receipt, with a copy of the acknowledgement by the relevant Debtor of the Right of Pledge; and
- (d) procure, in respect of each IP Right which is registered in a register, that the Right of Pledge is notified to and requested to be recorded with the relevant registers promptly and in any event no later than 15 Business Days after the date of this Deed (or such longer period as the Pledgee may agree) (and, in respect of any IP Right which is registered in a register after the date of this Deed, promptly and in any event no later than 15 Business Days after the date of registration). For the avoidance of doubt, the parties note that at the date of this Deed, the Pledgor does not have any IP Rights and therefore, the provisions in this Clause 2.5(d) only apply to any IP Rights which are registered in a register after the date of this Deed. Such registers include:
  - (i) in relation to Designs:
    - (A) for Benelux design rights: the design register of the Benelux Office for Intellectual Property (BOIP) in The Hague, the Netherlands;
    - (B) for community design rights: the design register of the Office for Harmonisation in the Internal Market (OHIM) in Alicante, Spain; and
    - (C) for international design rights: the design register of the World Intellectual Property Organisation (WIPO) in Geneva, Switzerland;
  - (ii) in relation to Internet Domain Names with .nl top level extensions:

the domain name register of Stichting Internet Domeinregistratie Nederland (SIDN);
  - (iii) in relation to Patents:
    - (A) for Dutch patents: the Netherlands Patent Office (NL Octrooi Centrum);

- (B) for European Patents: (i) as long as an application is still pending, the European Patent Office (EPO) in Munich, Germany and (ii) if the EPO application has been accepted as a Dutch patent registration, the Netherlands Patents Office (NL Octrooiencentrum); and
  - (C) for International Patents on the basis of the PCT system (PCT): the International Bureau of the World Intellectual Property Organisation (WIPO) in Geneva, Switzerland;
- (iv) in relation to supplementary protection certificates: the Netherlands Patent Office (NL Octrooiencentrum); and
- (v) in relation to trade marks:
- (A) for Benelux trademark rights: the trademark register of the Benelux Office for Intellectual Property (BOIP) in The Hague, the Netherlands;
  - (B) for community trademark rights: the trademark register of the Office for Harmonisation in the Internal Market (OHIM) in Alicante, Spain; and
  - (C) for international trademark rights: the trademark register of the World Intellectual Property Organisation (WIPO) in Geneva, Switzerland.

## 2.6 Domicile for Patents

For purposes of article 67(2) of the Dutch Patent Act 1995, the Pledgor that pledges any Patent under this Deed and the Pledgee choose domicile at The Hague, the Netherlands.

## 2.7 Pledge Confirmation for registered IP Rights

Notification to and request for recording with an intellectual property register within the meaning of Clause 2.5 (*Perfection*) under (d) above will be effected by means of a notification letter in the form of Schedule 3 (*Form of Pledge Confirmation*) and the Pledgor shall provide evidence of receipt by the relevant authorities of such notification and recording to the Pledgee promptly upon receipt of such evidence.

## 2.8 Registration by Pledgee

Without prejudice to the obligations of the Pledgor under Clause 2.5 (*Perfection*), the Pledgee shall be authorised to register this Deed and any Supplemental Deed with the relevant authorities, including any intellectual property register referred to in Clause 2.5 (*Perfection*) under (d).

## 2.9 Perfection by Pledgee

Without prejudice to the obligations of the Pledgor under Clause 2.5 (*Perfection*), the Pledgor hereby irrevocably authorises the Pledgee to grant a right of undisclosed pledge over all Receivables within the meaning of Clause 2.3 (*Creation of Pledge*) under (b) of this Deed by executing on its behalf a Supplemental Deed in the frequency determined by the Pledgee, and the Pledgee is authorised to register each Supplemental Deed with the relevant authorities. In addition, the Pledgee has the right to use the power of attorney granted to the Pledgee in Clause 5.2 (*Power of Attorney*) of this Deed to create similar rights of pledge over the Collateral by other means (including by way of a collective pledge deed) on a daily basis or at such other intervals or times as the Pledgee deems appropriate.

## 2.10 Notification of disclosed pledge to Parties

- (a) Without prejudice to the obligations of the Pledgor under Clause 2.5 (*Perfection*), the Pledgee shall be authorised to notify each Debtor of the disclosed rights of pledge purported to be created under this Deed.
- (b) The Pledgee, in its capacity as Debtor of any Bank Rights, confirms to have been notified as Debtor of the Right of Pledge by signing this Deed.
- (c) The Pledgor, in its capacity as Debtor of any Intercompany Rights, confirms to have been notified as Debtor of the Right of Pledge by signing this Deed.

## 2.11 Intellectual property rights other than IP Rights

If any intellectual property right (including internet domain names and licenses concerning intellectual property rights) granted to or by, acquired, held by, registered and/or applied for by or in the name of the Pledgor before or after the date of this Deed does not fall within the definition of any IP Right for geographical and/or other reasons, the Pledgor, where applicable in advance, hereby pledges such right to the Pledgee. The Pledgee, where applicable in advance, hereby accepts these rights of pledge. Each right of pledge purported to be created under this Clause 2.11 is in addition to and without prejudice to any other rights of pledge created under this Deed.

## 2.12 Conversion

If pursuant to Netherlands private international law a law other than the law of the Netherlands would be applicable to the validity of the creation of the security interests purported to be created under this Deed, and the requirements for the creation of such a security interest under that other law have been materially satisfied, then, for the purposes of this Deed, the Parties intend to create a security interest under that law to the extent legally possible.

## 3. UNDERTAKING

### 3.1 Preservation of Collateral

Unless explicitly provided otherwise under any Finance Document, the Pledgor shall not without the prior written consent of the Pledgee:

- (a) pledge, otherwise encumber, dispose of, transfer or make subject to a limited right (*beperkt recht*) the Collateral or any part thereof other than in the ordinary course of business and on arm's length terms, whether or not in advance, or perform any act that may harm the rights of the Pledgee, or permit to subsist any kind of encumbrance or attachment over the Collateral or any part thereof;
- (b) vary the terms of or extend, release (*kwijtschelden*) or waive (*afstand doen van*) any Right other than in the ordinary course of business and on arm's length terms;
- (c) abandon or withdraw any registration of the IP Rights or any part thereof or any entitlement in relation to the IP Rights or any part thereof; or
- (d) waive any accessory rights (*afhankelijke rechten*) or ancillary rights (*nevenrechten*) attached to the Collateral other than in the ordinary course of business and on arm's length terms.

### 3.2 Undertakings applicable to IP Rights

(a) The Pledgor shall:

- (i) retain evidence of the genuine use made of its Trade Marks (and provide the Pledgee with this evidence upon the Pledgee's request). This evidence includes samples of product packaging, promotional material and copies of invoices to customers with the Trade Mark; and
- (ii) take all actions, including paying maintenance, renewal, registration and other applicable fees, monitoring prosecution, defending against third parties, commencement of legal proceedings and other relevant proceedings, making normal and commercial adequate use of its IP Rights in conformity with the registration thereof and all other actions necessary to keep its IP Rights in force and valid worldwide and will do nothing to jeopardise its IP Rights now or in the future.

(b) At the Pledgee's request, provide the Pledgee with:

- (i) a data carrier, in such form as the Pledgee may request, on which its Copyrights are stored and, to the extent the Copyrights relate to software, including all relevant source codes; and
- (ii) with all such data and movables, including to computers, computer files and software as the Pledgee may reasonably deem necessary to have access to the Copyrights.

### 3.3 Undertakings applicable to Bank Rights

The Pledgor shall use all reasonable endeavours to ensure that each bank (other than the Pledgee) with which a Bank Account is or will be maintained (an “**account bank**”) will consent to the creation of the Right of Pledge over any account maintained with that account bank and will release any pledge, waive any right to create a pledge and any right to set-off and suspension that account bank may have in respect of any account.

### 3.4 Undertakings applicable to Movables

The Pledgor shall at its own expense keep the Movables in good working order and condition, handle the same in a diligent manner, effect any necessary repair and maintain insurances with reputable insurance companies or underwriters on and in relation to the Movables against those risks and on such market conditions as is usual for companies carrying on the same or substantially similar business. It shall produce policies of the relevant insurances to the Pledgee for review at the Pledgee's request.

### 3.5 Information

The Pledgor shall:

- (a) promptly inform in writing a bailiff (*deurwaarder*) serving an attachment (*beslag exploit*) in respect of the Collateral or any part thereof, liquidator (*curator*) in bankruptcy, an administrator (*bewindvoerder*) of the Pledgor or, upon the request of the Pledgee, any third party creditor of the Pledgor, of the rights of the Pledgee pursuant to this Deed;

- (b) inform the Pledgee promptly of any events or circumstances which may adversely affect the rights of the Pledgee pursuant to this Deed, the value of the Collateral and/or the possibility of enforcement of the rights of the Pledgee, including but not limited to:
  - (i) an application being filed for its bankruptcy or the granting of a suspension of payments (or any analogous event under any other jurisdiction); or
  - (ii) any attachment (*beslagen*) on or dispute concerning the Collateral or any part thereof if such attachment or dispute has a Material Adverse Change on the rights of pledge created under this Deed and any Supplemental Deed, or on the value of the Collateral concerned;
- (c) promptly upon request of the Pledgee and in such form as the Pledgee may designate provide all information, evidence (including invoices) and documents relating to the Collateral which the Pledgee may deem necessary to exercise its rights under this Deed;
- (d) promptly upon request of the Pledgee submit an updated Annex 1 (*Overview of Collateral*) or any other up-to-date overview in the form designated by the Pledgee, which may include a print-out or an electronic data carrier containing the relevant data and listing amongst others the Collateral location(s) of the Movables and the total value thereof, the aggregate amount of the Rights and the amounts owed by each Debtor and/or the aggregate amount of the Receivables and the amounts owed by each debtor of a Receivable.

### 3.6 Inspection of books and records

The Pledgee shall on five (5) Business Day's notice (provided no notice is required if an Event of Default has occurred and is continuing), but in the absence of a continuing Event of Default, only during regular business hours, be granted access to the premises of the Pledgor to inspect the Pledgor's books and records relating to the Collateral. Such inspections or audits shall be conducted no more than once every twelve (12) months unless an Event of Default has occurred and is continuing.

## 4. REPRESENTATIONS AND WARRANTIES

### 4.1 Representations and warranties

The Pledgor represents and warrants to the Pledgee that:

- (a) it is the proprietor (*rechthebbende*) of the Collateral and has full power to dispose (*beschikkingsbevoegd*) of the Collateral;
- (b) unless explicitly provided otherwise under the Finance Document, the Collateral is (i) freely transferable and capable of being pledged under applicable law and, in respect of Rights, the relevant agreements from which the Rights result are legal, valid and binding agreements and if the validity of the assignment or pledge is subject to prior consent, such consent is obtained, (ii) not subject to any option or similar right and (iii) not subject to any right of set off;
- (c) on the date of this Deed,

- (i) it does not hold any account numbers with any bank in the Netherlands other than the Bank Accounts listed in Part I of Annex 1 (*Overview of Collateral*);
  - (ii) it does not have any insurance agreements under which it is entitled to claim and which are capable of being pledged other than the Insurance Agreements listed in Part I of Annex 1 (*Overview of Collateral*);
  - (iii) the entities listed in Part I of Annex 1 (*Overview of Collateral*) together with the Pledgor constitute all companies which form part of the Group;
  - (iv) the notification details for each Debtor set forth in Part I of Annex 1 (*Overview of Collateral*) are complete and correct;
  - (v) it has no intellectual property rights falling within the scope of the definition of any IP Right which are not listed in Part II of Annex 1 (*Overview of Collateral*); and
  - (vi) it has not granted any licenses enabling a person to use any of its IP Rights other than those listed in Part I of Annex 2 (*Overview of Collateral*).
- (d) neither the Collateral nor any part thereof has been encumbered whether or not in advance (*bij voorbaat*) by any attachments (*beslagen*), limited rights (*beperkte rechten*) or other encumbrances (including but not limited to any licences or sub-licences) or security interest;
- (e) the execution and performance of this Deed does not violate any agreement or other legal relationship to which it is a party;
- (f) no litigation, arbitration or administrative proceedings have been instituted or, to the best of its knowledge, are threatened against it, which could or are reasonably likely to have a material adverse effect on its position under this Deed or on the economic value of the Collateral; and
- (g) no corporate action or any other steps have been taken or legal proceedings have been instituted or threatened against it for the entering into a suspension of payments or for bankruptcy or for the appointment of a receiver or similar officer for it or any or all of its assets.

#### 4.2 **Times when representations and are made**

The representations and warranties as included in Clause 4.1 (*Representations and warranties*) are made on each date a Right of Pledge is (purported to be) granted over the Collateral or any part thereof and are deemed to be repeated on each day that any Secured Obligation exists, in each case in relation to all Collateral existing on the day the representations and warranties are made or deemed repeated other than as disclosed on prior to the date of this Deed and/or after the date of this Deed prior to any drawdown of Tranch 2 under the Loan Agreement.

### 5. **FURTHER ASSURANCE AND POWER OF ATTORNEY**

#### 5.1 **Further assurance**

The Pledgor hereby covenants that it will, at the Pledgee's first request, at its own expense:



- (a) execute any further encumbrances and assurances in favour of, or for the benefit of the Pledgee to create and perfect the rights of pledge purported to be created hereunder;
- (b) do all acts and things as the Pledgee may deem necessary to create and perfect the rights of pledge purported to be created hereunder and to exercise its rights under this Deed (including the enforcement of each right of pledge);
- (c) ensure that any right of pledge and the undertakings and obligations of the Pledgor under this Deed shall inure to the benefit of any successor, transferee or assignee of the Pledgee; and
- (d) facilitate the collection, appropriation or realisation of the Collateral (or any part thereof) in the manner contemplated by this Deed.

## 5.2 **Power of Attorney**

- (a) Subject to paragraph (b) below, the Pledgor hereby irrevocably and unconditionally grants to the Pledgee a power of attorney with the right of substitution to (i) perform on its behalf and at its expense any of its obligations under this Deed, including by means of entry into on its behalf of any Supplemental Deed, (ii) exercise any ancillary or other right in relation to the Collateral and (iii) exercise any of its obligations in relation to the Collateral. This authorisation permits the Pledgee to (also) act as counterparty within the meaning of article 3:68 DCC.
- (b) The appointment under paragraph (a) of this Clause 5.2 (*Power of Attorney*) above may be exercised by the Pledgee (i) with respect to any obligation or act of the Pledgor to perfect the security rights purported to be created under this Deed or any Supplemental Deed, at all times and (ii) with respect to any other act or obligation under this Deed, (a) if an Event of Default has occurred which is continuing or (b) in case the Pledgor has failed to perform an act or obligation under this Deed and has not remedied such failure within 2 Business Days after receipt of a notice of such failure from the Pledgee or after becoming aware of such failure.
- (c) The Pledgor hereby ratifies and confirms (where relevant, in advance) any act performed by the Pledgee under the power of attorney appointment referred to in paragraph (a) of this Clause 5.2 (*Power of Attorney*).

## 6. **AUTHORITY TO COLLECT RIGHTS**

### 6.1 **Notice to debtors**

The Pledgee may, if an Event of Default has occurred which is continuing, notify any debtor of the right of pledge created over the Receivable(s) owed by that debtor and inform that debtor that further payments must be made into a bank account designated by the Pledgee.

### 6.2 **Collection of Rights other than Receivables**

- (a) Subject to paragraph (b) below and Clause 6.3 (*Collection by Pledgee*), Pledgee is authorised, to the fullest extent permitted by law, to collect the Rights (other than the Receivables), to grant discharge in respect of the Rights (other than the Receivables) and to exercise all other rights of the Pledgor in connection with the

Rights (other than the Receivables) (including calling in (*opzeggen*) the Rights (other than the Receivables)).

- (b) The Pledgee hereby authorises, in accordance with article 3:246(4) DCC, the Pledgor to collect the Rights (other than the Receivables) and exercise all other rights referred to in paragraph (a) above with respect to the Rights (other than the Receivables) to the extent permitted under this Deed. This authorisation terminates upon the notification to the respective Debtors referred to in Schedule 1 (*Form of Notification Letter*) that this authorisation is withdrawn, which notice may only be given if an Event of Default has occurred which is continuing.

### 6.3 Collection by Pledgee of Rights

- (a) Following notification as provided in Clause 6.1 (*Notice to Debtors*) or Clause 6.2 (*Collection of Rights other than Receivables*), only the Pledgee is authorised, to the fullest extent permitted by law, to collect the Rights, to grant discharge in respect of the Rights and, to the fullest extent permitted by law, to exercise all other rights of the Pledgor in connection with the Rights (including making the Rights due and payable (*opeisbaar verklaren*)). The Pledgor waives its rights under article 3:246(4) DCC.
- (b) If the Pledgor receives any payment in respect of a Right after the Pledgee has become authorised to collect that Right it must promptly transfer to the Pledgee an amount equal to the amount received.

## 7. AUTHORITY TO REQUEST POSSESSION OF MOVABLES

The Pledgee may, if an Event of Default has occurred which is continuing, require that all or part of the Movable are brought into its possession or into the possession of a third party appointed by it for this purpose and in connection herewith the Pledgee (or its representative) is authorised to enter upon any premises where such Movable are located and to remove such Movable or have the same delivered by the Pledgor who is obliged to do so after the request of the Pledgee, to such place as the Pledgee may designate.

## 8. IMMEDIATE FORECLOSURE

### 8.1 Sale and recourse

After an Enforcement Event has occurred which is continuing, the Pledgee may, without prior notice to the Pledgor or any other person:

- (a) sell or cause the Collateral to be sold in accordance with articles 3:248 DCC et seq, provided that the articles 3:234, 3:249 and 3:252 DCC shall not apply; and
- (b) take recourse against the proceeds of the Collateral or any part thereof collected by it pursuant to Clause 6 (*Authority to Collect Rights*) in accordance with article 3:255 DCC.

### 8.2 Waivers

- (a) The Pledgor shall not be entitled to request the court to determine that the Collateral pledged pursuant hereto shall be sold in a manner deviating from the provisions of article 3:250 DCC.

(b) The Pledgor waives:

- (i) any right it may have of (first) requiring the Pledgee to proceed against or enforce any other right or security or claim payment from any person before enforcing its rights of pledge created by this Deed;
- (ii) any right to be notified by the Pledgee of the sale or of how, where or when the sale will be or was conducted (as provided for in article 3:249(1) and article 3:252 DCC; and
- (iii) to the extent possible, any other right under Dutch law aimed at protecting grantors of security for the debts of third parties, including any right pursuant to articles 3:233, 3:234, 6:139 and 6:154 DCC.

