

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

Amendment No. 3
to
FORM S-1
REGISTRATION STATEMENT
under
THE SECURITIES ACT OF 1933

ZOSANO PHARMA CORPORATION

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

2834
(Primary Standard Industrial
Classification Code No.)

45-4488360
(I.R.S. Employer
Identification No.)

34790 Ardentech Court
Fremont, California 94555
(510) 745-1200

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Vikram Lamba
President and Chief Executive Officer
34790 Ardentech Court
Fremont, California 94555
(510) 745-1200

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Robert W. Sweet, Jr., Esq.
Jeffrey L. Quillen, Esq.
Foley Hoag LLP
Seaport West
155 Seaport Boulevard
Boston, Massachusetts 02110
(617) 832-1000

John D. Hogoboom, Esq.
Lowenstein Sandler LLP
1251 Avenue of the Americas
New York, New York 10020
(212) 262-6700

Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement is declared effective.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act") please check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This Amendment No. 3 to Registration Statement on Form S-1 is being filed solely for the purpose of amending Item 16 of “Part II—Information Not Required in Prospectus” and the related Exhibit Index, and filing Exhibits 1.1, 4.1 and 24.2 and refiling an amended version of Exhibit 21.1.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table indicates the expenses to be incurred in connection with this offering described in this Registration Statement, other than underwriting discounts and commissions, all of which will be paid by us. All amounts are estimated except the Securities and Exchange Commission registration fee and the FINRA filing fee.

| | <u>Amount</u> |
|---|---------------------|
| Securities and Exchange Commission registration fee | \$ 11,376 |
| FINRA filing fee | 13,748 |
| NASDAQ Global Market listing fee | 125,000 |
| Accountants’ fees and expenses | 80,000 |
| Legal fees and expenses | 1,000,000 |
| Transfer agent’s fees and expenses | 10,000 |
| Blue Sky fees and expenses | 12,500 |
| Printing and engraving expenses | 250,000 |
| Miscellaneous | 97,376 |
| Total Expenses | <u>\$ 1,600,000</u> |

Item 14. Indemnification of Directors and Officers.

Section 102 of the Delaware General Corporation Law permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. Upon the closing of this offering, our certificate of incorporation will provide that none of our directors shall be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duty as director, notwithstanding any provision of law imposing such liability, except to the extent that the Delaware General Corporation Law prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty.

Section 145 of the Delaware General Corporation Law provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he is or is threatened to be made a party by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and, in any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Upon the closing of this offering, our amended and restated bylaws will provide that we will indemnify each person who was or is a party or threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding by reason of the fact that he or she is or was a director or officer of Zosano Pharma Corporation, or is or was serving at our request as a director or officer of another corporation, partnership, joint venture, trust or other enterprise to the fullest extent permitted by the Delaware General Corporation Law. Upon the closing of this offering, our amended and restated bylaws will provide that expenses must be advanced to these indemnitees under certain circumstances.

The indemnification provisions contained in our amended and restated bylaws that will be effective as of the closing of this offering are not exclusive. In addition, we have entered into indemnification agreements with each of our directors. Each indemnification agreement provides that we will indemnify the director to the fullest extent permitted by law for claims arising in his capacity as a director, provided that he acted in good faith and in a manner that he reasonably believed to be in, or not opposed to, our best interests and, with respect to any criminal proceeding, had no reasonable cause to believe that his conduct was unlawful. In the event that we do not assume the defense of a claim against a director, we are required to advance his expenses in connection with his defense, provided that he undertakes to repay all amounts advanced if it is ultimately determined that he is not entitled to be indemnified by us.

In addition, we maintain standard policies of insurance under which coverage is provided to our directors and officers against losses arising from claims made by reason of breach of duty or other wrongful act, and to us with respect to payments which may be made by us to such directors and officers pursuant to the above indemnification provisions or otherwise as a matter of law. In any underwriting agreement we enter into in connection with the sale of common stock being registered hereby, the underwriters will agree to indemnify, under certain conditions, us, our directors, our officers and persons who control us within the meaning of the Securities Act of 1933, as amended, against certain liabilities.

Item 15. Recent Sales of Unregistered Securities.

Stock Options

At various times since June 2012, we have granted options to purchase an aggregate of 662,162 shares of common stock to our employees, directors, and consultants pursuant to our 2012 Stock Incentive Plan, at exercise prices ranging from \$1.28 to \$4.52 per share. None of these options have been exercised to date. The issuance of these options was exempt from registration pursuant to Rule 701 of the Securities Act of 1933, as securities issued pursuant to a compensatory benefit plan.

The following table provides information regarding the number of options issued pursuant to our 2012 Stock Incentive Plan in each calendar year during this period.

| <u>Year</u> | <u>Options Issued (#)</u> | <u>Weighted average exercise price of issued options (\$)</u> | <u>Total shares of stock issued upon exercise of outstanding options (#)</u> | <u>Weighted average exercise price of exercised options (\$)</u> |
|-------------|---------------------------|---|--|--|
| 2012 | 327,435 | \$ 1.41 | — | \$ — |
| 2013 | 203,943 | \$ 1.40 | — | \$ — |
| 2014 | 130,784 | \$ 1.28 | — | \$ — |

Common Stock

On January 26, 2012, we sold an aggregate of 937,500 shares of common stock to our Chief Executive Officer, Vikram Lamba, and our Chief Scientific Officer, Peter Daddona. On December 11, 2012, we issued an aggregate of 12,500 additional shares of common stock to Mr. Lamba and Dr. Daddona pursuant to our 2012 Stock Incentive Plan. The issuance of these shares was exempt from registration under Section 4(a)(2) of the Securities Act, as a sale not involving a public offering, and pursuant to Rule 701 of the Securities Act of 1933, as securities issued pursuant to a compensatory benefit plan.

In April 2012, in a transaction to recapitalize our business, structured as a reverse triangular merger, a wholly-owned subsidiary of Zosano Pharma Corporation (then named ZP Holdings, Inc.) was merged with and into ZP Opco, Inc. (then named Zosano Pharma, Inc.), whereby ZP Opco was the surviving entity and became a wholly-owned subsidiary of Zosano Pharma Corporation. As part of this reorganization, we issued 2,812,498 shares of our common stock to the stockholders and optionholders of ZP Opco in exchange for the cancellation of all outstanding common and preferred stock of ZP Opco and all outstanding stock options. Also, in connection with this reorganization, all outstanding debt and related accrued interest of ZP Opco held by investors was cancelled, and all outstanding warrants to purchase capital stock were terminated. The issuance of these shares was exempt from registration under Section 4(a)(2) of the Securities Act, as a sale not involving a public offering.

In April 2012, in connection with the restructuring of our lease with an affiliate of BioMed Realty Holdings, Inc., or BMR, for our facilities located in Fremont, California, we issued an aggregate of 1,344,314 shares of our common stock to BMR and another affiliate of BMR. The issuance of these shares was exempt from registration under Section 4(a)(2) of the Securities Act, as a sale not involving a public offering. In June 2014, in consideration of BMR agreeing to subordinate its secured promissory note and related security interest to our term loan facility with Hercules and its related security interest, we issued an aggregate of 31,250 shares of our common stock to BMR. The issuance of these shares was exempt from registration under Section 4(a)(2) of the Securities Act, as a sale not involving a public offering.

BMR Promissory Note

In April 2012, in consideration of the amendment of our lease agreement with BMR's affiliate, we issued a new four year non-callable secured promissory note to BMR with an original principal amount of \$8.6 million bearing interest at the rate of 8% per annum, compounded annually. All principal and interest will become due and payable under the note in April 2016. The note is secured by substantially all of our assets, including intellectual property. In addition to the note, we issued shares of our common stock to BMR and another affiliate of BMR in connection with the restructuring, described above under the heading "*Common Stock*". The issuance of the secured promissory note to BMR was exempt from registration under Section 4(a)(2) of the Securities Act, as a sale not involving a public offering.

Convertible Promissory Notes

In September 2013, we issued and sold convertible promissory notes in the aggregate original principal amount of approximately \$3.0 million to certain of our existing stockholders. In February 2014, we issued and sold additional convertible promissory notes in the aggregate original principal amount of \$2.5 million to certain of our existing stockholders. Pursuant to their terms, all of these notes will automatically convert upon the closing of this offering into shares of our common stock, at a conversion price equal to 85% of the price per share at which our common stock is sold in this offering. The issuance of these bridge notes was exempt from registration under Section 4(a)(2) of the Securities Act, as a sale not involving a public offering.