### 8.3 **Compositions**

Upon the occurrence of an Enforcement Event, the Pledgee may regarding the Collateral or any part thereof (i) enter into court compositions or out-of-court compositions (*gerechtelijke of buitengerechtelijke akkoorden*), (ii) cast a vote in connection with such compositions, and (iii) enter into any settlement agreement with any other person.

### 8.4 **Enforcement Proceeds**

The Pledgee will apply the proceeds of a sale of the Collateral or any part thereof or from having taken recourse against the Collateral or any part thereof following collection towards satisfaction of the Secured Obligations in accordance with the mandatory provisions of Dutch law and the Loan Agreement.

## 9. **NO PREJUDICE**

To the fullest extent permitted by law, (i) this Deed does not prejudice, limit or affect any right of the Pledgee under any Finance Document and (ii) the Finance Document do not prejudice, limit or affect any right of the Pledgee under this Deed.

## 10. **CONFLICT**

If there is a conflict between this Deed and the Loan Agreement, the provisions of the Loan Agreement will take priority over the provisions of this Deed, except for provisions herein which are required for establishing a right of pledge over the Collateral in accordance with Dutch law.

## 11. **TERMINATION AND RELEASE OF PLEDGE**

### 11.1 **Continuing security**

Each Right of Pledge and all obligations under this Deed shall remain in full force and effect until all Secured Obligations have been irrevocably and unconditionally paid in full and no new Secured Obligations may arise unless terminated by the Pledgee pursuant to Clause 11.2 (*Termination by notice*).

### 11.2 **Termination by notice**

Subject to any consent required by the Loan Agreement, the Pledgee may terminate (*opzeggen*) the Right of Pledge and relating obligations under this Deed in whole or in part by notice (*opzegging*) in writing to the Pledgor.

11.3 **Rights and obligations**

Upon the termination of the right of pledge by notice pursuant to Clause 11.2 (*Termination by notice*) or at any other time, the contractual rights and obligations created under this Deed may be terminated in whole or in part by the Pledgee and the Pledgor by means of a private deed (*onderhandse akte*).

11.4 **Evidence of indebtedness**

The records of the Pledgee are conclusive evidence (*dwingend bewijs*) of the existence and the amount of the Secured Obligations.

12. **TRANSFER**

12.1 **No transfers – Pledgor**

The Pledgor shall not assign or transfer any of its rights and obligations under this Deed without the prior written consent of the Pledgee.

12.2 **Transfers – Pledgee**

- (a) The Pledgee is entitled to transfer, assign or pledge all or part of its rights and/or obligations pursuant to this Deed in accordance with the relevant provisions of the Loan Agreement and the Pledgor grants its co-operation in advance within the meaning of article 6:159(1) DCC provided that (a) the Pledgor shall be responsible for reasonably and properly incurred external costs incurred in connection with such assignment or transfer and (b) such assignment or transfer shall not be made to a direct or indirect competitor of the Pledgee and (c) this Deed shall only be assigned or transferred if the Pledgor transfers all of its rights and obligations under the Secured Obligations to such third party.
- (b) If the Pledgee transfers, assigns or pledges its rights under the Secured Obligations (or a part thereof), the Rights of Pledge shall follow *pro rata parte* the transferred, assigned or pledged rights (as ancillary right (*nevenrecht*)) to the relevant transferee, assignee or pledgee.
- (c) The Pledgee is entitled to provide any transferee, assignee or pledgee or proposed transferee, assignee or pledgee with any information concerning the Pledgor and/or the Collateral.

13. **LIABILITY**

The Pledgee will not be liable vis-à-vis the Pledgor as a result of (i) any sale or collection of the Collateral (or failure to sell or collect the Collateral) by the Pledgee, (ii) any exercise of, or failure to exercise any right under this Deed, except, in each case, for any loss caused by its wilful misconduct or negligence.

14. **COSTS**

The Pledgor will in accordance with the Loan Agreement pay the Pledgee all reasonable costs, losses, claims and out-of-pocket expenses of whatever nature (including reasonable legal fees) incurred by it relating to or arising out of this Deed and any Supplemental Deed (including the entering into and registration of this deed, Clause 5.1 (*Further Assurance*) and the enforcement of or preservation of any rights under this Deed).

15. **GENERAL**

15.1 **No Rescission**

To the extent permitted by law, the Pledgor hereby waives (i) its rights under articles 6:228 and 6:265 to 6:272 DCC or any other ground under any applicable law inclusive to rescind (*ontbinden*) or nullification (*vernietiging*), or demand in legal proceedings the rescission (*ontbinding*) or nullification (*vernietiging*) of, this Deed and (ii) its rights under articles 6:52, 6:262 and 6:263 DCC or any other ground under any applicable law to suspend (*opschorten*) any obligation under or in connection with this Deed.

15.2 **Subordination of recourse and subrogation claims**

The Pledgor will not be entitled to any right by way of recourse (*regres*) or to any right or security interest of the Pledgee by way of or subrogation (*subrogatie*) in respect of this Deed. To the extent necessary, the Pledgor hereby (i) waives any entitlement to any such right of recourse or subrogation or security interest and (ii) subordinates any such right in favour of the Pledgee, to the extent possible under law such that the right of recourse or subrogation is acquired subordinated (*ontstaat achtergesteld*) and (iii), if the waiver or subordination of rights acquired by way of subrogation is not effective, undertakes to refrain from exercising the relevant right or security interest. If any amount is received by the Pledgor on account of such recourse or subrogation rights at any time when any Secured Obligation is outstanding, the Pledgor shall promptly pay an amount equal to such amount to the Pledgee to be applied in accordance with Clause 8 (*Immediate foreclosure*).

15.3 **Notices**

Any notice or other communication under or in connection with this Deed must be made in accordance with the Loan Agreement.

15.4 **Partial Invalidity**

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

15.5 **Execution and amendments**

(a) This Deed and any Supplemental Deed may be signed in any number of counterparts.

(b) This Deed may only be amended by a written deed or agreement.

15.6 **No Implied Waiver and no forfeiture**

(a) Any waiver under this Deed must be given by notice to that effect.

(b) Where a Party does not exercise any right under this Deed (which includes the granting by a Party to any of the other Parties of an extension of time in which to perform its obligations under any of these provisions), this is not deemed to constitute a forfeiture of that Party's right under this Deed (*rechtsverwerking*).

(c) The rights and remedies of the Pledgee are in addition to any other right that the Pledgee may have under Netherlands law or any other applicable law.

16. **GOVERNING LAW AND JURISDICTION**

16.1 **Governing Law**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by and construed in accordance with the laws of the Netherlands.

16.2 **Jurisdiction**

Any dispute arising out of or in connection with this Deed is to be submitted to the non-exclusive jurisdiction of the competent court in Amsterdam, the Netherlands. This Clause 16.2 (*Jurisdiction*) is for the benefit of the Pledgee only. As a result, the Pledgee shall not be prevented from taking proceedings relating to a dispute in any other courts with jurisdiction. To the extent allowed by law, the Pledgee may take concurrent proceedings in any number of jurisdictions.

16.3 **Acceptance governing law power of attorney**

If a Party is represented by an attorney in connection with the signing and/or execution of this Deed or any agreement or document pursuant to or in connection with this Deed,

- (a) the existence and extent of the authority of; and
- (b) the effects of the exercise or purported exercise of that authority by,

that attorney is governed by the law designated in the power of attorney pursuant to which that attorney is appointed and such choice of law is accepted by the other Parties.

## ANNEX 1

## OVERVIEW OF COLLATERAL

## PART I – DEBTORS

List of Bank Accounts			
Pledgor	Bank	Bank Account(s)	Contact details

None at the date of this Deed

Affimed N.V.	[•]	[•] [•] [•]	attn. : [•] address : [•] fax number : [•] email : [•]
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List of group companies other than the Pledgor	
Group company	Contact details

Affimed GmbH	attn. : Florian Fischer address : Im Neuenheimer Feld 582, 69120 Heidelberg fax number : email :
AbCheck s.r.o.	attn. : Volker Lang address : Teslova 1202/3, 30100 Plzen, Czech Republic fax number : email :
Affimed Inc.	attn. : Andrew Curtis address : 196 West Ashland St, Doylestown, PA 18901 fax number : email :

List of Insurance Agreements
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None at the date of this Deed

Insurer(s)	Broker	Description	Policy nr	Contact details
[•]	[•]	[•]	[•]	attn. : [•] address : [•] fax number : [•] email : [•]

## IP RIGHTS

"**Copyrights**" means all copyrights of the Pledgor within the meaning of the Netherlands Copyrights Act, including but not limited to:

None at the date of this Deed

Affirmed N.V.	[insert description of work(s)]
	[insert description of work(s)]

"**Database Rights**" means all rights of the Pledgor in any database within the meaning of the Netherlands Database Act, including but not limited to:

None at the date of this Deed

Affirmed N.V.	[insert description of database right(s)]
	[insert description of database right(s)]

"**Designs**" means all:

- (a) drawings and designs registered or to be registered in the name of the Pledgor with validity in the Benelux;
- (b) Community designs registered or to be registered in the name of the Pledgor;
- (c) unregistered EU designs of the Pledgor with validity in the European Union; and
- (d) to the extent not falling within any of the categories referred to above under (a), (b) and (c), international drawings and designs registered or to be registered in the name of the Pledgor with validity in the Benelux,

including, in each case, any application for the same and including but not limited to:

None at the date of this Deed

Affirmed N.V.	[insert description of drawing or design] ([BX/EU/INT])	Reg/app No(s): [●] and [●]**
	[insert description of drawing or design] ([BX/EU/INT])	Reg/app No(s): [●] and [●]**



"**Internet Domain Names**" means all rights of the Pledgor to <[●]nl> internet domain names registered or to be registered in the name of the Pledgor, including but not limited to:

None at the date of this Deed

Affirmed N.V.	<[●]nl> <[●]nl> <[●]nl>
---------------	-------------------------------

"**Licensee Rights**" means all permissions of any kind whatsoever, whether or not registered or in writing, granted or to be granted to the Pledgor by any person and entitling the Pledgor to use any intellectual property or related right owned by (or licensed to) that person in the course of the Pledgor's business, whether or not in return for any financial or other compensation, including but not limited to:

None at the date of this Deed

Affirmed N.V.	[description licence]	Licensor: [name]	dated: [date licence]
	[description licence]	Licensor: [name]	dated: [date licence]

"**Neighbouring Rights**" means, with respect to the Pledgor, all neighbouring rights of the Pledgor within the meaning of the Dutch Neighbouring Rights Act, including but not limited to:

None at the date of this Deed

Affirmed N.V.	[insert description of neighbouring right]
	[insert description of neighbouring right]

"**Patents**" means, with respect to the Pledgor, all

- (a) NL and EU patents registered or to be registered in the name of the Pledgor with validity in the Netherlands and the Netherlands Antilles; and
- (b) applications of the Pledgor for a right referred to under (a) as well as its entitlements to such rights, and/or any divisionals, continuations, continuations-in-part or the like in the Netherlands based on any of the foregoing applications, and any applications in the Netherlands claiming priority of any of the foregoing applications, and including all patents that are granted in relation to any of the foregoing applications,

including but not limited to :

Affimed N.V.	[patent(s)] ([EU/NL])	Reg/app No(s): [●] and [●]
	[patent(s)] ([EU/NL])	Reg/app No(s): [●] and [●]

None at the date of this Deed

**"Trade Marks"** means all

- (a) trade marks registered or to be registered in the name of the Pledgor with validity in the Benelux;
- (b) Community trade marks registered or to be registered in the name of the Pledgor; and
- (c) to the extent not falling within any of the categories referred to under (a) and (b), international trade marks registered or to be registered in the name of the Pledgor with validity in the Benelux,

including but not limited to:

None at the date of this Deed

Affimed N.V.	[trade mark(s)] ([BX/EU/INT])	Reg/app No(s): [●] and [●]
	[trade mark(s)] ([BX/EU/INT])	Reg/app No(s): [●] and [●]

**"Trade Names"** means all names under which the Pledgor conducts its business in the Netherlands, including but not limited to:

Affimed N.V.	Affimed N.V.
--------------	--------------

**FORM OF NOTIFICATION LETTER**

BY REGISTERED MAIL & POSTAL SERVICE CONFIRMATION OF RECEIPT

*(aangetekend met ontvangstbevestiging)*

From:  
Affimed N.V.  
Im Neuenheimer Feld 582  
D-69120 Heidelberg

Germany

To:  
[insert name of Debtor]

Address : [•]  
Fax number : [•]  
Attn. : [•]

Copy to:

Silicon Valley Bank  
3003 Tasman Drive, Santa Clara  
California 95054  
United States of America

[•] 2016

Ladies and gentlemen,

We write you in your capacity as [bank in connection with the bank account maintained by us with you under number[s] [•] and any future bank accounts that may be maintained by us with you (the "**Bank Accounts**")][debtor in our intercompany relation dated [•] and under any future intercompany relation that may come into existence between you and ourselves (the "**Intercompany Relations**")][[insurer][broker] under an insurance agreement between you and ourselves dated [•] and under any future insurance agreement that may be entered into between you and ourselves (the "**Insurance Agreements**")][licensee under a license agreement between you and ourselves dated [•] and under any future license agreement under which a licence may be granted to you by ourselves (the "**Licenses**")][licensor under a license agreement between you and ourselves dated [•] and under any future license agreement under which a licence may be granted by you to ourselves (the "**Licenses**")].

We hereby notify you of the right of pledge created under an omnibus deed of pledge (the "**Deed of Pledge**") dated [•] 2016 between, amongst others, us as pledgor and Silicon Valley Bank, as bank (the "**Pledgee**") under which we have pledged to the Pledgee all our present and future rights, claims and receivables against you including, but not limited to, the rights, claims and receivables [as these

are or will be administered from time to time in the balance of any existing or future Bank Account or otherwise] [under the Intercompany Relations] [pursuant to the Insurance Agreements] [pursuant to the Licence(s)] (the "**Pledged Rights**").

Pursuant to the Deed of Pledge, we have been granted permission to give instructions in relation to and collect and receive payment of the Pledged Rights until the Pledgee has given written notice to you stating that such permission has been withdrawn. Consequently, until receipt of such notice, you can continue to make payments to us as instructed and upon and following receipt of such notice, you are only discharged from your payments obligations if you make payments to the Pledgee as instructed by the Pledgee. In addition, you are requested to incorporate a "*special clause*" in the relevant certificate of insurance and register the right of pledge in the insurance policy with regard to the Insurance Agreements and promptly provide us and the Pledgee a copy of such certificate of insurance and insurance policy including the registration of the right of pledge.

To the extent required, this notice is a Supplemental Deed under and as defined in the Deed of Pledge and we hereby pledge the Pledged Rights to the Pledgee, on the terms and conditions of the Deed of Pledge.

We request you to sign this letter for acknowledgement and to return the same to us.

Yours sincerely,

Affimed N.V.

---

By:

Title:

We, the undersigned, acknowledge receipt of this notice of pledge, agree to be bound by the terms of this notice and confirm that we have not received a notice of another right of pledge over the Pledged Rights. In addition, we release any right of pledge, and waive (*afstand doen van*) any right of set-off (*verrekening*) and suspension of performance (*opschorting*) we may have, in respect of the [Bank Accounts][Intercompany Relations][Insurance Agreements] other than in respect of fees and costs directly related to administering the Bank Accounts until the Pledgee has notified us in writing that the [relevant] right of pledge pursuant to the Deed of Pledge has been terminated.

**FOR ACKNOWLEDGMENT:**

[*name of Debtor*]

---

By: [*name*]

Title: [*authorised representative*]

SCHEDULE 2

FORM OF SUPPLEMENTAL DEED

Silicon Valley Bank  
3003 Tasman Drive, Santa Clara  
California 95054  
United States of America

[•] 2016

Ladies and gentlemen,

Reference is made to the omnibus deed of pledge dated [*insert date*] between yourselves as Pledgee (as defined in that deed) and ourselves as pledgor (the "**Deed of Pledge**").

1. This is a Supplemental Deed and a Finance Document. Unless otherwise defined in this Supplemental Deed, words and expressions defined in the Deed of Pledge have the same meanings when used in this Supplemental Deed.
2. Pursuant to the undertaking set forth in Clause 2.1 (*Undertaking to Pledge*) of the Deed of Pledge and as security for the payment when due of the Secured Obligations, the Pledgor agrees to create and hereby grants (as the case may be (i) in advance (*bij voorbaat*) and/or (ii) by means of a third party right of pledge (*derden-pandrecht*) as referred to in article 3:231(1) DCC), in favour of the Pledgee, a right of pledge over all Receivables capable of being pledged on the date of registration of this Supplemental Deed and all rights attached to these Receivables.
3. We hold all electronic carriers, copies of invoices and/or other relevant documents, such as order and delivery receipts and contracts concerning the Receivables at your disposal.
4. With regard to the Receivables (purported to be) encumbered with a right of pledge by this Supplemental Deed, we make the representations and warranties set out in Clause 4 (*Representations and Warranties*) of the Deed of Pledge.
5. We will register this Supplemental Deed with the relevant authorities as set out in Clause 2.5 (*Perfection*) of the Deed of Pledge and provide you a copy of confirmation of receipt and of the registered deed. Without prejudice to the foregoing sentence we confirm that you are authorised to register this Supplemental Deed with the relevant authorities.
6. [The exhibit attached to this Supplemental Deed (on its face or in the document attached to it) specifies the information required by Clause 3.5 (*Information*) under (d) of the Deed of Pledge.<sup>1</sup>
7. All provisions of the Deed of Pledge (including the governing law and jurisdiction clause) apply mutatis mutandis to this Supplemental Deed.
8. The Pledgee has accepted the pledge created under this Supplemental Deed in advance in the Deed of Pledge.