Item 16. Exhibits and Financial Statement Schedules.

The exhibits to the registration statement are listed in the Exhibit Index attached hereto and incorporated by reference herein.

Item 17. Undertakings.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for

indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

- For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.
- For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

The undersigned registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreements, certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Fremont, State of California, on the 25th day of July, 2014.

ZOSANO PHARMA CORPORATION

By: /s/ Vikram Lamba
Vikram Lamba
President and Chief Executive Officer

In accordance with the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|--|---------------|
| <u>/s/ Vikram Lamba</u> Vikram Lamba | Chief Executive Officer, President and Director (Principal Executive Officer) | July 25, 2014 |
| <u>*</u> Winnie W. Tso | Chief Financial Officer and Chief Accounting Officer (Principal Financial Officer and Principal Accounting Officer) | July 25, 2014 |
| <u>*</u> Peter Daddona | Director | July 25, 2014 |
| <u>*</u> Bruce Steel | Director | July 25, 2014 |
| <u>*</u> M. James Barrett | Director | July 25, 2014 |
| <u>*</u> Kleanthis G. Xanthopoulos | Director | July 25, 2014 |
| <u>*</u> Troy Wilson | Director | July 25, 2014 |

* The undersigned, by signing his name hereto, does sign and execute this registration statement as attorney-in-fact pursuant to the powers of attorney executed by the above-named directors and officer of the registrant, which powers of attorney were included in the signature page to the Registration Statement of Zosano Pharma Corporation on Form S-1 (File No. 333-196983) filed with the Securities and Exchange Commission on June 24, 2014.

/s/ Vikram Lamba
Vikram Lamba, attorney-in fact

EXHIBIT INDEX

| <u>Exhibit number</u> | <u>Description</u> |
|---------------------------|--|
| 1.1 | Form of Underwriting Agreement |
| 3.1† | Certificate of Incorporation of Zosano Pharma Corporation |
| 3.2† | Certificate of Amendment to Certificate of Incorporation of Zosano Pharma Corporation, effective April 18, 2012 |
| 3.3† | Certificate of Amendment to Certificate of Incorporation of Zosano Pharma Corporation, effective June 23, 2014 |
| 3.4† | Amended and Restated Certificate of Incorporation of Zosano Pharma Corporation, to be effective upon the closing of this offering |
| 3.5† | Bylaws of Zosano Pharma Corporation |
| 3.6† | Amended and Restated Bylaws of Zosano Pharma Corporation, to be effective upon the closing of this offering |
| 3.7† | Certificate of Amendment to Certificate of Incorporation of Zosano Pharma Corporation, effective July 11, 2014 |
| 4.1 | Specimen certificate evidencing shares of common stock |
| 4.2† | Note Purchase Agreement, dated as of September 9, 2013, among ZP Holdings, Inc., BMV Direct SO LP, BMV Direct SOTRS LP, New Enterprise Associates 12, Limited Partnership, ProQuest Investments IV, L.P. and ProQuest Management LLC |
| 4.3† | Form of Subordinated Convertible Promissory Note dated September 9, 2013 |
| 4.4† | Note Purchase Agreement, dated as of February 26, 2014, among ZP Holdings, Inc., BMV Direct SO LP, BMV Direct SOTRS LP and New Enterprise Associates 12, Limited Partnership |
| 4.5† | Form of Subordinated Convertible Promissory Note dated February 26, 2014 |
| 4.6† | Stock Repurchase Option Agreement, dated May 15, 2012, between ZP Holdings, Inc. and Peter Daddona |
| 4.7† | Stock Repurchase Option Agreement, dated May 15, 2012, between ZP Holdings, Inc. and Vikram Lamba |
| 4.8† | First Amendment, dated as of June 3, 2014, to Note Purchase Agreement and 8% Subordinated Convertible Promissory Notes dated September 9, 2013 |
| 4.9† | First Amendment, dated as of June 3, 2014, to Note Purchase Agreement and 8% Subordinated Convertible Promissory Notes dated February 26, 2014 |
| 5.1† | Opinion of Foley Hoag LLP |
| 10.1**† | Collaboration, Development and License Agreement, dated January 31, 2014, between Zosano Pharma, Inc. and Novo Nordisk A/S |
| 10.2† | Notice of Termination, dated January 27, 2014, of the Amended and Restated License Agreement dated as of April 1, 2012 among Zosano Pharma, Inc. and Asahi Kasei Pharma Corporation |
| 10.3† | Letter Amendment to Intellectual Property License Agreement, dated February 22, 2011 between ALZA Corporation and Zosano Pharma, Inc. |
| 10.4**† | Intellectual Property License Agreement, dated as of October 5, 2006, between ALZA Corporation and The Macroflux Corporation |
| 10.5† | Secured Promissory Note, dated April 26, 2012, between ZP Holdings, Inc. and BioMed Realty Holdings, Inc. |

| <u>Exhibit number</u> | <u>Description</u> |
|------------------------------|--|
| 10.6† | Security Agreement, dated as of April 26, 2012, between ZP Holdings, Inc. and BioMed Realty Holdings, Inc. |
| 10.7† | Intellectual Property Security Agreement, dated as of April 26, 2012, between ZP Holdings, Inc. and BioMed Realty Holdings, Inc. |
| 10.8† | Guaranty, made as of April 1, 2012, by ZP Holdings, Inc. in favor of BMR-34790 Ardentech Court LP |
| 10.9† | Lease Agreement, dated May 1, 2007, between Zosano Pharma, Inc. and BMR-34790 Ardentech Court LP |
| 10.10† | First Amendment to Lease, dated June 20, 2008, between Zosano Pharma, Inc. and BMR-34790 Ardentech Court LP |
| 10.11† | Second Amendment to Lease, dated October 16, 2008, between Zosano Pharma, Inc. and BMR-34790 Ardentech Court LP |
| 10.12† | Third Amendment to Lease, dated April 29, 2011, between Zosano Pharma, Inc. and BMR-34790 Ardentech Court LP |
| 10.13† | Fourth Amendment to Lease, dated July 31, 2011, between Zosano Pharma, Inc. and BMR-34790 Ardentech Court LP |
| 10.14† | Fifth Amendment to Lease, dated April 1, 2012, between Zosano Pharma, Inc. and BMR-34790 Ardentech Court LP |
| 10.15† | Form of Indemnification Agreement for Directors associated with an Investment Fund |
| 10.16† | Form of Indemnification Agreement for Directors not associated with an Investment Fund |
| 10.17±† | Employment Letter Agreement, dated April 30, 2014, among Zosano Pharma, Inc., ZP Holdings, Inc. and W. Tso |
| 10.18±† | Amendment to Amended and Restated Employment Letter Agreement, dated January 31, 2014, among Zosano Pharma, Inc., ZP Holdings, Inc. and Nandan Oza |
| 10.19±† | Amended and Restated Employment Letter Agreement, dated July 22, 2013, among Zosano Pharma, Inc., ZP Holdings, Inc. and Nandan Oza |
| 10.20† | Loan and Security Agreement, dated as of June 3, 2014, between Zosano Pharma, Inc. and Hercules Technology Growth Capital, Inc. |
| 10.21† | Joinder Agreement, dated as of June 3, 2014, between ZP Holdings, Inc. and Hercules Technology Growth Capital, Inc. |
| 10.22† | ZP Holdings, Inc. Pledge Agreement, dated as of June 3, 2014, between ZP Holdings, Inc. and Hercules Technology Growth Capital, Inc. |
| 10.23±† | Amendment No. 2 to Employment Letter Agreement, dated January 16, 2014, among Zosano Pharma, Inc., ZP Holdings, Inc. and Peter Daddona |
| 10.24±† | Amendment to Employment Letter Agreement, dated January 6, 2014, among Zosano Pharma, Inc., ZP Holdings, Inc. and Peter Daddona |
| 10.25±† | Employment Letter Agreement, dated May 11, 2012, among Zosano Pharma, Inc., ZP Holdings, Inc. and Peter Daddona |
| 10.26±† | Amendment to Employment Letter Agreement, dated December 17, 2013, among Zosano Pharma, Inc., ZP Holdings, Inc. and Vikram Lamba |

| Exhibit number | Description |
|-----------------------|--|
| 10.27±† | Employment Letter Agreement, dated May 11, 2012, among Zosano Pharma, Inc., ZP Holdings, Inc. and Vikram Lamba |
| 10.28† | Letter Amendment to Independent Director Agreement, dated July 15, 2013, between ZP Holdings, Inc. and Kleanthis G. Xanthopoulos |
| 10.29† | Independent Director Agreement, dated as of March 28, 2013, between ZP Holdings, Inc. and Kleanthis G. Xanthopoulos |
| 10.30±† | ZP Holdings, Inc. 2012 Stock Incentive Plan |
| 10.31±† | Form of Incentive Stock Option under ZP Holdings, Inc. 2012 Stock Incentive Plan |
| 10.32±† | Form of Non-Statutory Stock Option under ZP Holdings, Inc. 2012 Stock Incentive Plan |
| 10.33±† | ZP Holdings, Inc. 2014 Equity and Incentive Plan |
| 10.34† | Warrant Agreement, dated as of June 3, 2014, between ZP Holdings, Inc. and Hercules Technology Growth Capital, Inc. |
| 10.35† | Subordination Agreement, dated as of June 3, 2014, among BMV Direct SOTRS LP, BioMed Realty Holdings, Inc., Zosano Pharma, Inc., ZP Holdings, Inc. and Hercules Technology Growth Capital, Inc. |
| 10.36† | Subordination Agreement, dated as of June 3, 2014, among BMV Direct SOTRS LP, BMV Direct SO LP, New Enterprise Associates 12, Limited Partnership, ProQuest Investments IV, L.P., ProQuest Management LLC, Zosano Pharma, Inc., ZP Holdings, Inc. and Hercules Technology Growth Capital, Inc. |
| 10.37† | Subordination Agreement, dated as of June 3, 2014, among BMV Direct SOTRS LP, BMV Direct SO LP, New Enterprise Associates 12, Limited Partnership, Zosano Pharma, Inc., ZP Holdings, Inc. and Hercules Technology Growth Capital, Inc. |
| 10.38† | First Amendment to Secured Promissory Note, dated as of June 3, 2014, among BMV Direct SOTRS LP, ZP Holdings, Inc. and Zosano Pharma, Inc. |
| 10.39† | Independent Director Agreement, dated as June 23, 2014, between Zosano Pharma Corporation and Troy Wilson |
| 21.1 | Subsidiaries of Registrant |
| 23.1† | Consent of Marcum LLP |
| 23.2† | Consent of Foley Hoag LLP (included in Exhibit 5.1) |
| 24.1† | Power of Attorney (included on signature page) |
| 24.2 | Secretary's Certificate dated July 25, 2014 |

** Confidential treatment requested as to certain portions, which portions have been omitted and filed separately with the Securities and Exchange Commission

† Previously filed

± Management contract or compensatory plan or arrangement

6,400,000 Shares

ZOSANO PHARMA CORPORATION

Common Stock

UNDERWRITING AGREEMENT

[], 2014

WEDBUSH SECURITIES INC.,
As Representative of the several

Underwriters named in Schedule I attached hereto,
Two Embarcadero Center, Suite 600
San Francisco, California 94111

Ladies and Gentlemen:

Zosano Pharma Corporation, a Delaware corporation (the “**Company**”), confirms its agreement with Wedbush Securities Inc. (“**Wedbush**”) and each of the other Underwriters named in **Schedule I** hereto (collectively, the “**Underwriters**,” which term shall also include any underwriter substituted as hereinafter provided in Section 9 hereof), for whom Wedbush is acting as representative (in such capacity, the “**Representative**”), with respect to (i) the sale by the Company and the purchase by the Underwriters, acting severally and not jointly, of the respective numbers of shares of Common Stock, par value \$0.0001 per share, of the Company (“**Common Stock**”) set forth in **Schedule I** hereto and (ii) the grant by the Company to the Underwriters of the option described in Section 2 hereof to purchase, severally and not jointly, all or any part of 960,000 additional shares of Common Stock. The 6,400,000 shares of Common Stock (the “**Firm Stock**”) set forth in **Schedule I** hereto to be purchased by the Underwriters and all or any part of the 960,000 shares of Common Stock subject to the option described in Section 2 hereof (the “**Option Stock**”) are herein called, collectively, the “**Stock**.”

The Company understands that the Underwriters propose to make a public offering of the Stock as soon as the Representative deems advisable after this Agreement has been executed and delivered.

1. *Representations, Warranties and Agreements of the Company.* The Company represents, warrants and agrees that:

(a) A registration statement on Form S-1 (File No. 333-196983) relating to the Stock has (i) been prepared by the Company in conformity with the requirements of the Securities Act of 1933, as amended (the “**Securities Act**”), and the rules and regulations of the Securities and Exchange Commission (the “**Commission**”) thereunder (the “**Securities Act Regulations**”); (ii) been filed with the Commission under the Securities Act; and (iii) become effective under the Securities Act. Copies of such registration statement and any amendment thereto have been delivered by the Company to the Representative. Promptly after execution and delivery of this Agreement, the Company will prepare and file a prospectus in accordance with the provisions of Rule 430A (“**Rule 430A**”) of the Securities Act Regulations and Rule 424(b) (“**Rule 424(b)**”)

thereunder. For purposes of this Agreement, all references to the Registration Statement, any Preliminary Prospectus (as defined below), the Prospectus (as defined below) or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system or any successor system (“**EDGAR**”). As used in this Agreement:

- (i) “**Applicable Time**” means [] [a.m./ p.m.] (New York City time), [], 2014;
- (ii) “**Effective Date**” means the date and time as of which such registration statement, or the most recent post-effective amendment thereto, was declared effective by the Commission;
- (iii) “**Issuer Free Writing Prospectus**” means each “issuer free writing prospectus” (as defined in Rule 433 under the Securities Act) relating to the Stock, excluding any issuer free writing prospectus prepared by or on behalf any Underwriter without the Company’s consent;
- (iv) “**Preliminary Prospectus**” means any preliminary prospectus relating to the Stock included in such registration statement or filed with the Commission pursuant to Rule 424(a) under the Securities Act;
- (v) “**Pricing Disclosure Package**” means, as of the Applicable Time, the most recent Preliminary Prospectus, together with the information included in **Schedule III** hereto and each Issuer Free Writing Prospectus listed in **Schedule III** hereto;
- (vi) “**Prospectus**” means the final prospectus relating to the Stock, as filed with the Commission pursuant to Rule 424(b) under the Securities Act;
- (vii) “**Registration Statement**” means such registration statement, as amended as of the Effective Date, including any Preliminary Prospectus or the Prospectus, all exhibits to such registration statement and including the information deemed by virtue of Rule 430A under the Securities Act to be part of such registration statement as of the Effective Date. Any registration statement filed pursuant to Rule 462(b) under the Securities Act is herein called the “**Rule 462(b) Registration Statement**” and, after such filing, the term “Registration Statement” shall include the Rule 462(b) Registration Statement;
- (viii) “**Testing-the-Waters Communication**” means any oral or written communication with potential investors undertaken by the Company or, with the prior written consent of the Company, another person acting on behalf of the Company, in reliance on Section 5(d) of the Securities Act; and
- (ix) “**Written Testing-the-Waters Communication**” means any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Securities Act.

Any reference to the “*most recent Preliminary Prospectus*” shall be deemed to refer to the latest Preliminary Prospectus included in the Registration Statement or filed pursuant to Rule 424(b) under the Securities Act prior to or on the date hereof.

(b) No order preventing or suspending the use of any Preliminary Prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company’s knowledge, threatened by the Commission. The Company has complied with each request (if any) from the Commission for additional information.

(c) From the time of initial confidential submission of the Registration Statement to the Commission (or, if earlier, the first date on which the Company engaged directly or through any Person authorized to act on its behalf in any Testing-the-Waters Communication) through the date hereof, the Company has been and is an “emerging growth company,” as defined in Section 2(a) of the Securities Act (an “*Emerging Growth Company*”).

(d) The Company (i) has not engaged in any Testing-the-Waters Communication with respect to the Stock other than Testing-the-Waters Communications with the consent of the Representative or as otherwise described on **Schedule VI** hereto with entities that are qualified institutional buyers within the meaning of Rule 144A under the Securities Act or institutions that are accredited investors within the meaning of Rule 501 under the Securities Act and (ii) has not authorized anyone other than the Representative to engage in Testing-the-Waters Communications except as described on **Schedule VI** hereto. The Company reconfirms that the Representative has been authorized to act on its behalf in undertaking Testing-the-Waters Communications with respect to the Stock. The Company has not distributed or approved for distribution any Written Testing-the-Waters Communications other than those listed on **Schedule VI** hereto.