<sup>1</sup> Attach exhibit manually if requested by the Pledgee

Yours faithfully,

**Affimed N.V.**

\_\_\_\_\_  
By :  
Title : authorised signatory

\_\_\_\_\_  
By :  
Title : authorised signatory

**FORM OF PLEDGE CONFIRMATION**

[Benelux Office for Intellectual Property (BOIP)  
Attn. [design register][trademark register]  
Postbus 90404  
NL-2509 LK, Den Haag, Nederland<sup>1</sup>  
[Office for Harmonisation in the Internal Market (OHIM)  
Attn. [design register][trademark register]  
Avenida de Europa, 4  
E-03008 Alicante, Spain<sup>2</sup>  
[World Intellectual Property Organisation (WIPO)  
Attn. [design register][trademark register][international bureau]  
34, chemin des Colombettes  
CH-1211 Geneva 20, Switzerland<sup>3</sup>  
[Netherlands Patent Office (Nederlands Octrooi Centrum)  
Postbus 10366  
2595 AL, Den Haag, Nederland<sup>4</sup>  
[European Patent Office (EPO)  
P.O. Box 80298, Munich, Germany<sup>5</sup>  
[Stichting Internet Domeinregistratie Nederland (SIDN)  
Postbus 5022  
6802 EA Arnhem, Nederland<sup>6</sup>

- 
- 1 use this register for registration of pledge over Benelux Designs and over Benelux Trademarks (always check whether contact details are still correct)
  - 2 use this register for registration of pledge over Community Designs and over Community Trademarks (always check whether contact details are still correct)
  - 3 use this register for registration of pledge over International Patents on the basis of the PCT system (PCT) and international Trademarks (always check whether contact details are still correct)
  - 4 use this register for registration of pledge over Dutch Patents and over European Patents for which an application has been filed with the European Patent Office (EPO) that has been accepted as a Dutch Patent registration (always check whether contact details are still correct)
  - 5 use this register for registration of pledge over European Patents as long as application for registration is still pending at the European Patent Office (EPO) (always check whether contact details are still correct)
  - 6 use this register for .nl Internet Domain Names (always check whether contact details are still correct)



Copy to:  
Silicon Valley Bank  
Attn.: [•]  
3003 Tasman Drive, Santa Clara  
California 95054  
United States of America  
Tel: [•]  
Fax: [•]

[•] 2016

Dear Sirs,

**Pledge of intellectual property rights**

We hereby inform you that pursuant to an omnibus deed of pledge dated *[insert date]* (the "**Deed of Pledge**"), a right of pledge was created by Affimed N.V. as pledgor (the "**Pledgor**") on all its present and future intellectual property rights in favour of **SILICON VALLEY BANK**, incorporated under the laws of the State of California, United States of America, with a registered address at 3003 Tasman Drive, Santa Clara, California 95054, United States of America (the "**Pledgee**").

[This is to confirm that we have intellectual property rights, particulars of which are set forth in the annex to this letter. We hereby confirm that these intellectual property rights are subject to the rights of pledge in favour of the Pledgee pursuant to the Deed of Pledge and request you kindly to have these rights of pledge recorded in your register as soon as possible.]\*

[This is to confirm that on *[insert date]* we have acquired intellectual property rights, particulars of which are set forth in the annex to this letter. We hereby confirm that these intellectual property rights are subject to the rights of pledge in favour of the Pledgee pursuant to the Deed of Pledge and request you kindly to have these rights of pledge recorded in your register as soon as possible.]\*\*\*

*\* please use this option in case of first registration of rights of pledge after signing of the Deed of Pledge*

*\*\* please use this option in case of future registration of rights of pledge after the first registration*

Yours sincerely,

Affimed N.V.

**ANNEX TO PLEDGE CONFIRMATION**

**Details of Designs**

Affirmed N.V.	[insert description of drawing or design] ([BX/EU/INT])	Reg/app No(s): [●] and [●]**
	[insert description of drawing or design] ([BX/EU/INT])	Reg/app No(s): [●] and [●]**

**Details of .nl Internet Domain Names**

Affirmed N.V.	<[●].nl> <[●].nl> <[●].nl>
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**Details of Patents**

Affirmed N.V.	[patent(s)] ([EU/NL])	Reg/app No(s): [●] and [●]
	[patent(s)] ([EU/NL])	Reg/app No(s): [●] and [●]

**Details of Trademarks**

Affirmed N.V.	[trade mark(s)] ([BX/EU/INT])	Reg/app No(s): [●] and [●]
	[trade mark(s)] ([BX/EU/INT])	Reg/app No(s): [●] and [●]

\*\* If applicable.

\*\* If applicable.

**SIGNATURES**

**THE PLEDGOR**

**Affimed N.V.**

/s/ Florian Fischer

By: Dr Florian Fischer

Title: Authorised Signatory

/s/ Jörg Windisch

By: Dr. Jörg Windisch

Title: Authorised signatory

**THE PLEDGEE**

**Silicon Valley Bank**

/s/ Nooman Haque

By: Nooman Haque

Title: Director of Life Sciences

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By:

Title:

**FOR NOTIFICATION AND ACKNOWLEDGEMENT AS DEBTORS OF INTERCOMPANY RIGHTS:**

**Affimed GmbH**

/s/ Florian Fischer

By: Dr Florian Fischer

Title: Authorised Signatory

/s/ Jörg Windisch

By: Dr. Jörg Windisch

Title: Authorised signatory

## NOTARIAL DEED

Roll of Deeds No. W 2612/2016

## Share pledge agreement

- Relating to shares in Affimed GmbH -

Recorded

at Munich, this thirtieth day of November two thousand and sixteen

– 30 November 2016 –

Before me, the undersigned

Dr. Simon Weiler

notary public

with official office in Munich (the "**Notary**") appeared today in my offices located at Pacellistraße 14, 80333 Munich, Germany, the following persons:

1. Dr Tobias Kallmaier, born 1 March 1986, attorney at law, having his business address at CMS Hasche Sigle, Partnerschaft von Rechtsanwälten und Steuerberatern mbB, Nymphenburger Straße 12, 80335 Munich, Germany, personally known to the Notary,  
declaring to make the following declarations not in his own name but, excluding any personal liability, for and on behalf of  
**Affimed N.V.**, a stock corporation formed and organized under the laws of the Netherlands, with registered seat in Amsterdam, having its business address at Im Neuenheimer Feld 582, 69120 Heidelberg and registered with the Dutch Trade Register under registration number 60673389,  
presenting a power of attorney in text form dated 28 November 2016;
  2. JUDr Zuzana Meinecke Fábry, born 6 December 1977, attorney at law, having her business address at Fieldfisher (Germany) LLP, Landsberger Straße 110, 80339 Munich, Central Tower, personally known to the Notary,  
declaring to make the following declarations not in her own name but, excluding any personal liability, for and on behalf of
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**Silicon Valley Bank**, a company organized under the laws of California, having its business address at 3003 Tasman Drive, Santa Clara, 95054, CA, USA,

presenting an original power of attorney in text from dated 29 November 2016.

Neither the Notary nor the persons appearing assume any liability as to the validity and/or the scope of the powers of attorney presented. The aforementioned original powers of attorney were presented today as pdf copies, with the promise to deliver the original of the power of attorney in due course for inclusion to his deed as certified copies.

The persons appearing stated that the parties represented by them requested that this instrument be recorded in the English language. The Notary convinced himself that the persons appearing are in adequate command of the English language and declared that he is in command of the English language as well. After having been instructed by the officiating notary, the persons appearing waived their right to obtain the assistance of a sworn interpreter.

Requesting its notarization, the persons appearing then declared the following:

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**PART I**

**SHARE PLEDGE AGREEMENT**

by and between

**Affimed N.V.,**

a stock corporation formed and organized under the laws of the Netherlands, with registered seat in Amsterdam, having its business address at Im Neuenheimer Feld 582, 69120 Heidelberg and registered with the Dutch Trade Register under registration number 60673389,

– hereinafter referred to as "**Pledgor**"–

AND

**Silicon Valley Bank**

a company organized under the laws of California, having its business address at 3003 Tasman Drive, Santa Clara, 95054, CA, USA,

– hereinafter referred to as "**Pledgee**" –

– Pledgor and Pledgee hereinafter individually referred to as "**Party**" and collectively referred to as "**Parties**" –

**Preamble**

Reference is hereby made to a certain loan arrangement by and among (a) the Pledgee and (b) Affimed GmbH, a German limited liability company, which loan arrangement is evidenced by, among other documents, a certain Loan Agreement dated 30 November 2016 between the Pledgee and Affimed GmbH (as may from time to time be further amended, modified, supplemented, or restated; hereinafter referred to as the "**Loan Agreement**"). Affimed GmbH is hereinafter also referred to as "**Borrower**".

According to the Loan Agreement, Pledgor agreed to pledge to the Pledgee as an additional security interest 100% of its shares in Affimed GmbH, a limited liability company (*Gesellschaft mit beschränkter Haftung*) organized under the laws of the Federal Republic of Germany, having its

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registered business address at Im Neuenheimer Feld 582, 69120 Heidelberg, Germany and registered with the Commercial Register (*Handelsregister*) of the local court (*Amtsgericht*) of Mannheim under registration number HRB 721206 (hereinafter referred to as the "**Company**"). The Pledgor is the sole shareholder of the Company.

In order to secure the present and future obligations and liabilities of the Borrower under the Loan Agreement vis-à-vis the Pledgee, the Pledgor agreed to provide to the Pledgee collateral by way of pledging 100% of the entire issued share capital of the Company to the Pledgee pursuant to the terms and provisions of this agreement (the "**Agreement**").

NOW, this stated above, the Parties agree on the following:

## 1. Pledged Shares, Shareholder Structure

- 1.1 The Company has a nominal share capital (*Stammkapital*) of EUR 2,079,068.-- (in words: Euros two million seventy nine thousand sixty eight) consisting of 2,079,068 shares in the nominal value of EUR 1.-- each and the serial numbers 1 to 2,079,068 (hereinafter collectively referred to as the "**Existing Shares**").
- 1.2 The Pledgor is the sole owner of the Existing Shares.

## 2. Pledge

- 2.1 The Pledgor hereby grants a first ranking pledge (*erstrangiges Pfandrecht*) to Pledgee in relation to (i) the shares in the Company with the serial numbers 1 to 2,079,068 in the nominal value of EUR 1.-- each (the "**Existing Pledged Share**") and in relation to (ii) all additional shares in the capital of the Company (irrespective of their nominal value) which the Pledgor may acquire in the future in the event of a share transfer, an increase of the share capital of the Company or otherwise (the "**Future Pledged Shares**" and, together with the Existing Pledged Share the "**Pledged Shares**") together with the ancillary rights, claims associated with the Pledged Shares and proceeds of the Pledged Shares as more particularly specified in Section 3 below (hereinafter collectively referred to as the "**Pledge**").

The Notary advised the Parties that according to the German law principle of certainty (*Be-stimmtheitsgrundsatz*) only specific shares and not a portion of shares can be pledged. With respect to the Future Pledged Shares the Parties undertake to re-execute in notarial form the Pledge once specific Future Pledged Shares have been acquired by the Pledgor (see also Section 7.10).

- 2.2 The Pledgee accepts this Pledge.
  - 2.3 The Parties agree that the Pledge shall not be affected and shall in any event encompass any and all shares of the Company's entire issued share capital even if the serial numbers or nominal values of the Existing Shares or the aggregate share capital of the Company as stated in Section 1.1 are inaccurate or deviate from the actual facts.
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### 3. Scope of the Pledge

3.1 The Pledge constituted by this Agreement includes:

- a. The present and future rights in relation to the Pledged Shares to receive (i) dividends payable, if any, for the relevant financial year or for previous years which have not been distributed and (ii) liquidation proceeds, (iii) redemption proceeds (*Einziehungsentgelt*), (iv) repaid capital in case of a capital decrease, (v) any compensation in case of termination (*Kündigung*) and/or withdrawal (*Austritt*) of a shareholder of the Company, (vi) the surplus in case of surrender (*Preisgabe*) and (vii) all other pecuniary claims associated with the Pledged Shares;
- b. the right to subscribe for newly issued shares; and
- c. all other rights and benefits attributable to the Pledged Shares.

3.2 Notwithstanding that the dividends are pledged hereunder, the Pledgor shall be entitled to receive and retain all dividend payments in cash in respect of the Pledged Shares until such time as the Pledgee is entitled to enforce the Pledge.

3.3 However, the Pledgor shall in no event be entitled to dispose of termination/withdrawal, liquidation or redemption proceeds as referred to in Section 3.1. Such payments must be remitted to the Pledgee and paid into a special account which shall be frozen or held by a trustee in favour of the Pledgee during the term of this Pledge.

### 4. Security Purpose

The Pledge according to this Agreement and any other collateral granted by the Pledgor to the Pledgee according to this Agreement shall secure all of the Borrower's present and future obligations and liabilities to the Pledgee whether actual or contingent and whether incurred jointly and/or severally and on principal or surety from time to time, including, without limitation, the obligations owed under the Loan Agreement (the "**Secured Obligations**"). The collateral granted under this Agreement shall also cover any future extension of the Secured Obligations and the Pledgor herewith agrees to such extension.

### 5. Exercise of Membership Rights

The membership rights, including the voting rights, attached to the Pledged Shares remain with the Pledgor. The Pledgor, however, shall at all times until full discharge of all Secured Obligations or the release of the Pledge exercise its membership rights, including its voting rights, in good faith to ensure that the validity and enforceability of the Pledge and the existence or value of all or part of the Pledged Shares are not in any way adversely affected, other than through dividend payments pursuant to Section 3.2 above. The Pledgor undertakes that no shareholder's resolutions are passed which constitute a breach of its obligations under Section 7 hereof.

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## 6. Enforcement of the Pledge

- 6.1 If the Borrower is in default in respect of the Secured Obligations and if the requirements set forth in Sec. 1204 *et seq.* of the German Civil Code (*Bürgerliches Gesetzbuch*) and Section 368 of the German Commercial Code (*Handelsgesetzbuch*) with regard to the enforcement of the Pledge are met (*Pfandreife*), in particular, if any of the Secured Obligations have become due and payable, then in order to enforce the Pledge, the Pledgee may at any time thereafter avail itself of all rights and remedies that a pledgee has upon default of a pledgor under the laws of the Federal Republic of Germany.
  - 6.2 The applicability of Section 1277 of the German Civil Code is expressly excluded and the Pledgee is entitled to exercise its rights without obtaining enforceable judgment or other instrument (*vollstreckbarer Titel*) by way of public auction.
  - 6.3 In the event of an enforcement by way of a public auction, the Pledgor hereby expressly agrees that five (5) business days' prior written notice to the Pledgor of the place and time of any such public auction shall be sufficient.
  - 6.4 If the Pledgee should seek to enforce the Pledge under Section 6.1 hereof, the Pledgor shall, at its own expense, render forthwith all necessary assistance in order to facilitate the prompt sale of the Pledged Shares or any part thereof and/or the exercise by the Pledgee of any other right it may have as Pledgee, in particular pass any shareholders' resolutions which become necessary or advisable in order to execute the sale of the Pledged Shares.
  - 6.5 If the Pledge is enforced, no rights of the Pledgee shall pass to the Pledgor by subrogation or otherwise unless and until all of the Secured Obligations have been satisfied and discharged in full. Until then, the Pledgee shall be entitled to treat all enforcement proceeds as additional collateral for the Secured Obligations, or to seek satisfaction from such proceeds at any time.
  - 6.6 Following satisfaction of the requirements for enforcement under Section 6.1 hereof, all subsequent dividend payments and all payments based on similar ancillary rights attributed to the Pledged Shares may be applied by the Pledgee in satisfaction in whole or in part of the Secured Obligations or treated as additional collateral.
  - 6.7 Even if the requirements for enforcement referred to under Section 6.1 above are met, the Pledgee shall not, whether as proxy or otherwise, be entitled to exercise the voting rights attached to the Pledged Shares. However, the Pledgor shall, upon occurrence of an event which allows the Pledgee to enforce the Pledge, have the obligations and the Pledgee shall have the rights set forth in Section 7.5 below regardless of which resolutions are intended to be adopted.
  - 6.8 The Pledgee may, in its sole discretion, determine which of several security interests, if applicable, shall be used to satisfy the Secured Obligations.
  - 6.9 The Pledgor hereby expressly waives all defenses of revocation (*Einrede der Anfechtbarkeit*) and set-off (*Einrede der Aufrechenbarkeit*) pursuant to Sections 770, 1211 of the German Civil Code. In the case of enforcement, Section 1225 of the German Civil Code (legal assignment of claims to a pledgor - *Forderungsübergang auf den Verpfänder*) shall not apply.
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## **7. Undertakings of the Pledgor**

During the term of this Agreement, the Pledgor undertakes to the Pledgee.

- 7.1 not to take, or participate in, any action which results or might result in the Pledgor's loss of ownership of all or part of the Pledged Shares, and any other transaction which would have the same result as a sale, transfer, encumbrance or other disposal of the Pledged Shares or which would for any other reason be inconsistent with the security interest of the Pledgee or the security purpose (as described in Section 4 hereof) or defeat, impair or circumvent the rights of the Pledgee except as permitted by the Pledgee;
  - 7.2 not to encumber, permit to subsist, create or agree to create any other security interest or third party right in or over the Pledged Shares except as set out in this Agreement;
  - 7.3 to promptly effect any payments to be made in respect of the Pledged Shares;
  - 7.4 to promptly notify the Pledgee, by notification in writing, of any change in the shareholding in or capital of the Company or any encumbrance over the Pledged Shares (or parts of them) and to agree upon any amendments of this Agreement and pass any shareholders' resolutions which become necessary or advisable as a result thereof in order to ensure the security interest of the Pledgee;
  - 7.5 to promptly inform the Pledgee, by notification in writing, of all matters concerning the Company of which the Pledgor is aware which might adversely affect the security interest of the Pledgee. In particular, the Pledgor shall notify the Pledgee, by notification in writing, forthwith of any shareholders' meeting at which a shareholders' resolution is intended to be adopted which could have an adverse effect upon the Pledge. The Pledgor shall allow, following the occurrence of any of the circumstances which permit the Pledgee to enforce the Pledge constituted hereunder in accordance with Section 6 hereof, the Pledgee or, as the case may be, its proxy or any other person designated by the Pledgee, to participate in all such shareholders' meetings of the Company as attendants without power to vote. As long as the Pledge remains in effect, the Pledgor shall provide the Pledgee with a protocol of any ordinary or extraordinary shareholders' meeting;
  - 7.6 in the event of any increase in the share capital of the Company, not to allow, without the prior written consent of the Pledgee and only upon fulfilment of the reasonable conditions prescribed by the Pledgee necessary to retain adequate collateral and ensure the security interest of the Pledgee, any other party to subscribe for any future shares if such subscription were to result in a decrease of the Pledgor's shareholding below the proportion currently held by the Pledgor, and not to defeat, impair or circumvent in any way the rights of the Pledgee created hereunder;
  - 7.7 to refrain from any acts or omissions, the purpose or effect of which is or would be the dilution of the value of the Pledged Shares, the Pledged Shares ceasing to exist or being encumbered;
  - 7.8 not to amend the articles of association of the Company to the extent that such amendment would or would be likely to adversely affect the security interest of the Pledgee created hereunder without the prior written consent of the Pledgee;
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- 7.9 insofar as additional declarations or actions are necessary for the creation of the Pledge (or any of them) in favour of the Pledgee or for the enforcement of the Pledge, the Pledgor shall make such declarations and undertake such actions at the Pledgor's costs and expenses, this also including necessary amendments of the articles of association or the passing of shareholders' resolutions; and
- 7.10 to confirm or re-execute in notarial form on the same terms contained herein and at its costs and expenses the Pledge created hereunder in order to ensure that (i) any Future Pledged Shares are sufficiently covered by the Pledge and (ii) any future pledgee shall receive the benefit of this Pledge.