(e) At the time of the filing of the Registration Statement and any post-effective amendment thereto with the Commission and at the date hereof, the Company was not and is not an “ineligible issuer,” as defined in Rule 405, without taking account of any determination by the Commission pursuant to Rule 405 that it is not necessary that the Company be considered an ineligible issuer.

(f) The Registration Statement conformed and will conform in all material respects on the Effective Date and on the applicable Delivery Date, and any amendment to the Registration Statement filed after the date hereof will conform in all material respects when filed, to the requirements of the Securities Act and the Securities Act Regulations. The most recent Preliminary Prospectus conformed, and the Prospectus will conform, in all material respects when filed with the Commission pursuant to Rule 424(b) under the Securities Act and on the applicable Delivery Date (as defined in Section 4) to the requirements of the Securities Act and the Securities Act Regulations.

(g) The Registration Statement did not, as of the Effective Date or at any Delivery Date, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; *provided* that no representation or warranty is made as to information contained in or omitted from the

Registration Statement in reliance upon and in conformity with written information furnished to the Company through the Representative by or on behalf of any Underwriter specifically for inclusion therein, which information is specified in Section 8(e).

(h) The Prospectus will not, as of its date or as of the applicable Delivery Date, contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that no representation or warranty is made as to information contained in or omitted from the Prospectus in reliance upon and in conformity with written information furnished to the Company through the Representative by or on behalf of any Underwriter specifically for inclusion therein, which information is specified in Section 8(e).

(i) The Pricing Disclosure Package did not, as of the Applicable Time, contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that no representation or warranty is made as to information contained in or omitted from the Pricing Disclosure Package in reliance upon and in conformity with written information furnished to the Company through the Representative by or on behalf of any Underwriter specifically for inclusion therein, which information is specified in Section 8(e).

(j) Each Issuer Free Writing Prospectus listed on **Schedule IV** hereto, when taken together with the Pricing Disclosure Package, did not, as of the Applicable Time, contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that no representation or warranty is made as to information contained in or omitted from such Issuer Free Writing Prospectus listed on **Schedule IV** hereto in reliance upon and in conformity with written information furnished to the Company through the Representative by or on behalf of any Underwriter specifically for inclusion therein, which information is specified in Section 8(e).

(k) Each Written Testing-the-Waters Communication listed on **Schedule VI** hereto, when taken together with the Pricing Disclosure Package, did not, as of the Applicable Time contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that no representation or warranty is made as to information contained in or omitted from such Written Testing-the-Waters Communication listed on **Schedule VI** hereto in reliance upon and in conformity with written information furnished to the Company through the Representative by or on behalf of any Underwriter specifically for inclusion therein, which information is specified in Section 8(e); and the Company has filed publicly on EDGAR at least 21 calendar days prior to any “road show” (as defined in Rule 433 under the Securities Act), any confidentially submitted registration statement and registration statement amendments relating to the offer and sale of the Stock.

(l) Each Issuer Free Writing Prospectus conformed or will conform in all material respects to the requirements of the Securities Act and the Securities Act Regulations on the date of first use, and the Company has complied with all prospectus delivery and any filing requirements applicable to such Issuer Free Writing Prospectus pursuant to the Securities Act

and Securities Act Regulations. The Company has not made any offer relating to the Stock that would constitute an Issuer Free Writing Prospectus without the prior written consent of the Representative, except as set forth on **Schedule V** hereto. The Company has retained in accordance with the Securities Act and the Securities Act Regulations all Issuer Free Writing Prospectuses that were not required to be filed pursuant to the Securities Act and the Securities Act Regulations. The Company has taken all actions necessary so that any “road show” (as defined in Rule 433 under the Securities Act) in connection with the offering of the Stock will not be required to be filed pursuant to the Securities Act and the Securities Act Regulations.

(m) The Company has been duly organized, is validly existing and in good standing as a corporation or other business entity under the laws of its jurisdiction of organization and is duly qualified to do business and in good standing as a foreign corporation or other business entity in each jurisdiction in which its ownership or lease of property or the conduct of its businesses requires such qualification, except where the failure to be so qualified or in good standing could not, in the aggregate, reasonably be expected to have a material adverse effect on the condition (financial or otherwise), results of operations, stockholders’ equity, assets, properties, business or prospects of the Company and its subsidiaries taken as a whole, or on its ability to perform its obligations under this Agreement (a “**Material Adverse Effect**”). The Company has all power and authority necessary to own or hold its properties and to conduct the businesses in which it is engaged.

(n) The Company has three subsidiaries: (i) ZP Opco, Inc., a Delaware corporation wholly owned by the Company; (ii) Zosano, Inc., a Delaware corporation 99.9% owned by the Company; and (iii) ZP Group LLC, a Delaware limited liability company wholly owned by ZP Opco, Inc. (each, a “**Subsidiary**,” and collectively, the “**Subsidiaries**”). Each Subsidiary has been duly organized and is validly existing as a corporation or limited liability company, as applicable, in good standing under the laws of its jurisdiction of organization. Each Subsidiary has the power and authority (corporate or otherwise) to own its properties and conduct its business as currently being conducted and as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, and is duly qualified to do business as a foreign corporation or other entity in good standing in each jurisdiction in which it owns or leases real property or in which the conduct of its business makes such qualification necessary, except where the failure to so qualify would not have or is not reasonably likely to result in a Material Adverse Effect. As used herein, the term “**Company Group**” means the Company and the Subsidiaries, taken as a whole, and the term “**member of the Company Group**” means the Company or any Subsidiary.

(o) The Company has an authorized capitalization as set forth in each of the Registration Statement, the Pricing Disclosure Package and the Prospectus, and all of the issued shares of capital stock of the Company have been duly authorized and validly issued, are fully paid and non-assessable, conform in all material respects to the description thereof contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus and were issued in compliance with federal securities laws and in material compliance with applicable state securities laws and not in violation of any preemptive right, resale right, right of first refusal or similar right. All of the equity interests of each Subsidiary have been duly and validly authorized and issued, are (in the case of any Subsidiary that is a corporation) fully paid and non-assessable and, except as disclosed in clause (n) above, are owned directly or indirectly by the Company,

free and clear of all liens, encumbrances, equities or claims, other than liens, encumbrances, equities and claims imposed in connection with arrangements described in the Registration Statement, the Pricing Disclosure Package and the Prospectus. All of the Company's options, warrants and other rights to purchase or exchange any securities for shares of the Company's capital stock have been duly authorized and validly issued, conform in all material respects to the description thereof contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus and were issued in compliance with federal securities laws and in material compliance with applicable state securities laws. Except for such options, warrants and other rights to purchase or exchange any securities for shares of the Company's capital stock as are described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there are no outstanding convertible or exchangeable securities, options, warrants, agreements, contracts or other rights to purchase or acquire from the Company any shares of the capital stock of the Company.

(p) The shares of the Stock to be issued and sold by the Company to the Underwriters hereunder have been duly authorized for issuance and sale to the Underwriters and, upon payment and delivery in accordance with this Agreement, will be validly issued, fully paid and non-assessable, will conform in all material respects to the description thereof contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus, will be issued in compliance with federal and state securities laws and will be free of statutory and contractual preemptive rights, rights of first refusal and similar rights.

(q) The Company has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly and validly authorized, executed and delivered by the Company.

(r) The issue and sale of the Stock by the Company, the execution, delivery and performance of this Agreement by the Company, the consummation by the Company of the transactions contemplated hereby and the application by the Company of the net proceeds from the sale of the Stock as described under "Use of Proceeds" in the Registration Statement, the Pricing Disclosure Package and the Prospectus will not (i) whether with or without the giving of notice or passage of time or both, conflict with or result in a breach or violation of any of the terms or provisions of, impose any lien, charge or encumbrance upon any property or assets of the Company or any Subsidiary, or constitute a default or a Repayment Event (as defined below) under, any indenture, mortgage, deed of trust, loan agreement, license, lease or other agreement or instrument to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary is bound or to which any of the property or assets of the Company or any Subsidiary is subject; (ii) result in any violation of the provisions of the charter or by-laws (or similar organizational documents) of the Company or any Subsidiary; or (iii) result in any violation of any statute, rule or regulation applicable to the Company or any Subsidiary or any judgment, order or decree of any court or governmental agency or body having jurisdiction over the Company or any Subsidiary or any of their respective properties or assets, except in each case under clauses (i) and (iii) for such breaches, violations, liens, charges, encumbrances, defaults or Repayment Events as would not reasonably be expected to have a Material Adverse Effect. As used herein, a "**Repayment Event**" means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment (which, for the avoidance of doubt, shall exclude any conversion into equity securities) of all or a portion of such indebtedness by the Company or any Subsidiary.

(s) No consent, approval, authorization or order of, or filing, registration or qualification with, any court or governmental agency or body having jurisdiction over the Company or any Subsidiary or any of their respective properties or assets is required for the issue and sale of the Stock by the Company, the execution, delivery and performance of this Agreement by the Company, the consummation by the Company of the transactions contemplated hereby, or the application by the Company of the net proceeds from the sale of the Stock as described under “Use of Proceeds” in the Registration Statement, the Pricing Disclosure Package and the Prospectus, except for the registration of the Stock under the Securities Act (including each order declaring the Registration Statement effective), the filing of the Prospectus, the filing of the exhibits to the Registration Statement, the filing of each Preliminary Prospectus, the filing of any free writing prospectus, and such consents, approvals, authorizations, orders, filings, registrations or qualifications as may be required under the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), applicable state or foreign securities laws and/or the bylaws and rules of the Financial Industry Regulatory Authority (the “*FINRA*”) in connection with the purchase and sale of the Stock by the Underwriters.

(t) The consolidated financial statements included in the Registration Statement, the Pricing Disclosure Package and the Prospectus, together with the related schedules and notes, comply as to form in all material respects with the requirements of Regulation S-X under the Securities Act and present fairly, in all material respects, the financial condition, results of operations and cash flows of the Company Group at the dates and for the periods indicated (in the case of unaudited interim financial statements, subject to year-end audit adjustments) in conformity with accounting principles generally accepted in the United States (“*GAAP*”) applied on a consistent basis throughout the periods indicated (except for such changes in the application of such accounting principles described therein). The supporting schedules included in the Registration Statement, if any, present fairly, in all material respects, in accordance with GAAP and Regulation S-X the information required to be stated therein. The selected financial data and the summary financial information included in the Registration Statement, the Pricing Disclosure Package and the Prospectus have been derived from the consolidated financial statements included therein and have been prepared in accordance with the requirements of Regulation S-K. The pro forma financial statements and the related notes thereto, if any, included in the Registration Statement, the Pricing Disclosure Package and the Prospectus present fairly, in all material respects, the information shown therein, have been prepared in accordance with the requirements of Regulation S-X and have been properly compiled, in all material respects, on the bases described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein. Except as included therein, no historical or pro forma financial statements or supporting schedules are required to be included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package or the Prospectus under the Securities Act or the Securities Act Regulations.

(u) Marcum LLP, whose report appears in the Registration Statement, the Pricing Disclosure Package and the Prospectus and who have delivered the initial letter referred to in Section 7(g) hereof, are independent public accountants as required by the Securities Act and the Securities Act Regulations.

(v) Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company maintains internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States, including, but not limited to, internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of the Company's financial statements in conformity with accounting principles generally accepted in the United States and to maintain accountability for its assets, (iii) access to the Company's and each Subsidiary's assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for the Company's and each Subsidiary's assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, as of the date of the most recent balance sheet of the Company included in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there were no material weaknesses in the Company's internal controls.

(w) Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (i) the Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act), (ii) such disclosure controls and procedures are designed to ensure that information is accumulated and communicated to management of the Company, including its principal executive officer and principal financial officer, as appropriate, and (iii) such disclosure controls and procedures are effective in all material respects to perform the functions for which they were established.

(x) Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, since the date of the most recent balance sheet of the Company included in the most recent Preliminary Prospectus, (i) the Company has not been advised of or become aware of (A) any significant deficiencies in the design or operation of internal controls that could adversely affect the ability of the Company to record, process, summarize and report financial data, or any material weaknesses in internal controls, and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Company; and (ii) there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses.

(y) The section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations – Critical Accounting Policies and Significant Judgments and Estimates" set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus provides a fair and accurate description in all material respects of (i) the accounting policies that the Company believes are the most important in the portrayal of the Company's financial condition and results of operations and that require management's most difficult, subjective or complex judgments ("**Critical Accounting Policies**"); and (ii) the judgments and uncertainties affecting the application of Critical Accounting Policies.

(z) The Company has taken all necessary actions to ensure that, upon the effectiveness of the Registration Statement, it will be in compliance with all provisions of the Sarbanes-Oxley Act of 2002 and all rules and regulations promulgated thereunder or implementing the provisions thereof (the “**Sarbanes-Oxley Act**”) that are then in effect and with which the Company is required to comply as of the effectiveness of the Registration Statement, and is actively taking steps to ensure that it will be in compliance with any other provisions of the Sarbanes-Oxley Act when they become applicable to the Company.

(aa) Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, since the date of the most recent balance sheet of the Company included in the Registration Statement, the Pricing Disclosure Package and the Prospectus, neither the Company nor any Subsidiary has (i) sustained any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute, or been the named subject of any court or governmental action, order or decree, (ii) issued or granted any securities (other than pursuant to employee benefit plans, stock option plans or other equity compensation plans or arrangements existing on the date hereof), (iii) incurred any material liability or obligation, direct or contingent, other than liabilities and obligations that were incurred in the ordinary course of business, (iv) entered into any material transaction not in the ordinary course of business, or (v) declared or paid any dividend on its capital stock, and, except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, since such date, there has not been any change in the capital stock or long-term debt of the Company or any adverse change outside the ordinary course of business, or any development involving a prospective adverse change outside the ordinary course of business, in or affecting the condition (financial or otherwise), results of operations, stockholders’ equity, properties, management, business or prospects of the Company, in each case except as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

(bb) No member of the Company Group owns any real property. Each member of the Company Group has good and marketable title to, or a valid leasehold interest in, all personal property owned or held by it and material to the operation of its business as currently conducted or as proposed to be conducted as described in the Registration Statement, the Pricing Disclosure Package or the Prospectus, in each case free and clear of all liens, encumbrances and defects, except such liens, encumbrances and defects imposed in connection with arrangements described in the Registration Statement, the Pricing Disclosure Package and the Prospectus or such as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by such member of the Company Group in the conduct of its business as currently conducted or as proposed to be conducted as described in the Registration Statement, the Pricing Disclosure Package or the Prospectus. All assets held under lease by any member of the Company Group and material to the operation of its business as currently conducted or as proposed to be conducted as described in the Registration Statement, the Pricing Disclosure Package or the Prospectus are held under valid, subsisting and enforceable leases, with such exceptions as do not materially interfere with the use made and proposed to be made of such assets by the applicable member of the Company Group in the conduct of its business as currently conducted or as proposed to be conducted as described in the Registration Statement, the Pricing Disclosure Package or the Prospectus.

(cc) Each member of the Company Group holds, and is operating in material compliance with, such material permits, licenses, franchises, registrations, exemptions, approvals, authorizations and clearances of the United States Food and Drug Administration (“*FDA*”) and other U.S. or foreign governmental authorities required for the conduct of its business as currently conducted (collectively, the “*Permits*”), and all such Permits are in full force and effect, except where the failure to hold such Permit or of such Permit to be so in full force and effect would not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate. Each member of the Company Group has fulfilled and performed all of its material obligations with respect to the Permits, and, to the Company’s knowledge, no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other material impairment of the rights of the holder of any Permit. To the Company’s knowledge, all applications, notifications, submissions, information, claims, reports and statistics, and other data and conclusions derived therefrom, utilized as the basis for any and all requests for a Permit from the FDA or other U.S. or foreign governmental authority relating to the Company or a Subsidiary, their respective businesses and their respective product candidates, when submitted to the FDA or other U.S. or foreign governmental authority by or on behalf of the Company or the applicable Subsidiary, were true, complete and correct in all material respects, and any necessary or required updates, changes, corrections or modifications to such applications, submissions, information and data have been submitted to the FDA or other U.S. or foreign governmental authority, except as would not reasonably be expected to have a Material Adverse Effect. Neither the Company nor any Subsidiary has received any notification, correspondence or any other written or oral communication, including notification of any pending or, to the Company’s knowledge, threatened claim, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any governmental authority, including, without limitation, the FDA or the United States Drug Enforcement Administration (“*DEA*”), of potential or actual material non-compliance by, or material liability of, the Company under any Permits. Each member of the Company Group has acquired and maintained all Permits in accordance with normal business practices and all applicable laws of the United States or any other foreign jurisdiction, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate. To the Company’s knowledge, there are no facts or circumstances that would reasonably be expected to give rise to any material liability of the Company or any Subsidiary under any Permits.