## **8. Representations and Warranties**

The Pledgor represents and warrants to the Pledgee by way of an independent guarantee (*selbständiges Garantieverprechen*) that:

- 8.1 at the date hereof the Company is validly existing and neither insolvent nor subject to any composition or insolvency proceeding;
- 8.2 the statements made in the Preamble and in Section 1.1 above are true and correct;
- 8.3 it is and will be the sole legal and beneficial owner, free from encumbrances (other than the Pledge created hereunder), of the Pledged Shares and has the corporate power and authority to enter into this Agreement;
- 8.4 this Agreement constitutes its legally valid and binding obligations and the Pledge over the Existing Pledged Share and the Future Pledged Shares constituted hereunder create valid pledges which are enforceable without enforceable judgment or other instrument (*vollstreckbarer Titel*);
- 8.5 all necessary authorizations to enable or entitle the Pledgor to enter into this Agreement have been obtained and are in full force and effect and will remain in full force and effect at all times during the subsistence of the security hereby construed;
- 8.6 the Existing Pledged Share is and any Future Pledged Shares will be fully paid in and there is no nor will there be any obligation for a shareholder to make additional contributions;
- 8.7 the share capital of the Company has not been repaid in any way; all facts capable of being entered into the commercial register of the Company have been entered into the commercial register, and, in particular, no shareholders' resolutions regarding changes in the articles of association of the Company have been passed which are not yet entered into the commercial register of the Company; and
- 8.8 there are no silent partnership agreements, profit sharing or pooling agreements or similar arrangements by which a third party is entitled to a participation in the profits or revenue of the Company.
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## **9. Release (*Pfandfreigabe*)**

After the occurrence of the Pledgee being satisfied that all the Secured Obligations have been unconditionally and irrevocably repaid and discharged in full, the Pledgee will as soon as reasonably practical declare the release of the Pledge (*Pfandfreigabe*) to the Pledgor as a matter of record. For the avoidance of doubt, the Parties are aware that upon the Pledgee being satisfied that all of the Secured Obligations have been unconditionally and irrevocably repaid and discharged in full and in all other cases where those obligations cease to exist, as, for example, without limitation, in a case of a novation, due to the accessory nature of the pledge as a security (*Pfandrechtsakzessorietät*) the Pledge automatically ceases to exist by operation of German mandatory law.

## **10. Indemnity**

The Pledgee shall not be liable for any loss or damage suffered by the Pledgor save in respect of such loss or damage which is suffered as a result of gross negligence or wilful misconduct of the Pledgee or any of its directors, officers, employees, agents, attorneys or the persons representing the Bank.

## **11. Assignment**

The Pledgee shall be entitled to assign or otherwise transfer any and all of its rights and duties under this Agreement in whole or in part (if and to the extent legally permissible under German law) to third parties. The Pledgor shall not be entitled to assign or transfer its rights under this Agreement to any third party.

## **12. Continuing Security**

This Agreement shall create a continuing security and no change or amendment whatsoever in any document or agreement related to it, nor (in deviation of Section 418 German Civil Code - *BGB*) any assumption of debt (*Schuldübernahme*) in relation to the Secured Obligations, shall affect the validity or scope of this Agreement or the obligations which are imposed on the Pledgor pursuant to it.

## **13. Independence**

This Agreement is independent from any other security or guarantee which may have been or will be given to the Pledgee with respect to any obligation of the Borrower. None of such other security shall prejudice, or shall be prejudiced by this Agreement.

## **14. Costs**

All reasonable out of pocket costs, charges, fees and expenses incurred by this Agreement, including but without limitation the fees for the notarization of this Agreement, shall be borne by the Pledgor.

## **15. Final Provisions**

15.1 This Agreement contains the entire agreement between the Parties with respect to the subject matter. Any amendment or supplement to or modification of this Agreement, including this provision, shall be valid only if made in writing, except where a stricter form (e.g. notarization) is

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required under applicable law. For the avoidance of doubt, this provision also applies to a waiver of any right or claim any Party may have under this Agreement.

- 15.2 This Agreement is written in the English language. Terms to which a German translation has been added in parentheses shall be interpreted pursuant to the meaning assigned to them in German.
- 15.3 The parties assume that this Agreement is governed by and construed in accordance with the substantive laws of the Federal Republic of Germany, even if the German conflict of laws provisions should refer to another legal system. The courts of Frankfurt/Main, Germany shall have exclusive jurisdiction.
- 15.4 Should any provision of this Agreement be or become invalid, ineffective or unenforceable in whole or in part, the validity, effectiveness and enforceability of the remaining provisions shall not be affected thereby. Any such invalid, ineffective or unenforceable provision shall, to the extent permitted by law, be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of such invalid, ineffective or unenforceable provision. The aforesaid shall apply mutatis mutandis to any gap in this Agreement.

## **PART II**

### **NOTARIAL INSTRUCTIONS**

The Notary advised the persons appearing

1. that a pledge is a security instrument of strictly accessory nature (which means that it comes into legal existence only if, to the extent that, and as long as, the underlying secured claims do in fact exist, and that the owners of the secured claims and the pledgees must be identical);
  2. that there is no bona fide creation, acquisition nor ranking of a pledge of shares (which means that the pledgee is not protected if the shares purported to be pledged do not exist, have been previously transferred to a third party, or have been previously encumbered for the benefit of a third party); and
  3. that the English original version of this Agreement will not be acceptable for enforcement but will have to be translated, by a certified translator, into German for such purposes.
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### PART III

#### ISSUES, COPIES

The Pledgee receives one certified copy (beglaubigte Abschrift) and the Pledgor receives one certified copy (beglaubigte Abschrift) of this Agreement.

The Company shall receive a certified copy of this agreement. CMS Hasche Sigle Partnerschaft von Rechtsanwälten und Steuerberatern mbB, att. to Dr Tobias Kallmaier, 80335 Munich, Nymphenburger Straße 12 and Fieldfisher (Germany) LLP, Am Sandtorkai 68, 20457 Hamburg, att. to Claudia Schnurbusch, shall receive a certified copy of this Agreement.

The Agreement was read aloud by the Notary to the persons appearing, approved by them and signed in their own hand as follows:

/s/ Tobias Kallmaier /s/ Zuzana Meinecke Fábry

/s/ Simon Weiler

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## Account Pledge Agreement

*(Vereinbarung über die Verpfändung  
von Kontoguthaben)*

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BETWEEN

**Silicon Valley Bank**  
3003 Tasman Drive,  
Santa Clara  
95054, CA  
USA

– hereinafter referred to as "**Bank**" –

AND

**Affimed N.V.**  
Im Neuenheimer Feld 582  
69120 Heidelberg  
Germany

– hereinafter referred to as "**Affimed**" –

– The Bank and Affimed hereinafter individually referred to as "**Party**" and collectively referred to as "**Parties**" -

### **Preamble**

Reference is hereby made to a certain loan arrangement by and among (a) the Bank and (b) Affimed GmbH, a German limited liability company, which loan arrangement is evidenced by, among other documents, a certain Loan Agreement dated as of the date hereof between the Bank and Affimed GmbH (as may from time to time be further amended, modified, supplemented, or restated; hereinafter referred to as the "**Loan Agreement**"). Affimed GmbH is hereinafter also referred to as "**Borrower**". Affimed is the sole shareholder of Affimed GmbH.

In order to secure, *inter alia*, the assumed obligations of Affimed GmbH as a borrower under the Loan Agreement, Affimed agreed - among other securities - to provide the Bank collateral by way of pledging its German corporate bank accounts for security purposes under or pursuant to the terms and conditions of this agreement (the "**Agreement**").

NOW, this stated above, the Parties agree on the following:

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## 1. Scope of Account Pledge

### 1.1 Affirmed hereby pledges to the Bank

- all present and future credit balances, including all interest payable, from time to time standing to the credit of (i) its bank accounts currently held with Sparkasse Heidelberg, Deutsche Bank AG and Volksbank Kurpfalz H+G Bank eG (the "**Existing Account Banks**") and as further specified in the Exhibit 1 hereto and (ii) any new accounts which Affirmed may open in the future with any bank (the "**Future Account Banks**") and together with the Existing Account Banks individually each an "**Account Bank**" and collectively the "**Account Banks**"), which shall in each case include any sub-account, renewal, redesignation or replacement thereof (collectively the "**Accounts**"); and
- all rights, title and interest in and to (but not its obligations) all present and future monies owing and all rights including, in particular, termination rights (*Kündigungsrechte*) and instruction rights (*Weisungsrechte*) and any other claims related thereto or related to the underlying account relationship, in particular, without limitation, any claims credited on any of the Accounts by the Account Banks for the account of Affirmed.

### 1.2 Moreover, Affirmed assigns to the Bank all claims against each Account Bank for redemption and all ancillary rights and claims associated with the Accounts.

### 1.3 The Bank accepts the pledge of the Accounts referred to in Section 1.1 and the assignment of claims as per Section 1.2 (individually and collectively the "**Pledge**").

### 1.4 Affirmed shall bear any costs, charges and other debits incurred in connection with the management of the Accounts without any right of recourse against the Bank.

### 1.5 Immediately after signing this Agreement, Affirmed shall notify the Account Banks of the Pledge by submitting a duly signed notification letter in the form attached hereto as Exhibit 2, and shall use commercially reasonable efforts that the Account Banks confirm to the Bank in writing that they (i) have received notice of the Pledge and the irrevocable instructions as per Section 3.3 below, (ii) are not aware of any third party rights relating to the Accounts, in particular as regards any prior pledges of the Accounts of any third parties and (iii) waive their prior pledges or other security rights in relation to the Accounts which have arisen under the general terms and conditions of the Account Banks or otherwise. A draft confirmation letter to be issued by the Account Banks is attached hereto as Exhibit 3.

### 1.6 Should the Pledge require additional statements or actions, the Parties agree to make such statements and/or to take such actions without any reservation.

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## **2. Security Purpose**

The Pledge and any other collateral granted by Affimed to the Bank according to this Agreement shall secure all of the Obligations (as defined in the Loan Agreement) (the "**Secured Obligations**").

## **3. Notification of Account Balances, Right of Disposal**

3.1 No later than ten (10) Business Days (as defined in the Loan Agreement) after the end of each month Affimed shall inform the Bank of the balances on the Accounts as of the end of the month.

3.2 It is expressly agreed between Affimed and the Bank that Affimed shall have no right to exercise any of its rights and powers in respect of the Accounts without the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of the Bank, except as expressly set out herein. In particular, without limitation, during the continuation of the Pledge (i) Affimed shall have no right to withdraw any monies from or otherwise debit the Accounts and (ii) Affimed shall not have the right to close any of the Accounts. However, the Bank agrees that Affimed shall have the right to withdraw monies from or otherwise debit the Accounts in the ordinary course of business until an Enforcement Event (as defined under Section 6 below) occurs.

3.3 Affimed shall give to the Account Banks the irrevocable instruction that Affimed may only operate the Accounts and shall only have the right to withdraw monies from or otherwise debit the Accounts until the relevant Account Bank receives notice to the contrary from the Bank and that on the receipt of such revocation notice/enforcement notice the Bank may dispose over the Accounts without the prior consent of Affimed. If Affimed fails to give the irrevocable instruction as per sentence 1 to any one of the Account Banks and/or to notify the Account Banks about the Pledge as per Section 1.5 above and provide to the Bank a copy of the notification letter with the relevant Account Bank (including a fax confirmation proving that the notification letter was at least sent to the relevant Account Bank by fax) within 2 weeks after signature of this Agreement, the Bank shall also be entitled to give to each Account Bank the irrevocable instruction as per sentence 1 above and/or to notify the relevant Account Bank about the Pledge by delivering a notification letter as per Exhibit 2 on behalf of Affimed, which hereby expressly authorises, and grants an irrevocable power of attorney to the Bank to do so.

## **4. Undertakings of Affimed**

4.1 During the term of this Agreement, Affimed undertakes to inform the Bank promptly upon becoming aware of any attachments (*Pfändung*) or any enforcement of any prior contrac-

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tual pledge with respect to any of the Accounts, any part thereof or any other measures which may materially impair or jeopardise the Bank's rights or interests relating thereto.

- 4.2 In the event of it becoming aware of an attachment or any other enforcement measure in relation to the Accounts, Affirmed undertakes to forward to the Bank without undue delay a copy of the attachment order or other relevant communication, the garnishee order and all other documents necessary for a defence against the attachment or the enforcement. Affirmed shall inform the attaching creditor or the holder of the relevant contractual pledge immediately about the Bank's rights and interests in the Accounts.
- 4.3 Affirmed undertakes not to open any new bank accounts that are not listed in Exhibit 1 neither in Germany nor elsewhere unless (i) with the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of the Bank and (ii) under the proviso that the Bank will obtain a first ranking security interest over any new bank account (with the exception of any pledges existing by operation of the general terms and conditions (*Allgemeine Geschäftsbedingungen* provided that Affirmed uses commercially reasonable efforts to have such banks waive their prior pledge) of the Account Bank) according to the requirements of the applicable local laws and in each case in form and substance reasonably acceptable to the Bank.
- 4.4 Finally, Affirmed undertakes (i) not to do or cause anything which may adversely affect the Pledge or the rights of the Bank under this Agreement and (ii) to notify the Bank without undue delay of any event or circumstance which might adversely affect the validity or enforceability of the Pledge or cause an Enforcement Event (as defined in Section 6 below) to occur.

## **5. Representation and Warranties**

Affirmed hereby represents and warrants to the Bank by way of an independent guarantee statement within the meaning of Section 311 German Civil Code, that (i) it has full and unaffected title to the Accounts, (ii) the Accounts are free and clear from any encumbrances and adverse rights and claims of any third parties (except for any pledges in favour of the Account Banks which have arisen under the general terms and conditions of the Account Banks and which shall presumably be waived by the Account Banks as outlined in in Section 1.5 above), and (iii) Exhibit 1 is a true and complete list of all Accounts currently held by Affirmed with any Account Bank in Germany.

## **6. Realization ("Verwertung")**

- 6.1 The Pledge shall become enforceable upon the occurrence of the earlier of: (i) an Event of Default (as defined in the Loan Agreement) which is continuing and has not been waived by Bank or (ii) the Bank making a demand for the due payment or discharge of the Secured Obligations (or any part of them) and such demand remains unpaid (herein-
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after referred to as "**Enforcement Event**") and provided any additional requirements, if any, set forth in Section 1204 et seq. German Civil Code with regard to the enforcement of the Pledge are met (*Pfandreife*), then the Bank may at any time thereafter enforce the Pledge in accordance with applicable law.

- 6.2 Notwithstanding Section 1277 German Civil Code, the Bank is entitled to exercise its rights without obtaining enforceable judgment or other instrument (*vollstreckbarer Titel*) by way of collecting any monies standing to the credit of the Accounts directly from the Account Banks but only to the extent necessary to fully satisfy all outstanding amounts under the Secured Obligations. After complete, full, unconditional and irrevocable satisfaction and discharge of the Secured Obligations any remaining surplus shall be re-transferred to Affirmed.
- 6.3 Should the Bank seek to enforce the Pledge under this Section, Affirmed shall (i) (at its own expense), at the reasonable request of the Bank, render forthwith all necessary assistance in order to facilitate the prompt enforcement of the Pledge or any part thereof and/or the exercise by the Bank of any other rights it may have as pledgee (ii) provide all documentation on the Accounts to the Bank.
- 6.4 If the Pledge is enforced, no rights of the Bank shall pass to Affirmed by subrogation or otherwise unless and until the occurrence of all of: (a) the Secured Obligations have been unconditionally and irrevocably repaid and discharged in full and (b) Bank having no commitment or obligation to lend any further funds to the Borrower. Until then all enforcement proceeds shall serve as additional collateral and the Bank shall be entitled to seek satisfaction from such proceeds at any time.
- 6.5 Following satisfaction of the requirements for enforcement of Section 6.1, all subsequent payments and all payments based on similar ancillary rights attributed to the Accounts may be applied by the Bank in satisfaction in whole or in part of the obligations secured hereunder or serve as additional collateral.
- 6.6 The Bank may, in its sole discretion, determine which of several security interests, if applicable, shall be used to satisfy the Secured Obligations, however taking into account the legitimate interests of Affirmed.
- 6.7 Affirmed hereby expressly waives for itself all defences of revocation (*Anfechtung*) and set-off (*Aufrechnung*) pursuant to Sections 770 and 1211 German Civil Code.

## **7. Release of the Pledge**

- 7.1 After the occurrence of all of: (a) the Secured Obligations have been unconditionally and irrevocably repaid and discharged in full and (b) the Bank having no commitment or obligation to lend any further funds to the Borrower, the Bank will as soon as reasonably
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practical declare the release of the Pledge (*Pfandfreigabe*) to Affimed and the Account Bank as a matter of record. For the avoidance of doubt, the Parties are aware that upon the Bank being satisfied that all of the Secured Obligations have been unconditionally and irrevocably repaid and discharged in full and in all other cases where those obligations cease to exist, as, for example, without limitation, in a case of a novation, due to the accessory nature of the pledge as a security (*Pfandrechtsakzessorietät*) the Pledge automatically ceases to exist by operation of German mandatory law.

- 7.2 The Bank shall be obliged – even prior to the unconditional and irrevocable repayment and discharge of all the Secured Obligations – to release the Pledge and/or, at the Bank's discretion, to release any other collateral granted to the Bank by Affimed in whole or in part if and to the extent that the realizable value of all collateral permanently exceeds 110% of the value of the Secured Obligations. In case the total value of the collateral should permanently fall below the afore-mentioned threshold of 110%, Affimed shall be obliged to re-transfer such assigned Claims to the Bank or, at the Bank's discretion, provide other collateral to the Bank which had been previously released pursuant to the provisions in this paragraph to the extent necessary to cover the deficit. Affimed shall bear any and all reasonable costs incurred in connection with the release of the Pledge or of any other collateral in accordance with this Section 7.
- 7.3 The Bank undertakes to promptly release from the scope of this Agreement all current and future special accounts for the increase of the share capital (*Kapitalerhöhungssonderkonten*) of Affimed.