(dd) The Company and each Subsidiary, and to the knowledge of the Company, its directors, officers, employees and agents (in their capacities as such), have operated and currently are in compliance in all material respects with applicable statutes and implementing regulations administered or enforced by the FDA, DEA, or any other federal, state, local, or foreign governmental authority, including, without limitation, the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)); the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)); the civil False Claims Act (31 U.S.C. §§ 3729 et seq.); the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)); the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.), as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. §§ 17921 et seq.); the exclusion laws (42 U.S.C. § 1320a-7); the Federal

Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301 et seq.); Medicare (Title XVIII of the Social Security Act); Medicaid (Title XIX of the Social Security Act); the regulations promulgated pursuant to such laws; and any other similar local, state or federal law or regulation. Neither the Company nor any Subsidiary is a party to, or has any ongoing reporting obligations pursuant to, any corporate integrity agreement, deferred prosecution agreement, monitoring agreement, consent decree, settlement order, plan of correction or similar agreement imposed by any governmental authority. Neither the Company nor any Subsidiary nor, to the knowledge of the Company, any of their respective directors, officers, employees or agents, has been debarred by any United States or foreign governmental authority, including but not limited to by the FDA pursuant to the Generic Drug Enforcement Act of 1992 (21 U.S.C. Sec. 335(a) or (b)), or, excluded or suspended from participation in or receiving payment from any federal, state, local or foreign government health care program, including, but not limited to the Medicare or Medicaid programs.

(ee) Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus or as would not reasonably be expected to have a Material Adverse Effect, since January 1, 2011, neither the Company nor any Subsidiary has had any product candidate or manufacturing site (including such a site of a contract manufacturer for any product candidate of the Company or any Subsidiary) subject to a U.S. or foreign governmental authority (including the FDA) shutdown or import or export prohibition, nor received any FDA Form 483 or other U.S. or foreign governmental authority notice of inspectional observations, “warning letters,” “untitled letters,” requests to make changes to the product candidates, processes or operations, safety alerts, field corrective actions (including voluntary or involuntary recalls) of the Company or any Subsidiary, or similar correspondence or notice from the FDA or other U.S. or foreign governmental authority alleging or asserting material noncompliance with any applicable laws. To the Company’s knowledge, neither the FDA nor any other U.S. or foreign governmental authority has threatened such action.

(ff) The clinical and pre-clinical studies and tests conducted by the Company or any Subsidiary, and, to the knowledge of the Company, the clinical and pre-clinical studies conducted on behalf of or sponsored by the Company or any Subsidiary were, and if still pending, are, being conducted in all material respects in accordance with all applicable laws of the United States or foreign jurisdictions, including, but not limited to, the Federal Food, Drug and Cosmetic Act and its applicable implementing regulations at 21 C.F.R. Part 812. Any descriptions of clinical, pre-clinical and other studies and tests, including any related results and regulatory status, contained in the Registration Statement, the Pricing Disclosure Package or the Prospectus are, and will be, fair and accurate in all material respects. Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, to the Company’s knowledge, there are no studies, tests or trials the results of which reasonably call into question in any material respect the clinical trial results described or referred to in the Registration Statement, the Pricing Disclosure Package or the Prospectus. No investigational device exemption filed by or on behalf of the Company or any Subsidiary with the FDA or any applicable foreign regulatory authority has been terminated or suspended by the FDA or such applicable foreign regulatory authority, and neither the FDA nor any applicable foreign regulatory authority has commenced, or, to the Company’s knowledge, threatened to initiate, any action to place a clinical hold order on, or otherwise terminate, delay or suspend, any proposed or ongoing clinical investigation conducted or proposed to be conducted by or on behalf of the Company or any Subsidiary.

(gg) Each member of the Company Group owns or possesses adequate rights to use all material patents, patent applications, trademarks, trademark applications, service marks, service mark applications, trade names, trademark registrations, service mark registrations, copyrights, inventions, know-how, software, databases, internet domain names, systems and technology (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), and other intellectual property (collectively, "**Intellectual Property**"), in each case material to the operation of its business as currently conducted and as proposed to be conducted as described in the Registration Statement, the Pricing Disclosure Package or the Prospectus; provided, however, that this sentence makes no representation, warranty or agreement regarding any infringement or violation of the Intellectual Property of any person. To the Company's knowledge, the business of the Company Group, as currently conducted and as proposed to be conducted as described in the Registration Statement, the Pricing Disclosure Package or the Prospectus, does not and will not infringe or violate any Intellectual Property of any person, except for such infringements or violations as would not have a Material Adverse Effect, individually or in the aggregate. No claim is pending or, to the knowledge of the Company, threatened against any member of the Company Group alleging that the conduct of the business of any member of the Company Group, as currently conducted and as proposed to be conducted as described in the Registration Statement, the Pricing Disclosure Package or the Prospectus, infringes or violates the Intellectual Property of any person. Each member of the Company Group has taken commercially reasonable steps to protect, maintain and safeguard its rights in all Intellectual Property owned or held by it and material to the operation of its business as currently conducted or as proposed to be conducted as described in the Registration Statement, the Pricing Disclosure Package or the Prospectus, including the execution of appropriate nondisclosure and confidentiality agreements. The consummation of the transactions contemplated by this Agreement will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other person in respect of, the right of any member of the Company Group to own, use, or hold for use any of the Intellectual Property as owned, used or held for use by it for the operation of its business as currently conducted or proposed to be conducted as described in the Registration Statement, the Pricing Disclosure Package or the Prospectus. Each member of the Company Group has at all times complied in all material respects with all applicable laws relating to privacy, data protection, and the collection and use of personal information collected, used, or held for use by it for the operation of its business as currently conducted or proposed to be conducted as described in the Registration Statement, the Pricing Disclosure Package or the Prospectus. No claims are currently pending or, to the Company's knowledge, threatened, against the Company or any Subsidiary alleging a violation of any person's privacy or personal information or data rights. Each member of the Company Group takes commercially reasonable measures to protect such information against unauthorized access, use, modification, or other misuse.

(hh) Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there is no action, suit or proceeding before or brought by any U.S. or foreign governmental entity now pending or, to the knowledge of the Company, threatened, nor to the knowledge of the Company is there any inquiry or investigation brought by any U.S. or foreign governmental entity now pending or threatened, in each case against or affecting the

Company or any Subsidiary, which, if determined adversely to the Company or the applicable Subsidiary, would reasonably be expected to result in a Material Adverse Effect or would reasonably be expected to materially and adversely affect the consummation of the transactions contemplated by this Agreement or the performance by the Company of its obligations hereunder. The aggregate liability of the Company and the Subsidiaries with respect to all pending legal or governmental proceedings to which the Company or any Subsidiary is a party or of which any of their respective properties or assets is the subject which are not described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, including ordinary routine litigation incidental to the business, if all of such proceedings were determined adversely to the Company or the applicable Subsidiary, would not reasonably be expected to result in a Material Adverse Effect.

(ii) There are no contracts or other documents required under the Securities Act to be described in the Registration Statement, the Pricing Disclosure Package and the Prospectus or filed as exhibits to the Registration Statement that are not described or filed as required. The statements made in the Registration Statement, the Pricing Disclosure Package and the Prospectus, insofar as they contain descriptions of the terms of the contracts and other documents so described and filed, are fair and accurate in all material respects. No other party to any such contract or other document has notified the Company or any Subsidiary that it will not render full performance as contemplated by the terms thereof, except as would not reasonably be expected to have a Material Adverse Effect.

(jj) The statements made in the Registration Statement, the Pricing Disclosure Package and the Prospectus under the captions “Risk Factors—Risks Related to the Development and Commercialization of Our Product Candidates,” “Risk Factors—Risks Related to Our Intellectual Property,” “Risk Factors—Risks Related to Legislation and Administrative Actions,” “Business—Intellectual Property,” “Business—Government regulation and product approval,” “Executive Compensation—Stock Incentive and Equity Compensation Plans,” “Related Person Transactions,” “Description of Capital Stock,” “Shares Eligible for Future Sale,” and “Material U.S. Federal Income Tax Considerations for Non-U.S. Holders” and the information in the Registration Statement under Items 14 and 15, insofar as they contain descriptions of the terms of statutes, rules, regulations or legal or governmental proceedings, or contracts or other documents, are fair and accurate in all material respects.