## **8. Indemnity**

- 8.1 The Bank shall not be liable for any loss or damage suffered by Affimed save in respect of such loss or damage which is suffered as a result of gross negligence or willful misconduct of the Bank or any of its directors, officers, employees, agents, attorneys or the persons representing the Bank.
- 8.2 Affimed shall indemnify the Bank and keep the Bank indemnified against any losses, actions, claims, expenses, demands and liabilities which is suffered or incurred by the Bank as a result of, following from, consequential to, or arising from a breach of Affimed's obligations or undertakings pursuant to this Agreement except for any losses, actions, claims, expenses, demands and liabilities which is suffered or incurred by the Bank as a result of, following from, consequential to, or arising from gross negligence or willful misconduct of the Bank or any of its directors, officers, employees, agents, attorneys or the persons representing the Bank.
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## **9. Assignment**

The Bank shall be entitled, at its own expenses and costs, to assign or otherwise transfer any and all of its rights and duties under this Agreement as well as the entire Agreement to a third party only if the Bank transfers all of its rights and obligations under the Secured Obligations to such third party. Affirmed shall not be entitled to assign or transfer its rights under this Agreement to any third party.

## **10. Continuing Security**

This Agreement shall create a continuing security and no change or amendment whatsoever in any document or agreement related to it, nor (in deviation of Section 418 German Civil Code (*BGB*)) any assumption of debt (*Schuldübernahme*) in relation to the Secured Obligations, shall affect the validity or scope of this Agreement or the obligations which are imposed on Affirmed pursuant to it.

## **11. Independence**

This Agreement is independent from any other security or guarantee which may have been or will be given to the Bank with respect to any obligation of the Borrower. None of such other security shall prejudice, or shall be prejudiced by this Agreement.

## **12. Final Provisions**

- 12.1 This Agreement (together with the Exhibits hereto) contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect thereto. In case of any discrepancies between this Agreement and the provisions of the Loan Agreement the provisions of the Loan Agreement shall – to the extent legally permissible – prevail.
  - 12.2 Any amendment or supplement to or modification of this Agreement (including the Exhibits hereto), including this provision, shall be valid only if made in writing, except where a stricter form (e.g. notarization) is required under applicable law. For the avoidance of doubt, this provision also applies to a waiver of any right or claim any Party may have under this Agreement.
  - 12.3 This Agreement is written in the English language (except that the Exhibits may be in the German language in whole or in part). Terms to which a German translation has been added in parentheses shall be interpreted pursuant to the meaning assigned to them in German.
  - 12.4 This Agreement shall be governed by and construed in accordance with the substantive laws of the Federal Republic of Germany, even if the German conflict of laws provisions
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should refer to another legal system. The courts of Frankfurt/Main, Germany shall have exclusive jurisdiction.

- 12.5 Should any provision of this Agreement be or become invalid, ineffective or unenforceable in whole or in part, the validity, effectiveness and enforceability of the remaining provisions shall not be affected thereby. Any such invalid, ineffective or unenforceable provision shall, to the extent permitted by law, be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of such invalid, ineffective or unenforceable provision. The aforesaid shall apply mutatis *mutandis* to any gap in this Agreement.

**SILICON VALLEY BANK**

**Affimed N.V.**

30 November 2016  
Place, Date

30 November 2016  
Place, Date

By: /s/ Nooman Haque  
Name: Nooman Haque  
Title: Director of Life Sciences

By: /s/ Florian Fischer  
Name: Dr. Florian Fischer  
Title: CFO

By: /s/ Jörg Windisch  
Name: Dr. Jörg Windisch  
Title: COO

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## **Exhibit 1**

- Bank Account Details Affirmed N.V.-

### **Account Bank1:**

#### Account Details:

Name of Account Owner:  
IBAN:  
BIC:

Name of Account Owner:  
IBAN:  
BIC:

Name of Account Owner:  
IBAN:  
BIC:

Name of Account Owner:  
IBAN/Reference:  
BIC:

### **Account Bank2:**

#### Account Details:

Name of Account Owner:  
IBAN:  
BIC:

Name of Account Owner:  
IBAN:  
BIC:

Name of Account Owner:  
IBAN/Reference:  
BIC:

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**Account Bank3:**

Account Details:

Name of Account Owner:

IBAN:

BIC:

Name of Account Owner:

IBAN:

BIC:

Name of Account Owner:

IBAN:

BIC:

**Account Bank4:**

Account Details:

Name of Account Owner:

Account No.:

---

**Exhibit 2**

- Notification Letter Template -

---

[Account Bank]

[Street]

[ZIP Code] [Pace]

[Country]

[Letterhead Affimed N.V.]

Per Einschreiben / By Registered Mail

[Datum/Date]

**Affimed N.V.**  
**Verpfändungsanzeige**

Sehr geehrte Damen und Herren,

hiermit zeigen wir Ihnen an, dass wir die nachfolgenden bei Ihnen geführten Bankkonten und alle damit zusammenhängenden Forderungen und Rechte gemäß eines Kontoverpfändungsvertrages vom \_\_ 2016 erstrangig an die Silicon Valley Bank, 3003 Tasman Drive, Santa Clara, CA 95054, USA ("**SVB**"), verpfändet haben ("**Verpfändungsvertrag**"):

Konto

IBAN:                    —  
BIC:                      —

Nach dem Verpfändungsvertrag sind wir berechtigt, nur solange über das vorgenannte Bankkonto zu verfügen, bis Sie eine anderslautende Mitteilung von SVB (im Folgenden der "**Pfandgläubiger**") erhalten.

Hiermit bitten wir Sie, uns sowie dem Pfandgläubiger jeweils den Erhalt dieser Verpfändungsanzeige gemäß beiliegendem Bestätigungsschreiben oder dem in Ihrem Haus verwendeten Muster schriftlich zu bestätigen.

Weiterhin bitten wir um Bestätigung gegenüber dem Pfandgläubiger, dass

**Affimed N.V.**  
**Notification of Pledge**

Dear Sir / Madam,

We hereby notify you that we pledged the following bank accounts held with you together with any and all ancillary rights and claims pursuant to an Account Pledge Agreement dated \_\_ 2016 in favor of Silicon Valley Bank, 3003 Tasman Drive, Santa Clara, CA 95054, USA ("**SVB**") by way of a first ranking pledge ("**Account Pledge Agreement**"):

Account

IBAN:                    —  
BIC:                      —

According to the Account Pledge Agreement, we may only dispose of the afore-mentioned bank account until you receive notice to the contrary from SVB (hereinafter referred to as "**Pledgee**").

Please confirm to us and to the Pledgee in writing that you have received this notification of pledge as per the attached confirmation letter or any template that you use internally.

Moreover we kindly ask you to acknowledge vis-à-vis the Pledgee that

- a) wir nur solange über die vorgenannten Bankkonten verfügen können, bis Sie eine anderslautende Mitteilung von dem Pfandgläubiger erhalten, so dass der Pfandgläubiger in diesem Fall ohne unsere Zustimmung unmittelbar über die Bankkonten verfügen und insbesondere auf etwaige Guthabenbeträge auf den Bankkonten zugreifen kann;
- b) Sie auf Ihr vorrangiges Pfandrecht gemäß Ihrer Banken-AGB sowie auf sonstige Pfand- oder Sicherungsrechte in Bezug auf unsere bei Ihnen geführten Konten verzichten bzw. zugunsten des Pfandgläubigers den Rangrücktritt erklären

sowie

- c) Sie im Übrigen keine Kenntnis von einer anderweitigen Verpfändung der Bankkonten an Dritte oder von sonstigen Rechten Dritter in Bezug auf die Bankkonten haben.

Bitte übermitteln Sie Ihre Antwortschreiben an den Pfandgläubiger zur Vermeidung etwaiger postalischer Fehlleitungen an dessen deutsche Rechtsanwälte:

Fieldfisher (Germany) LLP  
RA Dr. Florian Streiber  
Am Sandtorkai 68  
20457 Hamburg

Mit freundlichen Grüßen

- a) we may only dispose of the afore-mentioned bank accounts until you receive notice to the contrary from the Pledgee so that the Pledgee is in that event entitled to immediately dispose of the bank accounts and to make use of any funds credited to the bank accounts without our consent;

- b) you waive or subordinate your prior pledges or other security rights in relation to our bank accounts held with you in favour of the Pledgee which have arisen under your general terms and conditions or otherwise

and

- c) you are not aware of any prior pledge of the bank accounts or any other third party rights relating to the above-mentioned bank accounts.

Please submit your response letter to the Pledgee directly to its German lawyers to avoid any postal misrouting:

Fieldfisher (Germany) LLP  
Dr. Florian Streiber  
Am Sandtorkai 68  
20457 Hamburg

Yours sincerely,

**Exhibit 3**

- Confirmation Letter Template -

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Fieldfisher (Germany) LLP  
**Dr. Florian Streiber**  
Am Sandtorkai 68  
20457 Hamburg  
Deutschland

[Datum/Date]

**Verpfändung Bankkonto  
Affimed N.V.**

Sehr geehrter Herr Dr. Streiber,

hiermit bestätigen wir, dass die Affimed N.V. uns die Verpfändung ihrer bei uns geführten Konten zu Gunsten der Silicon Valley Bank angezeigt hat.

Wir haben keine Kenntnis von einer anderweitigen Verpfändung der Bankkonten an Dritte oder von sonstigen Rechten Dritter in Bezug auf die Bankkonten.

Weiterhin bestätigen wir gegenüber der Silicon Valley Bank, dass

- a) die Affimed N.V. nur solange über die bei uns geführten Bankkonten verfügen kann, bis wir eine anderslautende Mitteilung von der Silicon Valley Bank hierzu erhalten, so dass der Pfandgläubiger im Falle der Pfandreife ohne Zustimmung der Affimed N.V. unmittelbar über die Bankkonten verfügen und insbesondere auf etwaige Guthabenbeträge zugreifen kann und
- b) wir hiermit auf unser vorrangiges Pfandrecht gemäß unserer Banken-AGB sowie auf sonstige Pfand- oder Sicherungsrechte in Bezug auf die von der Affimed N.V.

**Pledge of Bank Account  
Affimed N.V.**

Dear Dr. Streiber,

We hereby confirm that Affimed N.V. notified us about the pledge of its bank accounts held with us in favour of Silicon Valley Bank.

We are not aware of any prior pledges of the bank accounts or any other third party rights relating to the bank accounts.

Moreover we hereby acknowledge vis-à-vis Silicon Valley Bank that

- a) Affimed N.V. may only dispose of the bank accounts held with us until we receive notice to the contrary from Silicon Valley Bank so that the pledgee is in an enforcement event entitled to immediately dispose of the bank accounts and to make use of any funds credited to the bank accounts without the approval of Affimed N.V.; and
- b) we hereby waive our prior pledges or other security rights in relation to the bank accounts held with us by Affimed N.V. which have arisen under our general

bei uns geführten Konten verzichten.

banking terms and conditions or otherwise.

Mit freundlichen Grüßen

Yours sincerely,

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## Account Pledge Agreement

*(Vereinbarung über die Verpfändung  
von Kontoguthaben)*

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BETWEEN

**Silicon Valley Bank**  
3003 Tasman Drive,  
Santa Clara  
95054, CA  
USA

– hereinafter referred to as "**Bank**" –

AND

**Affimed GmbH**  
Im Neuenheimer Feld 582  
69120 Heidelberg  
Germany

- registered with the Commercial Register of the local court of Mannheim under registration number HRB 721206 -

– hereinafter referred to as "**Affimed**" –

- The Bank and Affimed hereinafter individually referred to as "**Party**" and collectively referred to as "**Parties**" -

### **Preamble**

Reference is hereby made to a certain loan arrangement by and among (a) the Bank and (b) Affimed GmbH, a German limited liability company, which loan arrangement is evidenced by, among other documents, a certain Loan Agreement dated as of the date hereof between the Bank and Affimed GmbH (as may from time to time be further amended, modified, supplemented, or restated; hereinafter referred to as the "**Loan Agreement**"). Affimed is hereinafter also referred to as "**Borrower**".

In order to secure, *inter alia*, its assumed obligations as a borrower under the Loan Agreement, Affimed agreed - among other securities - to provide the Bank collateral by way of pledging its German corporate bank accounts for security purposes under or pursuant to the terms and conditions of this agreement (the "**Agreement**").

NOW, this stated above, the Parties agree on the following:

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## 1. Scope of Account Pledge

### 1.1 Affirmed hereby pledges to the Bank

- all present and future credit balances, including all interest payable, from time to time standing to the credit of (i) its bank accounts currently held with Sparkasse Heidelberg, Deutsche Bank AG and Volksbank Kurpfalz H+G Bank eG (the "**Existing Account Banks**") and as further specified in the Exhibit 1 hereto and (ii) any new accounts which Affirmed may open in the future with any bank (the "**Future Account Banks**") and together with the Existing Account Banks individually each an "**Account Bank**" and collectively the "**Account Banks**"), which shall in each case include any sub-account, renewal, redesignation or replacement thereof (collectively the "**Accounts**"); and
- all rights, title and interest in and to (but not its obligations) all present and future monies owing and all rights including, in particular, termination rights (*Kündigungsrechte*) and instruction rights (*Weisungsrechte*) and any other claims related thereto or related to the underlying account relationship, in particular, without limitation, any claims credited on any of the Accounts by the Account Banks for the account of Affirmed.

### 1.2 Moreover, Affirmed assigns to the Bank all claims against each Account Bank for redemption and all ancillary rights and claims associated with the Accounts.

### 1.3 The Bank accepts the pledge of the Accounts referred to in Section 1.1 and the assignment of claims as per Section 1.2 (individually and collectively the "**Pledge**").

### 1.4 Affirmed shall bear any costs, charges and other debits incurred in connection with the management of the Accounts without any right of recourse against the Bank.

### 1.5 Immediately after signing this Agreement, Affirmed shall notify the Account Banks of the Pledge by submitting a duly signed notification letter in the form attached hereto as Exhibit 2, and shall use commercially reasonable efforts that the Account Banks confirm to the Bank in writing that they (i) have received notice of the Pledge and the irrevocable instructions as per Section 3.3 below, (ii) are not aware of any third party rights relating to the Accounts, in particular as regards any prior pledges of the Accounts of any third parties and (iii) waive their prior pledges or other security rights in relation to the Accounts which have arisen under the general terms and conditions of the Account Banks or otherwise. A draft confirmation letter to be issued by the Account Banks is attached hereto as Exhibit 3.

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1.6 Should the Pledge require additional statements or actions, the Parties agree to make such statements and/or to take such actions without any reservation.

## **2. Security Purpose**

The Pledge and any other collateral granted by Affirmed to the Bank according to this Agreement shall secure all of the Obligations (as defined in the Loan Agreement) (the "**Secured Obligations**").

## **3. Notification of Account Balances, Right of Disposal**

3.1 No later than ten (10) Business Days (as defined in the Loan Agreement) after the end of each month Affirmed shall inform the Bank of the balances on the Accounts as of the end of the month.

3.2 It is expressly agreed between Affirmed and the Bank that Affirmed shall have no right to exercise any of its rights and powers in respect of the Accounts without the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of the Bank, except as expressly set out herein. In particular, without limitation, during the continuation of the Pledge (i) Affirmed shall have no right to withdraw any monies from or otherwise debit the Accounts and (ii) Affirmed shall not have the right to close any of the Accounts. However, the Bank agrees that Affirmed shall have the right to withdraw monies from or otherwise debit the Accounts in the ordinary course of business until an Enforcement Event (as defined under Section 6 below) occurs.

3.3 Affirmed shall give to the Account Banks the irrevocable instruction that Affirmed may only operate the Accounts and shall only have the right to withdraw monies from or otherwise debit the Accounts until the relevant Account Bank receives notice to the contrary from the Bank and that on the receipt of such revocation notice/enforcement notice the Bank may dispose over the Accounts without the prior consent of Affirmed. If Affirmed fails to give the irrevocable instruction as per sentence 1 to any one of the Account Banks and/or to notify the Account Banks about the Pledge as per Section 1.5 above and provide to the Bank a copy of the notification letter with the relevant Account Bank (including a fax confirmation proving that the notification letter was at least sent to the relevant Account Bank by fax) within 2 weeks after signature of this Agreement, the Bank shall also be entitled to give to each Account Bank the irrevocable instruction as per sentence 1 above and/or to notify the relevant Account Bank about the Pledge by delivering a notification letter as per Exhibit 2 on behalf of Affirmed, which hereby expressly authorises, and grants an irrevocable power of attorney to the Bank to do so.

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#### **4. Undertakings of Affirmed**

- 4.1 During the term of this Agreement, Affirmed undertakes to inform the Bank promptly upon becoming aware of any attachments (*Pfändung*) or any enforcement of any prior contractual pledge with respect to any of the Accounts, any part thereof or any other measures which may materially impair or jeopardise the Bank's rights or interests relating thereto.
- 4.2 In the event of it becoming aware of an attachment or any other enforcement measure in relation to the Accounts, Affirmed undertakes to forward to the Bank without undue delay a copy of the attachment order or other relevant communication, the garnishee order and all other documents necessary for a defence against the attachment or the enforcement. Affirmed shall inform the attaching creditor or the holder of the relevant contractual pledge immediately about the Bank's rights and interests in the Accounts.
- 4.3 Affirmed undertakes not to open any new bank accounts that are not listed in Exhibit 1 neither in Germany nor elsewhere unless (i) with the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of the Bank and (ii) under the proviso that the Bank will obtain a first ranking security interest over any new bank account (with the exception of any pledges existing by operation of the general terms and conditions (*Allgemeine Geschäftsbedingungen* provided that Affirmed uses commercially reasonable efforts to have such banks waive their prior pledge) of the Account Bank) according to the requirements of the applicable local laws and in each case in form and substance reasonably acceptable to the Bank.
- 4.4 Finally, Affirmed undertakes (i) not to do or cause anything which may adversely affect the Pledge or the rights of the Bank under this Agreement and (ii) to notify the Bank without undue delay of any event or circumstance which might adversely affect the validity or enforceability of the Pledge or cause an Enforcement Event (as defined in Section 6 below) to occur.