(kk) Each member of the Company Group carries, or is covered by, insurance from insurers of recognized financial responsibility in such amounts and covering such risks as is adequate for the conduct of its business and the value of its properties and as is customary for companies engaged in similar businesses in similar industries. All policies of insurance of the Company Group are in full force and effect; each member of the Company Group is in compliance with the terms of such policies in all material respects; and no member of the Company Group has received written notice from any insurer or agent of such insurer that material capital improvements or other material expenditures are required or necessary to be made in order to continue such insurance; there are no claims by the Company or any Subsidiary under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; and the Company has no reason to believe that any member of the Company Group will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not reasonably be expected to have a Material Adverse Effect.

(ll) No relationship, direct or indirect, exists between or among the Company or any Subsidiary, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company or any Subsidiary, on the other hand, that is required to be described in the Registration Statement, the Pricing Disclosure Package and the Prospectus which is not so described.

(mm) No labor disturbance by or dispute with the employees of the Company or any Subsidiary exists or, to the knowledge of the Company, is imminent that would reasonably be expected to have a Material Adverse Effect.

(nn) Neither the Company nor any Subsidiary (i) is in violation of its charter or by-laws (or similar organizational documents), (ii) is in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant, condition or other obligation contained in any indenture, mortgage, deed of trust, loan agreement, license or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets is subject, or (iii) is in violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over it or its property or assets and has not failed to obtain any license, permit, certificate, franchise or other governmental authorization or permit necessary to the ownership of its property or to the conduct of its business, except in the case of clauses (ii) and (iii), to the extent any such default, violation or failure would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(oo) Each member of the Company Group (i) is, and at all times prior hereto was, in compliance with all laws, regulations, ordinances, rules, orders, judgments, decrees, permits or other legal requirements of any governmental authority, including without limitation any international, foreign, national, state, provincial, regional, or local authority, relating to pollution, the protection of human health or safety, the environment, or natural resources, or to use, handling, storage, manufacturing, transportation, treatment, discharge, disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants ("**Environmental Laws**") applicable to it, which compliance includes, without limitation, obtaining, maintaining and complying with all permits and authorizations and approvals required by Environmental Laws to conduct its business, and (ii) has not received notice or otherwise has knowledge of any actual or alleged violation of Environmental Laws, or of any actual or potential liability for or other obligation concerning the presence, disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except in the case of clause (i) or (ii) where such non-compliance, violation, liability, or other obligation would not, in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (x) there are no proceedings that are pending, or to the Company's knowledge, threatened, against any member of the Company Group under Environmental Laws in which a governmental authority is also a party, other than such proceedings regarding which the Company reasonably believes no monetary sanctions of \$100,000 or more will be imposed, (y) the Company is not aware of any non-compliance with Environmental Laws, including any pending or proposed Environmental Laws, or liabilities or

other obligations under Environmental Laws or concerning hazardous or toxic substances or wastes, pollutants or contaminants, that would reasonably be expected to have a material adverse effect on the capital expenditures, earnings or competitive position of the Company Group, and (z) the Company does not anticipate any material expenditures by the Company Group required by applicable Environmental Laws.

(pp) Each member of the Company Group has filed all federal, state, local and foreign tax returns required to be filed through the date hereof, subject to permitted extensions, and has paid all taxes due except for such taxes, if any, that are being contested in good faith and as to which adequate reserves have been established on the books and records of the Company Group, and no tax deficiency has been determined adversely to any member of the Company Group, nor does the Company have any knowledge of any tax deficiencies that have been, or would reasonably be expected to be asserted against any member of the Company Group, that would, in the aggregate, reasonably be expected to have a Material Adverse Effect. There are no tax liens on any of the assets or properties of the Company Group.

(qq) (i) Each “employee benefit plan” (within the meaning of Section 3(3) of the Employee Retirement Security Act of 1974, as amended (“*ERISA*”)) for which the Company or any member of its “Controlled Group” (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the “*Code*”)) would have any liability (each a “*Plan*”) has been maintained in compliance in all material respects with its terms and with the requirements of all applicable statutes, rules and regulations, including ERISA and the Code; (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan, excluding transactions effected pursuant to a statutory or administrative exemption; (iii) with respect to each Plan subject to Title IV of ERISA (A) no “reportable event” (within the meaning of Section 4043(c) of ERISA) has occurred or is reasonably expected to occur that would reasonably be expected to result in a material loss to the Company, (B) no “accumulated funding deficiency” (within the meaning of Section 302 of ERISA or Section 412 of the Code), whether or not waived, has occurred or is reasonably expected to occur, (C) the fair market value of the assets under each Plan that is required to be funded exceeds the present value of all benefits accrued under such Plan (determined based on those assumptions used to fund such Plan), and (D) neither the Company or any member of its Controlled Group has incurred, or reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guaranty Corporation in the ordinary course and without default) in respect of a Plan (including a “multiemployer plan”, within the meaning of Section 4001(c)(3) of ERISA); and (iv) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

(rr) The statistical and market-related data included in the Registration Statement, the Pricing Disclosure Package and the Prospectus are based on or derived from sources that the Company believes to be reliable and accurate in all material respects and, to the extent required, the Company has obtained the written consent to use such data from such sources.

(ss) The Company is not, and as of the applicable Delivery Date and, after giving effect to the offer and sale of the Stock and the application of the proceeds therefrom as

described under “Use of Proceeds” in the most recent Preliminary Prospectus and the Prospectus, will not be, (i) an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended (the “*Investment Company Act*”), and the rules and regulations of the Commission thereunder, or (ii) a “business development company” (as defined in Section 2(a)(48) of the Investment Company Act).

(tt) Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to the Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Securities Act, except for such rights as have been irrevocably waived prior to the execution and delivery of this Agreement, which waivers are in full force and effect.

(uu) Neither the Company nor any Subsidiary is a party to any contract, agreement or understanding with any person that would give rise to a valid claim against it or the Underwriters for a brokerage commission, finder’s fee or like payment to any person other than the Underwriters in connection with the offering and sale of the Stock.

(vv) The Company has not sold or issued any securities that would be integrated with the offering of the Stock contemplated by this Agreement pursuant to the Securities Act, the Securities Act Regulations or the interpretations thereof by the Commission.

(ww) The Company and, to the Company’s knowledge, its affiliates have not taken, directly or indirectly, any action designed to or that has constituted or that would reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the offering of the shares of the Stock or to result in a violation of Regulation M under the Exchange Act.

(xx) The Stock has been approved for listing, subject to official notice of issuance and evidence of satisfactory distribution on, The NASDAQ Global Market.

(yy) The Company has not distributed and, prior to the later to occur of any Delivery Date and completion of the distribution of the Stock, will not distribute any offering material in connection with the offering and sale of the Stock other than any Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus to which the Representative has consented in accordance with Section 1(l) or 5(i) and any Issuer Free Writing Prospectus set forth on **Schedule V** hereto.

(zz) Neither the Company nor any Subsidiary is in violation of or has received notice of any violation with respect to any federal or state law relating to discrimination in the hiring, promotion or pay of employees, nor any applicable federal or state wage and hour laws, nor any state law precluding the denial of credit due to the neighborhood in which a property is situated, the violation of any of which would reasonably be expected to have a Material Adverse Effect.

(aaa) Neither the Company nor any Subsidiary, nor, to the knowledge of the Company, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any Subsidiary, has (i) used any Company or Subsidiary funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from Company funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977; or (iv) made any (A) bribe or (B) rebate, payoff, influence payment, kickback or other payment in violation of applicable law.

(bbb) The operations of the Company and each Subsidiary have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “*Money Laundering Laws*”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(ccc) Neither the Company nor any Subsidiary, nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“*OFAC*”); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person then subject to any U.S. sanctions administered by OFAC.

(ddd) There are no debt securities or preferred stock issued, or guaranteed by, the Company that are rated by a “nationally recognized statistical rating organization,” as such term is defined in Section 3(a)(62) of the Exchange Act.

(eee) To the Company’s knowledge, there are no affiliations or associations between (i) any member of FINRA and (ii) the Company or any of the Company’s officers, directors or 5% or greater security holders or any beneficial owner of the Company’s unregistered equity securities that were acquired at any time on or after the one hundred eightieth (180th) day immediately preceding the date the Registration Statement was initially filed with the Commission, except as set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus or as otherwise disclosed in writing to the Representative.

(fff) No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in the Registration Statement and the Pricing Disclosure Package has been made without a reasonable basis or has been disclosed other than in good faith.

Any certificate signed by any officer of the Company and delivered to the Representative or counsel for the Underwriters in connection with the offering of the Stock shall be deemed a representation and warranty by the Company, as to matters covered thereby, to each Underwriter.