#### **5. Representation and Warranties**

Affirmed hereby represents and warrants to the Bank by way of an independent guarantee statement within the meaning of Section 311 German Civil Code, that (i) it has full and unaffected title to the Accounts, (ii) the Accounts are free and clear from any encumbrances and adverse rights and claims of any third parties (except for (a) the currently existing pledge in favour of Perceptive Credit Holdings, LP (i.e. former Account Pledge Agreement with PCOF 1, LLC dated 24 July 2014 meanwhile having been transferred from PCOF 1, LLC by Transfer Certificates, i.e. assumption of contract (*Vertragsübernahme*), dated 4 December 2014, 23 December 2015 and 27 June 2016 via Perceptive Credit Opportunities Fund, LP and PCOF Phoenix II Fund, LP to Perceptive Credit Holdings, LP, which shall be released by way of a Security Release Agreement in the course of the funding of the loan amount under the Loan Agreement) and (b) any pledges in favour of the Account Banks which have arisen under the

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general terms and conditions of the Account Banks and which shall presumably be waived by the Account Banks as outlined in in Section 1.5 above), and (iii) Exhibit 1 is a true and complete list of all Accounts currently held by Affirmed with any Account Bank in Germany.

## **6. Realization ("Verwertung")**

- 6.1 The Pledge shall become enforceable upon the occurrence of the earlier of: (i) an Event of Default (as defined in the Loan Agreement) which is continuing and has not been waived by Bank or (ii) the Bank making a demand for the due payment or discharge of the Secured Obligations (or any part of them) and such demand remains unpaid (hereinafter referred to as "**Enforcement Event**") and provided any additional requirements, if any, set forth in Section 1204 et seq. German Civil Code with regard to the enforcement of the Pledge are met (*Pfandreife*), then the Bank may at any time thereafter enforce the Pledge in accordance with applicable law.
  - 6.2 Notwithstanding Section 1277 German Civil Code, the Bank is entitled to exercise its rights without obtaining enforceable judgment or other instrument (*vollstreckbarer Titel*) by way of collecting any monies standing to the credit of the Accounts directly from the Account Banks but only to the extent necessary to fully satisfy all outstanding amounts under the Secured Obligations. After complete, full, unconditional and irrevocable satisfaction and discharge of the Secured Obligations any remaining surplus shall be re-transferred to Affirmed.
  - 6.3 Should the Bank seek to enforce the Pledge under this Section, Affirmed shall (i) (at its own expense), at the reasonable request of the Bank, render forthwith all necessary assistance in order to facilitate the prompt enforcement of the Pledge or any part thereof and/or the exercise by the Bank of any other rights it may have as pledgee (ii) provide all documentation on the Accounts to the Bank.
  - 6.4 If the Pledge is enforced, no rights of the Bank shall pass to Affirmed by subrogation or otherwise unless and until the occurrence of all of: (a) the Secured Obligations have been unconditionally and irrevocably repaid and discharged in full and (b) Bank having no commitment or obligation to lend any further funds to the Borrower. Until then all enforcement proceeds shall serve as additional collateral and the Bank shall be entitled to seek satisfaction from such proceeds at any time.
  - 6.5 Following satisfaction of the requirements for enforcement of Section 6.1, all subsequent payments and all payments based on similar ancillary rights attributed to the Accounts may be applied by the Bank in satisfaction in whole or in part of the obligations secured hereunder or serve as additional collateral.
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6.6 The Bank may, in its sole discretion, determine which of several security interests, if applicable, shall be used to satisfy the Secured Obligations, however taking into account the legitimate interests of Affirmed.

6.7 Affirmed hereby expressly waives for itself all defences of revocation (*Anfechtung*) and set-off (*Aufrechnung*) pursuant to Sections 770 and 1211 German Civil Code.

## **7. Release of the Pledge**

7.1 After the occurrence of all of: (a) the Secured Obligations have been unconditionally and irrevocably repaid and discharged in full and (b) the Bank having no commitment or obligation to lend any further funds to the Borrower, the Bank will as soon as reasonably practical declare the release of the Pledge (*Pfandfreigabe*) to Affirmed and the Account Bank as a matter of record. For the avoidance of doubt, the Parties are aware that upon the Bank being satisfied that all of the Secured Obligations have been unconditionally and irrevocably repaid and discharged in full and in all other cases where those obligations cease to exist, as, for example, without limitation, in a case of a novation, due to the accessory nature of the pledge as a security (*Pfandrechtsakzessorietät*) the Pledge automatically ceases to exist by operation of German mandatory law.

7.2 The Bank shall be obliged – even prior to the unconditional and irrevocable repayment and discharge of all the Secured Obligations – to release the Pledge and/or, at the Bank's discretion, to release any other collateral granted to the Bank by Affirmed in whole or in part if and to the extent that the realizable value of all collateral permanently exceeds 110% of the value of the Secured Obligations. In case the total value of the collateral should permanently fall below the afore-mentioned threshold of 110%, Affirmed shall be obliged to re-transfer such assigned Claims to the Bank or, at the Bank's discretion, provide other collateral to the Bank which had been previously released pursuant to the provisions in this paragraph to the extent necessary to cover the deficit. Affirmed shall bear any and all reasonable costs incurred in connection with the release of the Pledge or of any other collateral in accordance with this Section 7.

7.3 The Bank undertakes to promptly release from the scope of this Agreement all current and future special accounts for the increase of the share capital (*Kapitalerhöhungssonderkonten*) of Affirmed.

## **8. Indemnity**

8.1 The Bank shall not be liable for any loss or damage suffered by Affirmed save in respect of such loss or damage which is suffered as a result of gross negligence or willful misconduct of the Bank or any of its directors, officers, employees, agents, attorneys or the persons representing the Bank.

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8.2 Affirmed shall indemnify the Bank and keep the Bank indemnified against any losses, actions, claims, expenses, demands and liabilities which is suffered or incurred by the Bank as a result of, following from, consequential to, or arising from a breach of Affirmed's obligations or undertakings pursuant to this Agreement. except for any losses, actions, claims, expenses, demands and liabilities which is suffered or incurred by the Bank as a result of, following from, consequential to, or arising from gross negligence or willful misconduct of the Bank or any of its directors, officers, employees, agents, attorneys or the persons representing the Bank.

## **9. Assignment**

The Bank shall be entitled, at its own expenses and costs, to assign or otherwise transfer any and all of its rights and duties under this Agreement as well as the entire Agreement to a third party only if the Bank transfers all of its rights and obligations under the Secured Obligations to such third party. Affirmed shall not be entitled to assign or transfer its rights under this Agreement to any third party.

## **10. Continuing Security**

This Agreement shall create a continuing security and no change or amendment whatsoever in any document or agreement related to it, nor (in deviation of Section 418 German Civil Code (*BGB*)) any assumption of debt (*Schuldübernahme*) in relation to the Secured Obligations, shall affect the validity or scope of this Agreement or the obligations which are imposed on Affirmed pursuant to it.

## **11. Independence**

This Agreement is independent from any other security or guarantee which may have been or will be given to the Bank with respect to any obligation of the Borrower. None of such other security shall prejudice, or shall be prejudiced by this Agreement.

## **12. Final Provisions**

12.1 This Agreement (together with the Exhibits hereto) contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect thereto. In case of any discrepancies between this Agreement and the provisions of the Loan Agreement the provisions of the Loan Agreement shall – to the extent legally permissible – prevail.

12.2 Any amendment or supplement to or modification of this Agreement (including the Exhibits hereto), including this provision, shall be valid only if made in writing, except where a stricter form (e.g. notarization) is required under applicable law. For the avoidance of

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doubt, this provision also applies to a waiver of any right or claim any Party may have under this Agreement.

- 12.3 This Agreement is written in the English language (except that the Exhibits may be in the German language in whole or in part). Terms to which a German translation has been added in parentheses shall be interpreted pursuant to the meaning assigned to them in German.
- 12.4 This Agreement shall be governed by and construed in accordance with the substantive laws of the Federal Republic of Germany, even if the German conflict of laws provisions should refer to another legal system. The courts of Frankfurt/Main, Germany shall have exclusive jurisdiction.
- 12.5 Should any provision of this Agreement be or become invalid, ineffective or unenforceable in whole or in part, the validity, effectiveness and enforceability of the remaining provisions shall not be affected thereby. Any such invalid, ineffective or unenforceable provision shall, to the extent permitted by law, be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of such invalid, ineffective or unenforceable provision. The aforesaid shall apply mutatis *mutandis* to any gap in this Agreement.

**SILICON VALLEY BANK**

**Affimed GmbH**

30 November 2016

Place, Date

30 November 2016

Place, Date

By: /s/ Nooman Haque

Name: Nooman Haque

Title: Director of Life Sciences

By: /s/ Florian Fischer

Name: Dr. Florian Fischer

Title: Managing Director (*Geschäftsführer*)

By: /s/ Jörg Windisch

Name: Dr. Jörg Windisch

Title: Managing Director (*Geschäftsführer*)

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## **Exhibit 1**

- Bank Account Details Affirmed GmbH-

### **Account Bank1:**

#### Account Details:

Name of Account Owner:  
IBAN:  
BIC:

Name of Account Owner:  
IBAN:  
BIC:

Name of Account Owner:  
IBAN:  
BIC:

Name of Account Owner:  
IBAN:  
BIC:

Name of Account Owner:  
IBAN:  
BIC:

Name of Account Owner:  
IBAN:  
BIC:

Name of Account Owner:  
IBAN:  
BIC:

Name of Account Owner:  
IBAN:  
BIC:

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**Account Bank2:**

Account Details:

Name of Account Owner:

IBAN:

BIC:

Name of Account Owner:

IBAN:

BIC:

**Account Bank3:**

*Volksbank Kurpfalz H+G Bank eG  
Hauptstrasse 46  
69117 Heidelberg*

Account Details:

Name of Account Owner:

IBAN:

BIC:

Name of Account Owner:

IBAN:

BIC:

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**Exhibit 2**

- Notification Letter Template -

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[Account Bank]  
[Street]  
[ZIP Code] [Pace]  
[Country]

[Letterhead Affimed GmbH]

Per Einschreiben / By Registered Mail

[Datum/Date]

**Affimed GmbH  
Verpfändungsanzeige**

Sehr geehrte Damen und Herren,

hiermit zeigen wir Ihnen an, dass wir die nachfolgenden bei Ihnen geführten Bankkonten und alle damit zusammenhängenden Forderungen und Rechte gemäß eines Kontoverpfändungsvertrages vom \_\_ 2016 erstrangig an die Silicon Valley Bank, 3003 Tasman Drive, Santa Clara, CA 95054, USA ("**SVB**"), verpfändet haben ("**Verpfändungsvertrag**"):

Konto  
IBAN:     \_\_\_  
BIC:       \_\_\_

Nach dem Verpfändungsvertrag sind wir berechtigt, nur solange über das vorgenannte Bankkonto zu verfügen, bis Sie eine anderslautende Mitteilung von SVB (im Folgenden der "**Pfandgläubiger**") erhalten.

Hiermit bitten wir Sie, uns sowie dem Pfandgläubiger jeweils den Erhalt dieser Verpfändungsanzeige gemäß beiliegendem Bestätigungsschreiben oder dem in Ihrem Haus verwendeten Muster schriftlich zu bestätigen.

Weiterhin bitten wir um Bestätigung gegenüber dem Pfandgläubiger, dass

**Affimed GmbH  
Notification of Pledge**

Dear Sir / Madam,

We hereby notify you that we pledged the following bank accounts held with you together with any and all ancillary rights and claims pursuant to an Account Pledge Agreement dated \_\_ 2016 in favor of Silicon Valley Bank, 3003 Tasman Drive, Santa Clara, CA 95054, USA ("**SVB**") by way of a first ranking pledge ("**Account Pledge Agreement**"):

Account  
IBAN:     \_\_\_  
BIC:       \_\_\_

According to the Account Pledge Agreement, we may only dispose of the afore-mentioned bank account until you receive notice to the contrary from SVB (hereinafter referred to as "**Pledgee**").

Please confirm to us and to the Pledgee in writing that you have received this notification of pledge as per the attached confirmation letter or any template that you use internally.

Moreover we kindly ask you to acknowledge vis-à-vis the Pledgee that

a) wir nur solange über die vorgenannten Bankkonten verfügen können, bis Sie eine anderslautende Mitteilung von dem Pfandgläubiger erhalten, so dass der Pfandgläubiger in diesem Fall ohne unsere Zustimmung unmittelbar über die Bankkonten verfügen und insbesondere auf etwaige Guthabenbeträge auf den Bankkonten zugreifen kann;

b) Sie auf Ihr vorrangiges Pfandrecht gemäß Ihrer Banken-AGB sowie auf sonstige Pfand- oder Sicherungsrechte in Bezug auf unsere bei Ihnen geführten Konten verzichten bzw. zugunsten des Pfandgläubigers den Rangrücktritt erklären

sowie

c) Sie im Übrigen keine Kenntnis von einer anderweitigen Verpfändung der Bankkonten an Dritte oder von sonstigen Rechten Dritter in Bezug auf die Bankkonten haben.

Bitte übermitteln Sie Ihre Antwortschreiben an den Pfandgläubiger zur Vermeidung etwaiger postalischer Fehlleitungen an dessen deutsche Rechtsanwälte:

Fieldfisher (Germany) LLP  
RA Dr. Florian Streiber  
Am Sandtorkai 68  
20457 Hamburg

Mit freundlichen Grüßen

a) we may only dispose of the afore-mentioned bank accounts until you receive notice to the contrary from the Pledgee so that the Pledgee is in that event entitled to immediately dispose of the bank accounts and to make use of any funds credited to the bank accounts without our consent;

b) you waive or subordinate your prior pledges or other security rights in relation to our bank accounts held with you in favour of the Pledgee which have arisen under your general terms and conditions or otherwise

and

c) you are not aware of any prior pledge of the bank accounts or any other third party rights relating to the above-mentioned bank accounts.

Please submit your response letter to the Pledgee directly to its German lawyers to avoid any postal misrouting:

Fieldfisher (Germany) LLP  
Dr. Florian Streiber  
Am Sandtorkai 68  
20457 Hamburg

Yours sincerely,

**Exhibit 3**

- Confirmation Letter Template -

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Fieldfisher (Germany) LLP  
**Dr. Florian Streiber**  
Am Sandtorkai 68  
20457 Hamburg  
Deutschland

[Datum/Date]

**Verpfändung Bankkonto  
Affimed GmbH**

Sehr geehrter Herr Dr. Streiber,

hiermit bestätigen wir, dass die Affimed GmbH uns die Verpfändung ihrer bei uns geführten Konten zu Gunsten der Silicon Valley Bank angezeigt hat.

Wir haben keine Kenntnis von einer anderweitigen Verpfändung der Bankkonten an Dritte oder von sonstigen Rechten Dritter in Bezug auf die Bankkonten.

Weiterhin bestätigen wir gegenüber der Silicon Valley Bank, dass

- a) die Affimed GmbH nur solange über die bei uns geführten Bankkonten verfügen kann, bis wir eine anderslautende Mitteilung von der Silicon Valley Bank hierzu erhalten, so dass der Pfandgläubiger im Falle der Pfandreife ohne Zustimmung der Affimed GmbH unmittelbar über die Bankkonten verfügen und insbesondere auf etwaige Guthabenbeträge zugreifen kann und
- b) wir hiermit auf unser vorrangiges Pfandrecht gemäß unserer Banken-AGB sowie auf sonstige Pfand- oder Sicherungsrechte in Bezug auf die von der Affimed

**Pledge of Bank Account  
Affimed GmbH**

Dear Dr. Streiber,

We hereby confirm that Affimed GmbH notified us about the pledge of its bank accounts held with us in favour of Silicon Valley Bank.

We are not aware of any prior pledges of the bank accounts or any other third party rights relating to the bank accounts.

Moreover we hereby acknowledge vis-à-vis Silicon Valley Bank that

- a) Affimed GmbH may only dispose of the bank accounts held with us until we receive notice to the contrary from Silicon Valley Bank so that the pledgee is in an enforcement event entitled to immediately dispose of the bank accounts and to make use of any funds credited to the bank accounts without the approval of Affimed GmbH; and
- b) we hereby waive our prior pledges or other security rights in relation to the bank accounts held with us by Affimed GmbH which have arisen under our general

GmbH bei uns geführten Konten verzichten.

banking terms and conditions or otherwise.

Mit freundlichen Grüßen

Yours sincerely,

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Security Assignment Agreement  
(*Globalzession*)

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BETWEEN

**Silicon Valley Bank**  
3003 Tasman Drive,  
Santa Clara  
95054, CA  
USA

– hereinafter referred to as "**Bank**" –

AND

**Affimed GmbH**  
Im Neuenheimer Feld 582  
69120 Heidelberg  
Germany

- registered with the Commercial Register of the local court of Mannheim under registration number HRB 721206 -

– hereinafter referred to as "**Affimed**" –

– The Bank and Affimed hereinafter individually referred to as "**Party**" and collectively referred to as "**Parties**" -

### **Preamble**

Reference is hereby made to a certain loan arrangement by and among (a) the Bank and (b) Affimed GmbH, a German limited liability company, which loan arrangement is evidenced by, among other documents, a certain Loan Agreement dated as of the date hereof between the Bank and Affimed GmbH (as may from time to time be further amended, modified, supplemented, or restated; hereinafter referred to as the "**Loan Agreement**"). Affimed is also referred to as "**Borrower**".

In order to secure, *inter alia*, its assumed obligations as a borrower under the Loan Agreement, Affimed agreed - among other securities - to provide the Bank collateral by way of assigning its claims against third parties including but without limitation its current and future claims in relation to trade receivables and payment claims against insurance companies to the Bank for se-

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curity purposes under or pursuant to the terms and conditions of this agreement (the "**Agreement**").

NOW, this stated above, the Parties agree on the following:

## **1. Scope of the Security Assignment**

- 1.1 Affirmed hereby assigns to the Bank all of its present, future, contingent or unconditional claims, rights, interests (*Forderungen und Ansprüche*) and expectant rights (*Anwartschaftsrechte*) (collectively the "**Claims**"), in particular but without limitation Claims relating to (i) trade accounts receivable (*Forderungen aus Lieferungen und Leistungen*), (ii) Claims against insurance companies and (iii) Claims payable by or existing against any and all third party debtors, however with the exception of any claims in connection with any future equity financing of Affirmed, (hereinafter also referred to as the "**Assignment**"). If and to the extent that any Claims for payment against its customers have been or are to be assigned to a supplier of Affirmed as part of a customary agreement on an extended retention of title (*verlängerter Eigentumsvorbehalt*) the Assignment shall become effective only after the retention of title by the respective supplier has been lifted and its payment claims have been satisfied. The presently existing Claims shall pass over to the Bank upon execution of this Agreement and any future Claims shall pass over to the Bank on the date such assigned Claims come into existence. The Bank accepts such Assignment.
  - 1.2 The current status of the assigned Claims as of 31 October 2016 is attached hereto as Exhibit. Affirmed shall provide to the Bank no later than ten (10) Business Days (as defined in the Loan Agreement) after the end of each calendar quarter an updated list which shows all assigned Claims as of the end of the calendar quarter. The Parties agree that any and all Claims shall be assigned to the Bank under or pursuant to Section 1.1 above irrespective of whether the relevant Claim is mentioned in the list of assigned Claims or not.
  - 1.3 Any existing collateral with respect to the assigned Claims as well as all ancillary rights and rights pertaining to any surrogates for any of the assigned Claims shall also be transferred to the Bank.
  - 1.4 Provided that the Assignment according to this Section 1 requires additional statements or actions, the Parties agree to promptly make such statements and/or to take such actions without any reservation.
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## 2. Security Purpose

The Assignment and any other collateral granted by Affirmed to the Bank according to this Agreement shall secure all of the Obligations (as defined in the Loan Agreement) (the "**Secured Obligations**").

## 3. Collection of Funds

- 3.1 Subject to and without limiting the terms and conditions of the Loan Agreement and subject to Section 3.2 below, Affirmed shall remain entitled to collect the assigned Claims in its own name and for its own account in the ordinary course of business until such authorization is revoked by the Bank. The Bank may revoke such authorization at any time and at its sole discretion if an Event of Default (as defined under the Loan Agreement) has occurred which is continuing and has not been waived by Bank and may then enforce the Assignment pursuant to Section 6 below. Until such revocation the Assignment constituted hereunder will not be disclosed to any third party debtors.
- 3.2 Affirmed shall in any event only be entitled to collect the funds that are due in relation to the assigned Claims through a bank account in Germany that is pledged in favour of Bank pursuant to the terms and conditions of a separate Account Pledge Agreement or such other designated account as Bank may stipulate from time to time (the "**German Collections Account**") and shall at all times during the continuance of this Agreement get in and realise and pay into the German Collections Account all monies which Affirmed may otherwise receive in respect of the Assigned Claims that are not directly paid/transferred into the German Collections Account by the relevant account debtors.

## 4. Undertakings of Affirmed

Without limiting the provisions of the Loan Agreement, Affirmed hereby undertakes vis-à-vis the Bank:

- 4.1 to procure that all its present and future payments in respect of all assigned Claims are duly and promptly directly paid/transferred by the relevant debtor to the German Collections Account;
- 4.2 without the prior written consent of the Bank (such consent not to be unreasonably withheld, conditioned or delayed), (a) not to dispose of the assigned Claims, (b) to refrain from anything that could lead to the cessation or devaluation of an assigned Claim, and (c) not to agree on any deferment (*Stundung*), change of maturity (*Änderung des Fälligkeitszeitpunkts*), moratorium (*Stillhalteabkommen – pactum de non petendo*) or any other material amendment of the contracts underlying the assigned Claims other than in the ordinary course of business;
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- 4.3 not to assign any of the assigned Claims to a third party;
  - 4.4 not to deal with the assigned Claims or other monies in respect of them without the prior written consent of the Bank (such consent not to be unreasonably withheld, conditioned or delayed), otherwise than by getting in the same and making payments of the same into the German Collections Account;
  - 4.5 not at any time factor or discount any of the assigned Claims or enter into any agreement for such factoring or discounting;
  - 4.6 to highlight the Assignment in its books and accounting records upon the reasonable request of the Bank and to refrain from anything which could prevent third parties - who may have a legitimate interest in knowing the Assignment - from obtaining knowledge about this Assignment;
  - 4.7 to immediately notify the Bank if the Bank's rights in relation to the assigned Claims are or may be compromised or endangered by activity by a third party and to immediately provide the Bank with any and all information and documentation that the Bank requires, to take legal actions or remedy against the action taken by the relevant third party, including but without limitation any attachment orders (*Pfändungsbeschluss*), garnishee orders (*Überweisungsbeschluss*) and all other documents necessary for a defence against the attachment. Affirmed is obliged to immediately disclose to the relevant third party the existence of security rights of the Bank under this Agreement as well as to other third parties. Affirmed shall bear all costs and expenses and hold the Bank harmless for all activities of the defense connected therewith;
  - 4.8 to grant the Bank and/or its representatives access at reasonable intervals to all records and documents of Affirmed upon reasonable notice during normal business hours and to provide them with any and all information requested by the Bank and/or its representatives, in order for the Bank to be able to conduct checks in relation to the assigned Claims according to this Agreement;
  - 4.9 to inform the Bank promptly in case the value of the assigned Claims substantially changes afterwards due to complaints, reduction of prices, payment defaults or any other reason;
  - 4.10 (i) to inform the Bank promptly in case Claims governed by any US state law (hereinafter referred to as "**US Claims**") should exceed the amount of USD 750,000.00 in total, and (ii) to procure that the Bank will obtain a first ranking security interest over such US Claims according to the requirements of the applicable local laws and in each case in form and substance reasonably acceptable to the Bank.
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- 4.11 to use commercially reasonable efforts in reference to contracts with third parties not to include a regulation that would prohibit an assignment of claims under the relevant contract to the Bank according to this Agreement;
- 4.12 to use all commercially reasonable efforts to avoid any counter-claims that could create an offset or retention right of a third party in relation to an assigned Claim under this Agreement;
- 4.13 to immediately provide the Bank at its reasonable request with all (additional) information and documents which may become and/or are necessary for perfecting and/or enforcing the Assignment; and
- 4.14 to comply with any and all other obligations stated elsewhere under this Agreement.

## **5. Representation and Warranties**

Affirmed hereby represents and guarantees to the Bank by way of an independent guarantee statement according to Section 311 German Civil Code, that

- 5.1 - subject to the re-assignment of the assigned claims under / termination of the existing Global Assignment Agreement dated 28 July 2014 between Affirmed and PCOF 1, LLC (meanwhile being transferred from PCOF 1, LLC by Transfer Certificates, i.e assumption of contract (*Vertragsübernahme*), dated 4 December 2014, 23 December 2015 and 27 June 2016 via Perceptive Credit Opportunities Fund, LP and PCOF Phoenix II Fund, LP to Perceptive Credit Holdings, LP) - (i) Affirmed is the sole owner of the assigned Claims (except for an assignment under an extended retention of title), (ii) Affirmed is legally capable to freely dispose of the assigned Claims (except for Claims that are not assignable pursuant to mandatory law), and (iii) the assigned Claims are not encumbered with any third party rights (except for an assignment under an extended retention of title);
- 5.2 there are currently no existing counter-claims in relation to the assigned Claims as referred to in Section 4.11 above; and that
- 5.3 there are currently no litigation, arbitration or administrative proceedings pending, in progress or about to start in relation to the assigned Claims or which could threaten to restrain Affirmed in respect of the entry into, performance or compliance with any of its obligations under this Agreement.

## **6. Realization ("*Verwertung*")**

- 6.1 The Bank is entitled to collect (*einziehen*) the funds itself and to make use of any other collateral granted to Bank and to realize/enforce the Assignment according to the following sub-sections:
-

- 6.2 Upon the earlier of (i) the occurrence of an Event of Default (as defined in the Loan Agreement) which is continuing and has not been waived by Bank or (ii) the Bank making a demand for the due payment or discharge of the Secured Obligations (or any part of them) and such demand remains unpaid (hereinafter referred to as "**Enforcement Event**") and after the Bank has given Affirmed reasonable notice of at least ten (10) Business Days (as defined in the Loan Agreement) that the realization / enforcement of the Assignment is imminent (the "**Enforcement Notice**"), the Bank shall be entitled to
- a. take any and all steps necessary or which the Bank deems appropriate in order to make the assigned Claims due for payment, in particular by terminating contracts between Affirmed and the relevant debtor of the assigned Claim on behalf of Affirmed which hereby grants an irrevocable power of attorney to the Bank to do so;
  - b. collect all of the assigned Claims in total or in part in its (the Bank's) own name or have them collected by Affirmed on behalf of the Bank, including by bringing a suit before a court or an arbitral tribunal, initiating compulsory execution of any judgments or arbitral awards and take all other enforcement measures the Bank considers to be expedient for the collection of the assigned Claims. Affirmed shall bear all reasonable costs incurred in connection with such enforcement measures; and
  - c. make - in the Bank's reasonable discretion - arrangements with garnishees in relation to the assigned Claims, in particular to grant deferred payments, discounts or reductions or to conclude settlements; and
  - d. collect from and make use of any monies held with the German Collections Account but only to the extent necessary to fully satisfy all outstanding amounts under the Secured Obligations. After all Secured Obligations have been completely, unconditionally and irrevocably discharged in full and subject to any provisions contained in the Loan Agreement, any remaining funds standing to the credit of the German Collections Account shall be remitted by the Bank to Affirmed (or as Affirmed shall direct) unless otherwise provided for in the Loan Agreement.

The Enforcement Notice is not necessary if Affirmed has generally ceased to make payments or if an application for the institution of insolvency proceedings or similar proceedings is filed by it.

- 6.3 In case of an Enforcement Event the Bank is entitled to reclaim a copy of the contractual documentation in relation to the assigned Claims from Affirmed.
-

- 6.4 The Bank is entitled to freely choose between several assigned Claims which one to realize/utilize, however taking into account the legitimate interests of Affirmed. The Bank does not assume any obligation as regards the collection of the assigned Claims.
- 6.5 The Bank may determine which of several security interests, if applicable, shall be used to satisfy the Secured Obligations, however taking into account the legitimate interests of Affirmed.

## **7. Security Release**

- 7.1 After the occurrence of all of: (a) the Secured Obligations have been unconditionally and irrevocably repaid and discharged in full, and (b) the Bank having no commitment or obligation to lend any further funds to the Borrower, the Bank shall immediately re-transfer all assigned Claims to Affirmed and surrender all other financial collateral granted under this Agreement. The Bank shall, however, remain entitled to transfer any security to a third party, as long as it is legally obliged to do so, for example, if a guarantor has made payments to the Bank on behalf of Affirmed.
- 7.2 The Bank shall be obliged – even prior to the unconditional and irrevocable repayment and discharge of all the Secured Obligations – to re-transfer the assigned Claims and/or, at the Bank's discretion, to release any other collateral granted to the Bank by Affirmed in whole or in part if and to the extent that the realizable value of all collateral granted under this Agreement permanently exceeds 110% of the value of the Secured Obligations (plus any VAT). In case the total value of the collateral should permanently fall below the aforementioned threshold of 110%, Affirmed shall be obliged to re-transfer such assigned Claims to the Bank or, at the Bank's discretion, provide other collateral to the Bank which had been previously released pursuant to the provisions in this paragraph to the extent necessary to cover the deficit. Affirmed shall bear any and all reasonable and proven costs incurred in connection with the re-transfer of the assigned Claims or the release of any other collateral in accordance with this Section 7.
- 7.3 The realizable value of the assigned Claims corresponds to the nominal value of the assigned Claims minus a lump-sum deduction of 30% to cover a potential payment default. In case the Parties have different views of the valuation of the assigned Claims, the decision shall be made by a chartered accountant to be mutually appointed by the Parties or – if the Parties cannot agree on a person or an accounting firm – by an expert to be appointed by the Institute of Chartered Accountants in Germany (IDW), Dusseldorf. The costs of such dispute resolution shall be borne by the respective parties in accordance with section 91 et seq. of the German Code of Civil Procedure (ZPO).
- 7.4 The nominal value of the assigned Claims under the Assignment shall be the net nominal value of the assigned Claims but without taking into consideration (i) claims not assigned to the Bank because of non-assignability or consent-requirements, (ii) claims for which
-



there are off-settable counter-claims, (iii) claims which are subject to a defence, and (iv) claims which are not valid or enforceable due to any other reason.

## **8. Indemnity**

- 8.1 The Bank shall not be liable for any loss or damage suffered by Affirmed save in respect of such loss or damage which is suffered as a result of gross negligence or willful misconduct of the Bank or any of its directors, officers, employees, agents, attorneys or the persons representing the Bank.
- 8.2 Affirmed shall indemnify the Bank and keep the Bank indemnified against any losses, actions, claims, expenses, demands and liabilities which is suffered or incurred by the Bank as a result of, following from, consequential to, or arising from a breach of Affirmed's obligations or undertakings pursuant to this Agreement except for any losses, actions, claims, expenses, demands and liabilities which is suffered or incurred by the Bank as a result of, following from, consequential to, or arising from gross negligence or wilful misconduct of the Bank or any of its directors, officers, employees, agents, attorneys or the persons representing the Bank.

## **9. Assignment**

The Bank shall be entitled, at its own expenses and costs, to assign or otherwise transfer any and all of its rights and duties under this Agreement as well as the entire Agreement to a third party only if the Bank transfers all of its rights and obligations under the Secured Obligations to such third party. Affirmed shall not be entitled to assign or transfer its rights under this Agreement to any third party.

## **10. Continuing Security**

This Agreement shall create a continuing security and no change or amendment whatsoever in any document or agreement related to it, nor (in deviation of Section 418 German Civil Code (*BGB*)) any assumption of debt (*Schuldübernahme*) in relation to the Secured Obligations, shall affect the validity or scope of this Agreement or the obligations which are imposed on Affirmed pursuant to it.

## **11. Independence**

This Agreement is independent from any other security or guarantee which may have been or will be given to the Bank with respect to any obligation of the Borrower. None of such other security shall prejudice, or shall be prejudiced by this Agreement.

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## 12. Condition Precedent

This Agreement is entered into under the condition precedent (*aufschiebende Bedingung*) of the valid re-assignment of the assigned claims under / termination of the existing Global Assignment Agreement dated 28 July 2014 between Affimed and PCOF 1, LLC (meanwhile being transferred from PCOF 1, LLC by Transfer Certificates, i.e assumption of contract (*Vertragsübernahme*), dated 4 December 2014, 23 December 2015 and 27 June 2016 via Perceptive Credit Opportunities Fund, LP and PCOF Phoenix II Fund, LP to Perceptive Credit Holdings, LP).

## 13. Final Provisions

- 13.1 This Agreement (together with the Exhibit hereto) contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect thereto. In case of any discrepancies between this Agreement and the provisions of the Loan Agreement the provisions of the Loan Agreement shall – to the extent legally permissible – prevail.
  - 13.2 Any amendment or supplement to or modification of this Agreement (including the Exhibit hereto), including this provision, shall be valid only if made in writing, except where a stricter form (e.g. notarization) is required under applicable law. For the avoidance of doubt, this provision also applies to a waiver of any right or claim any Party may have under this Agreement.
  - 13.3 This Agreement is written in the English language (except that the Exhibits may be in the German language in whole or in part). Terms to which a German translation has been added in parentheses shall be interpreted pursuant to the meaning assigned to them in German.
  - 13.4 This Agreement shall be governed by and construed in accordance with the substantive laws of the Federal Republic of Germany, even if the German conflict of laws provisions should refer to another legal system. The courts of Frankfurt/Main, Germany shall have exclusive jurisdiction.
  - 13.5 Should any provision of this Agreement be or become invalid, ineffective or unenforceable in whole or in part, the validity, effectiveness and enforceability of the remaining provisions shall not be affected thereby. Any such invalid, ineffective or unenforceable provision shall, to the extent permitted by law, be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of such invalid, ineffective or unenforceable provision. The aforesaid shall apply *mutatis mutandis* to any gap in this Agreement.
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SILICON VALLEY BANK

Affirmed GmbH

30 November 2016  
Place, Date

30 November 2016  
Place, Date

By: /s/ Nooman Haque  
Name: Nooman Haque  
Title: Director of Life Sciences

By: /s/ Florian Fischer  
Name: Dr. Florian Fischer  
Title: Managing Director (*Geschäftsführer*)

By: /s/ Jörg Windisch  
Name: Dr. Jörg Windisch  
Title: Managing Director (*Geschäftsführer*)

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Security Transfer Agreement  
*(Inventory)*

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BETWEEN

**Silicon Valley Bank**  
3003 Tasman Drive,  
Santa Clara  
95054, CA  
USA

– hereinafter referred to as "**Bank**" –

AND

**Affimed GmbH**  
Im Neuenheimer Feld 582  
69120 Heidelberg  
Germany

- registered with the Commercial Register of the local court of Mannheim under registration number HRB 721206 -

– hereinafter referred to as "**Affimed**" –

– The Bank and Affimed hereinafter individually referred to as "**Party**" and collectively referred to as "**Parties**" -

### **Preamble**

Reference is hereby made to a certain loan arrangement by and among (a) the Bank and (b) Affimed GmbH, a German limited liability company, which loan arrangement is evidenced by, among other documents, a certain Loan Agreement dated as of the date hereof between the Bank and Affimed GmbH (as may from time to time be further amended, modified, supplemented, or restated; hereinafter referred to as the "**Loan Agreement**"). Affimed is hereinafter also referred to as "**Borrower**".

In order to secure, *inter alia*, its assumed obligations as a borrower under the Loan Agreement, Affimed agreed - among other securities - to provide to the Bank collateral by way of transferring / assigning its title in relation to its laboratory equipment, inventory, goods and warehouse stock to the Bank for security purposes pursuant to the terms and conditions of this agreement (the "**Agreement**").

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NOW, this stated above, the Parties agree on the following:

**1. Transfer of Title and Scope of the Security Assignment/Transfer**

- 1.1 Affirmed hereby assigns/transfers (*übereignet*) to the Bank its title and ownership relating to all of its present and future laboratory equipment, inventory, stock, goods, warehouse holding as well as any other material, office equipment, products and merchandise which are currently and will be in the future located at its business premises at Im Neuenheimer Feld 582, 69120 Heidelberg, Germany and located more specifically in the exact area as highlighted in Exhibit 1 (Territory Map - *Lageplan*) (hereinafter also referred to as the "**Assignment**"). The Bank accepts such Assignment. The assets assigned/transferred to the Bank pursuant to this Section 1.1 are hereinafter collectively referred to as the "**Assets**" and the business premises as further specified in sentence one and Exhibit 1 are hereinafter referred to as the "**Security Area**".
  - 1.2 The Assets currently located within the Security Area are assigned/transferred (*übereignet*) to the Bank upon execution of this Agreement. Moreover, the Parties agree that the title/ownership of any future Asset will be assigned / transferred to the Bank as soon as such Asset will be brought into the Security Area. The Assignment relates to and/or covers both full ownership as well as any potential co-ownership (*Miteigentum*) in relation to the Assets, as applicable.
  - 1.3 The current status of the assigned Assets as of 31 October 2016 – including an indication of the relevant values - is attached hereto as Exhibit 2 ("**Inventory List**"). Affirmed shall provide to the Bank no later than ten (10) Business Days (as defined in the Loan Agreement) after the end of each calendar quarter an updated Inventory List which shows all assigned Assets as of the end of the calendar quarter. The Parties agree for the avoidance of doubt that any and all Assets shall be assigned/transferred to the Bank under or pursuant to Section 1.1 above irrespective of whether the relevant Asset is mentioned in the Inventory List or not.
  - 1.4 If Affirmed has acquired or will acquire the Assets under certain conditions or under retention of title (*Eigentumsvorbehalt*), Affirmed hereby assigns any and all present and future expectancy rights (*Anwartschaftsrechte*). Finally, any existing and future collateral with respect to the assigned Assets as well as all ancillary rights and/or claims (in particular but without limitation claims in connection with a loss or damage of the Assets against insurance companies or other third parties) and rights pertaining to any surrogates for any of the assigned Assets shall also be transferred to the Bank. The Bank accepts the assignment of any expectancy rights or ancillary rights or claims pursuant to this Section 1.4.
  - 1.5 In order to replace the delivery (*Übergabe*) of the current and future Assets to the Bank Affirmed hereby assigns to the Bank its present and future claims for delivery of the
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current and future Assets (*Herausgabeansprüche*) against any third parties who are or will be in immediate possession (*unmittelbarer Besitz*) of the Assets. The Bank accepts such assignment. If Affirmed should obtain immediate possession of any current or future Assets (*unmittelbarer Besitz*), the Parties agree that the relevant Assets shall be stored by Affirmed at no charge (*unentgeltliche Verwahrung*) in favour and in the interest of the Bank in order to replace the delivery required under German law.

- 1.6 The Bank acknowledges the existence of Technologiepark Heidelberg II GmbH & Co. KG's first ranking statutory lien (*Vermieterpfandrecht*) on the Assets.
- 1.7 Provided that the Assignment of the Assets according to this Section 1 requires additional statements or actions, the Parties agree to promptly make such statements and/or to take such actions without any reservation.

## **2. Security Purpose**

The Assignment and any other collateral granted by Affirmed to the Bank according to this Agreement shall secure all of the Obligations (as defined in the Loan Agreement) (the "**Secured Obligations**").

## **3. Disposition Rights over the Assets (*Verfügungen über das Sicherungsgut*), Labeling of the Assets**

- 3.1 Subject to and without limiting the terms and conditions of the Loan Agreement, Affirmed shall remain entitled to dispose over the Assets in the ordinary course of business and to sell and transfer the Assets until such right of disposal (*Verfügungsberechtigung*) is revoked by the Bank. The Bank may revoke such right of disposal at any time and at its sole discretion if the requirements pursuant to Section 6 below are met.
- 3.2 In case the right of disposal is revoked by the Bank pursuant to Section 3.1 above, Affirmed shall be required at the Bank's request to either keep the Assets stored in the Security Area at its (Affirmed's) costs or to release the Assets to the Bank (*Herausgabe*) pursuant to Section 6 below. Moreover, the Bank may require and Affirmed shall procure that – to the extent reasonably practical and feasible – the Assignment will then be labelled to the Assets in order to disclose to third parties that the Assets have been assigned to the Bank for security purposes and that the Bank is the owner of the Assets.

## **4. Undertakings of Affirmed**

Without limiting the provisions of the Loan Agreement, Affirmed hereby undertakes vis-à-vis the Bank:

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- 4.1 not to (i) dispose of the Assets or (ii) remove or have removed the Assets out of the Security Area unless this is done in the ordinary course of business pursuant to Section 3.1 above or with the prior written consent of the Bank;
  - 4.2 not to use any other warehouse, storage place, logistic provider or stockholder (*Lagerhalter*) not mentioned in Section 1.1 to store any current or future Assets without the prior written consent of the Bank (such consent not to be unreasonably withheld, conditioned or delayed);
  - 4.3 to carefully store the Assets at all times and to keep the Assets at all times adequately insured against loss or damage or against any other risk which may reasonably be required by the Bank;
  - 4.4 to promptly pay any outstanding purchase prices to sellers or suppliers in relation to the Assets if the Assets were purchased under retention of title or under the condition of the payment of the purchase price or to otherwise procure that any retention of title will lapse without undue delay (*unverzüglich*); the Parties agree for the avoidance of doubt that the Bank may at all times pay and discharge any outstanding purchase prices or liabilities owed to sellers or suppliers of Affirmed at the costs (to the extent such costs are reasonable and proven) of Affirmed in order to obtain the ownership in the relevant Assets; subject to such payment by the Bank Affirmed hereby assigns to the Bank all of its present and future claims and rights under the relevant sales contracts it has against its sellers or suppliers, the Bank accepts such assignment;
  - 4.5 to highlight the Assignment in its books and accounting records upon the request of the Bank and to refrain from anything which could prevent third parties - who may have a legitimate interest in knowing the Assignment - from obtaining knowledge about this security Assignment;
  - 4.6 to immediately notify the Bank if the Bank's rights in relation to the Assets are compromised or endangered by activity by a third party and to immediately provide the Bank with any and all information and documentation that the Bank requires to take legal actions or remedy against the action taken by the relevant third party, including but without limitation any actions in connection with a compulsory enforcement (*Zwangsvollstreckung*) and all other documents necessary for a defence against such action or compulsory enforcement. Affirmed is obliged to immediately disclose to the relevant third party the existence of security rights of the Bank under this Agreement to the relevant creditor and other third parties. Affirmed shall bear all reasonable and proven costs and out-of-pocket expenses and hold the Bank harmless for all activities of the defense connected therewith;
  - 4.7 to grant the Bank and/or its representatives access to the Assets or procure that such access will be granted during normal business hours in order for the Bank to be able to (i) conduct checks in relation to the Assets or (ii) to take any other actions to secure the val-
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ue of the Assets and to provide the Bank and/or its representatives in each case with any and all information requested by them; Affirmed hereby grants an irrevocable power of attorney to the Bank to exercise any and all rights in the name of Affirmed against the relevant stockholder or third party who is in possession of the Assets to get access to and/or take possession of the Assets;

- 4.8 to provide to the Bank at its request with all information, records and documents in relation to the Assets, in particular but without limitation information, records and documents contained in any inventory control/management systems or information relating to cases of damages or the value of the Assets;
- 4.9 to promptly make all due payments to Technologiepark Heidelberg II GmbH & Co. KG or stockholders regarding any rent or fee for the stocking of the Assets unless such payments are contested by Affirmed in good faith and to provide the Bank at its reasonable request with sufficient proof of the relevant payments; the Parties agree for the avoidance of doubt that the Bank may at all times make any outstanding payments to landlords or stockholders of Affirmed at the costs of Affirmed in order to avoid any statutory or contractual lien in relation to the Assets in favour of those third parties;
- 4.10 to immediately provide the Bank at its request with all (additional) information and documents which may become and/or are necessary for perfecting and/or enforcing the Assignment; and
- 4.11 to comply with any and all other obligations stated elsewhere under this Agreement.

## **5. Representation and Warranties**

Affirmed hereby represents and guarantees to the Bank by way of an independent guarantee statement according to Section 311 German Civil Code, that

- 5.1 – subject to the re-transfer of title under / termination of the existing Security Transfer Agreement dated 28 July 2014 between Affirmed and PCOF 1, LLC (meanwhile being transferred from PCOF 1, LLC by Transfer Certificates, i.e. assumption of contract (*Vertragsübernahme*), dated 4 December 2014, 23 December 2015 and 27 June 2016 via Perceptive Credit Opportunities Fund, LP and PCOF Phoenix II Fund, LP to Perceptive Credit Holdings, LP) – (i) Affirmed is (or will be upon the payment of the purchase price to the relevant sellers or suppliers) the sole owner of the Assets, (ii) Affirmed is legally capable to freely dispose of the Assets, and (iii) the Assets are not encumbered with any third party rights (except for any encumbrances pursuant to statutory creditor rights such as a statutory lien in favour of the landlord and/or stockholder);
  - 5.2 unless with the prior written approval of the Bank none of the products or merchandise sold or to be sold in the future by Affirmed to its customers is or will be located at or held
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by any other warehouse, storage place, logistic provider or stockholder (*Lagerhalter*) not mentioned in Section 1.1 (it being understood that this shall not apply to any current and future products of Affirmed to be provided to cooperation partners); and

5.3 there are currently no litigation, arbitration or administrative proceedings pending, in progress or about to start in relation to the Assets or which could threaten to restrain Affirmed in respect of the entry into, performance or compliance with any of its obligations under this Agreement.

## **6. Release of the Assets (*Herausgabe*)**

6.1 The Bank is entitled to secure its legitimate interests and to revoke the right of disposal pursuant to Section 3 and to require the release of the Assets (*Herausgabe*) without any prior notice if any of the following occurs:

- a. Affirmed is not disposing over the Assets in the ordinary course of business;
- b. Affirmed is not carefully treating the Assets or is obviously acting against the legitimate interests of the Bank for example by damaging the Assets or by selling the Assets at dumping prices;
- c. Affirmed has generally ceased to make payments or if an application for the opening of insolvency proceedings or similar proceedings is filed by it; or
- d. an Enforcement Event (as defined under Section 7 below) occurs.

6.2 If the Bank is entitled to ask for the release of the Assets (*Herausgabe*) the Bank may take any and all steps necessary or which the Bank deems appropriate in order to get immediate possession of the Assets, in particular by terminating contracts between Affirmed and the relevant landlord or stockholder (*Lagerhalter*) on behalf of Affirmed which hereby grants an irrevocable power of attorney to the Bank to do so.

## **7. Realization ("*Verwertung*")**

7.1 The Bank is entitled to realize/enforce the Assignment according to the following sub-sections:

7.2 Upon the earlier of (i) the occurrence of an Event of Default (as defined in the Loan Agreement) which is continuing and has not been waived by the Bank or (ii) the Bank making a demand for the due payment or discharge of the Secured Obligations (or any part of them) and such demand remains unpaid (hereinafter referred to as "**Enforcement Event**") and after the Bank has given Affirmed reasonable notice of at least ten (10) Busi-

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ness Days (as defined in the Loan Agreement) that the realization / enforcement of the Assignment is imminent (the "**Enforcement Notice**"), the Bank shall be entitled to

- a. take any and all steps necessary or which the Bank deems appropriate in order to prepare the sale of the Assets or any other way of realization of the Assignment; however, the Parties agree that the Bank does not assume any obligation as regards the sale of the Assets;
- b. require Affirmed to provide to the Bank any documents in relation to the Assets;
- c. sell the Assets in total or in part either in its own name or in the name of Affirmed;
- d. require Affirmed to assist in any way in the sale of the Assets and/or to conduct the sale on the account of the Bank; and
- e. make – in the Bank's sole discretion – arrangements with garnishees in relation to the Assets, in particular to grant deferred payments, discounts or reductions or to conclude settlements on behalf of Affirmed.

The Enforcement Notice is not necessary if Affirmed has ceased to make payments or if an application for the institution of insolvency proceedings or similar proceedings is filed by or against it.

- 7.3 The Bank is at all times entitled to reclaim complete records and documentation of the Assets from Affirmed.
  - 7.4 The Bank is entitled to freely choose between several Assets which one to realize/utilize but only to the extent necessary to fully satisfy all outstanding amounts under the Secured Obligations and taking into account the legitimate interests of Affirmed. Affirmed shall bear all reasonable and proven costs incurred in connection with the enforcement or realization of the Assignment.
  - 7.5 Any proceeds of the realization of the Assignment shall – after payment of any applicable VAT – be used to cover any costs of the Bank incurred in connection with the enforcement of the Assignment and to discharge the Secured Obligations. Any remaining surplus shall be paid to Affirmed.
  - 7.6 The Bank may determine which of several security interests, if applicable, shall be used to satisfy the Secured Obligations, however taking into account the legitimate interests of Affirmed.
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## **8. Security Release**

- 9.1 After the occurrence of all of: (a) the Secured Obligations have been unconditionally and irrevocably repaid and discharged in full and (b) the Bank having no commitment or obligation to lend any further funds to the Borrower, the Bank shall immediately re-transfer all Assets to Affirmed and surrender all other financial collateral granted under this Agreement. The Bank shall, however, remain entitled to transfer any security to a third party, as long as it is legally obliged to do so, for example, if a guarantor has made payments to the Bank on behalf of Affirmed.
- 9.2 The Bank shall be obliged – even prior to the unconditional and irrevocable repayment and discharge of all the Secured Obligations – to partially re-transfer the Assets and/or, at the Bank's discretion, to release any other collateral granted to the Bank by Affirmed according to this Agreement in whole or in part if and to the extent that the realizable value of all collateral permanently exceeds 110% of the value of the Secured Obligations (plus any VAT). In case the total value of the collateral should permanently fall below the aforementioned threshold of 110%, Affirmed shall be obliged to re-transfer such assigned Claims to the Bank or, at the Bank's discretion, provide other collateral to the Bank which had been previously released pursuant to the provisions in this paragraph to the extent necessary to cover the deficit. Affirmed shall bear any and all reasonable and proven costs incurred in connection with the re-transfer of the Assets or the release of any other collateral in accordance with this Section 8.
- 9.3 The realizable value of the Assets corresponds to the retail price (*Verkaufspreis*) which the Bank could realize in case of a potential insolvency of Affirmed or – if such retail price is indeterminate – the wholesale price (*Einkaufspreis*) of the Assets in each case minus (i) a lump-sum deduction of 30% to cover a reduction due to a forced sale and (ii) the value of which the Assets are encumbered by any outstanding third party rights in relation to existing or potential claims asserted by landlords, stockholders, sellers and/or suppliers. In case the Parties have different views of the valuation of the assigned claims, the decision shall be made by a chartered accountant to be mutually appointed by the Parties or – if the Parties cannot agree on a person or an accounting firm – by an expert to be appointed by the Institute of Chartered Accountants in Germany (IDW), Dusseldorf. The costs of such dispute resolution shall be borne by the respective parties in accordance with section 91 et seq. of the German Code of Civil Procedure (ZPO).

## **9. Indemnity**

- 9.1 The Bank shall not be liable for any loss or damage suffered by Affirmed save in respect of such loss or damage which is suffered as a result of gross negligence or willful misconduct of the Bank or any of its directors, officers, employees, agents, attorneys or the persons representing the Bank.
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9.2 Affirmed shall indemnify the Bank and keep the Bank indemnified against any losses, actions, claims, expenses, demands and liabilities which is suffered or incurred by the Bank as a result of, following from, consequential to, or arising from a breach of Affirmed's obligations or undertakings pursuant to this Agreement except for any losses, actions, claims, expenses, demands and liabilities which is suffered or incurred by the Bank as a result of, following from, consequential to, or arising from gross negligence or willful misconduct of the Bank or any of its directors, officers, employees, agents, attorneys or the persons representing the Bank.

## **10. Assignment**

The Bank shall be entitled to assign or otherwise transfer any and all of its rights and duties under this Agreement as well as the entire Agreement to a third party to the extent that the Bank transfers its rights under the Secured Obligations to such third party. Affirmed shall not be entitled to assign or transfer its rights under this Agreement to any third party.

## **11. Continuing Security**

This Agreement shall create a continuing security and no change or amendment whatsoever in any document or agreement related to it, nor (in deviation of Section 418 German Civil Code (*BGB*)) any assumption of debt (*Schuldübernahme*) in relation to the Secured Obligations, shall affect the validity or scope of this Agreement or the obligations which are imposed on Affirmed pursuant to it.

## **12. Condition Precedent**

This Agreement is entered into under the condition precedent (*aufschiebende Bedingung*) of the valid re-transfer of title under / termination of the existing Security Transfer Agreement dated 28 July 2014 between Affirmed and PCOF 1, LLC (meanwhile being transferred from PCOF 1, LLC by Transfer Certificates, i.e. assumption of contract (*Vertragsübernahme*), dated 4 December 2014, 23 December 2015 and 27 June 2016 via Perceptive Credit Opportunities Fund, LP and PCOF Phoenix II Fund, LP to Perceptive Credit Holdings, LP).

## **13. Independence**

This Agreement is independent from any other security or guarantee which may have been or will be given to the Bank with respect to any obligation of the Borrower. None of such other security shall prejudice, or shall be prejudiced by this Agreement.

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#### 14. Final Provisions

- 14.1 This Agreement (together with the Exhibits hereto) contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect thereto. In case of any discrepancies between this Agreement and the provisions of the Loan Agreement the provisions of the Loan Agreement shall – to the extent legally permissible – prevail.
- 14.2 Any amendment or supplement to or modification of this Agreement (including the Exhibits hereto), including this provision, shall be valid only if made in writing, except where a stricter form (e.g. notarization) is required under applicable law. For the avoidance of doubt, this provision also applies to a waiver of any right or claim any Party may have under this Agreement.
- 14.3 This Agreement is written in the English language (except that the Exhibits may be in the German language in whole or in part). Terms to which a German translation has been added in parentheses shall be interpreted pursuant to the meaning assigned to them in German.
- 14.4 This Agreement shall be governed by and construed in accordance with the substantive laws of the Federal Republic of Germany, even if the German conflict of laws provisions should refer to another legal system. The courts of Frankfurt/Main, Germany shall have exclusive jurisdiction.
- 14.5 Should any provision of this Agreement be or become invalid, ineffective or unenforceable in whole or in part, the validity, effectiveness and enforceability of the remaining provisions shall not be affected thereby. Any such invalid, ineffective or unenforceable provision shall, to the extent permitted by law, be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of such invalid, ineffective or unenforceable provision. The aforesaid shall apply *mutatis mutandis* to any gap in this Agreement.
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30 November 2016  
Place, Date

30 November 2016  
Place, Date

By: /s/ Nooman Haque  
Name: Nooman Haque  
Title: Director of Life Sciences

By: /s/ Florian Fischer  
Name: Dr. Florian Fischer  
Title: Managing Director (*Geschäftsführer*)

By: /s/ Jörg Windisch  
Name: Dr. Jörg Windisch  
Title: Managing Director (*Geschäftsführer*)

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**Exhibit 1**

- Territory Map (*Lageplan*) -

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TECHNOPARK HEIDELBERG  
- BIOPARK -

3. BAUABSCHNITT

Anlage 1  
5. Seite

LAGEPLAN M: 1:1500

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49115 HEIDELBERG, VANGENOWSTRASSE 14  
TEL. 06221 / 402313 FAX: 06221 / 146547  
eMail: Architekt@kuhlmann-tral-gilling.de

POSTLEITZ.	PROJEKTION	PROJ.-NR.
0203000	0005000	18



**Exhibit 2**

- Inventory List -

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