2. *Purchase of the Stock by the Underwriters.* On the basis of the representations, warranties and covenants contained in, and subject to the terms and conditions of, this Agreement, the Company agrees to sell 6,400,000 shares of the Firm Stock to the several Underwriters, and each of the Underwriters, severally and not jointly, agrees to purchase the number of shares of the Firm Stock set forth opposite that Underwriter's name in Schedule I hereto. The respective purchase obligations of the Underwriters with respect to the Firm Stock shall be rounded among the Underwriters to avoid fractional shares, as the Representative may determine.

In addition, the Company grants to the Underwriters an option to purchase up to 960,000 additional shares of Option Stock. Such option is exercisable in the event that the Underwriters sell more shares of Common Stock than the number of shares of Firm Stock in the offering and as set forth in Section 4 hereof. Each Underwriter agrees, severally and not jointly, to purchase the number of shares of Option Stock (subject to such adjustments to eliminate fractional shares as the Representative may determine) that bears the same proportion to the total number of shares of Option Stock to be sold on such Delivery Date as the number of shares of Firm Stock set forth in **Schedule I** hereto opposite the name of such Underwriter bears to the total number of shares of Firm Stock.

The purchase price payable by the Underwriters for both the Firm Stock and any Option Stock is \$[]¹ per share.

The Company is not obligated to deliver any of the Firm Stock or Option Stock to be delivered on the applicable Delivery Date, except upon payment for all such Stock to be purchased on such Delivery Date as provided herein.

3. *Offering of Stock by the Underwriters.* Upon authorization by the Representative of the release of the Firm Stock, the several Underwriters propose to offer the Firm Stock for sale upon the terms and conditions to be set forth in the Prospectus.

4. *Delivery of and Payment for the Stock.* Delivery of and payment for the Firm Stock shall be made at 10:00 A.M., New York City time, on the third (fourth, if the pricing occurs after 4:30 P.M. (New York City time) on any given day) business day following the date of this Agreement (unless postponed in accordance with the provisions of Section 9) or at such other date or place as shall be determined by agreement between the Representative and the Company. This date and time are sometimes referred to as the "**Initial Delivery Date**". Delivery of the Firm Stock shall be made to the Representative for the account of each Underwriter against payment by the several Underwriters through the Representative of the aggregate purchase price of the Firm Stock being sold by the Company to or upon the order of the Company by wire transfer in immediately available funds to the accounts specified by the Company. Time shall be of the essence, and delivery at the time and place specified pursuant to this Agreement is a further condition of the obligation of each Underwriter hereunder. The Company shall deliver the Firm Stock through the facilities of The Depository Trust Company ("**DTC**") unless the Representative shall otherwise instruct.

¹ 93% of the public offering price.

The option granted in Section 2 will expire 30 days after the date of this Agreement and may be exercised in whole or from time to time in part by written notice being given to the Company by the Representative; *provided* that if such date falls on a day that is not a business day, the option granted in Section 2 will expire on the next succeeding business day. Such notice shall set forth the aggregate number of shares of Option Stock as to which the option is being exercised, the names in which the shares of Option Stock are to be registered, the denominations in which the shares of Option Stock are to be issued and the date and time, as determined by the Representative, when the shares of Option Stock are to be delivered; *provided, however*, that this date and time shall not be earlier than the Initial Delivery Date nor earlier than the second business day after the date on which the option shall have been exercised nor later than the fifth business day after the date on which the option shall have been exercised. Each date and time that shares of Option Stock are delivered is sometimes referred to as an “*Option Stock Delivery Date*”, and the Initial Delivery Date and any Option Stock Delivery Date are sometimes each referred to as a “*Delivery Date*”.

Delivery of the Option Stock by the Company and payment for the Option Stock by the several Underwriters through the Representative shall be made at 10:00 A.M., New York City time, on the date specified in the corresponding notice described in the preceding paragraph or at such other date or place as shall be determined by agreement between the Representative and the Company. On the applicable Option Stock Delivery Date, the Company shall deliver or cause to be delivered the Option Stock to the Representative for the account of each Underwriter against payment by the several Underwriters through the Representative of the aggregate purchase price of the Option Stock being sold by the Company to or upon the order of the Company by wire transfer in immediately available funds to the accounts specified by the Company. Time shall be of the essence, and delivery at the time and place specified pursuant to this Agreement is a further condition of the obligation of each Underwriter hereunder. The Company shall deliver the Option Stock through the facilities of DTC unless the Representative shall otherwise instruct.

5. Further Agreements of the Company and the Underwriters.

(a) The Company, subject to Section 5(b), will comply with the requirements of Rule 430A, and will notify the Representative as soon as practicable, and confirm the notice in writing, (i) when any post-effective amendment to the Registration Statement shall have become effective or any amendment or supplement to the Prospectus shall have been filed, (ii) of the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or for additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment or of any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus, or of the suspension of the qualification of the Stock for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes or of any examination pursuant to Section 8(d) or 8(e) of the Securities Act concerning the Registration Statement and (v) if the Company becomes the subject of a proceeding under Section 8A of the Securities Act

in connection with the offering of the Stock. The Company will effect all filings required under Rule 424(b), in the manner and within the time period required by Rule 424(b) (without reliance on Rule 424(b)(8)), and will take such steps as it deems reasonably necessary to ascertain promptly whether the form of prospectus transmitted for filing under Rule 424(b) was received for filing by the Commission and, in the event that it was not, it will promptly file such prospectus. The Company will use its reasonable best efforts to prevent the issuance of any stop order, or any other order for such prevention or suspension and, if any such order is issued, to obtain the lifting thereof as soon as practicable.

(b) The Company will comply with the Securities Act and the Securities Act Regulations so as to permit the completion of the distribution of the Stock as contemplated in this Agreement and in the Registration Statement, the Pricing Disclosure Package and the Prospectus. If at any time when a prospectus relating to the Stock is (or, but for the exception afforded by Rule 172 of the Securities Act (“**Rule 172**”), would be) required by the Securities Act to be delivered in connection with sales of the Stock, any event shall occur or condition shall exist as a result of which it is necessary, in the reasonable opinion of counsel for the Underwriters or for the Company, to (i) amend the Registration Statement in order that the Registration Statement will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) amend or supplement the Pricing Disclosure Package or the Prospectus in order that the Pricing Disclosure Package or the Prospectus, as the case may be, will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time it is delivered to a purchaser, not misleading, or (iii) amend the Registration Statement or amend or supplement the Pricing Disclosure Package or the Prospectus, as the case may be, in order to comply with the requirements of the Securities Act or the Securities Act Regulations, the Company will promptly (A) give the Representative notice of such event, (B) prepare any amendment or supplement as may be necessary to correct such statement or omission or to make the Registration Statement, the Pricing Disclosure Package or the Prospectus comply with such requirements and, a reasonable amount of time prior to any proposed filing or use thereof, furnish the Representative with copies of any such amendment or supplement and (C) file with the Commission any such amendment or supplement; provided that the Company shall not file or use any such amendment or supplement to which the Representative or counsel for the Underwriters shall reasonably object. The Company will furnish to the Underwriters such number of copies of such amendment or supplement as the Underwriters may reasonably request.

(c) The Company has furnished or will deliver to the Representative and counsel for the Underwriters, without charge, signed copies of the Registration Statement as originally filed and each amendment thereto (including exhibits filed therewith) and signed copies of all consents and certificates of experts, and will also deliver to the Representative, without charge, a conformed copy of the Registration Statement as originally filed and each amendment thereto (without exhibits) for each of the Underwriters. The copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(d) The Company has delivered or will deliver to each Underwriter, without charge, as many copies of each Preliminary Prospectus as such Underwriter reasonably requests, and the Company hereby consents to the use of such copies for purposes permitted by the Securities Act. The Company will furnish to each Underwriter, without charge, during the period when a prospectus relating to the Stock is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the Securities Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) The Company will use its reasonable best efforts, in cooperation with the Underwriters, to qualify the Stock for offering and sale under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Representative may reasonably designate and to maintain such qualifications in effect so long as required to complete the distribution of the Stock; provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in any jurisdiction in which it is not otherwise so subject.

(f) The Company will timely file such reports pursuant to the Exchange Act as are necessary in order to make generally available to its securityholders as soon as practicable an earnings statement for the purposes of, and to provide to the Underwriters the benefits contemplated by, the last paragraph of Section 11(a) of the Securities Act.

(g) The Company will use its reasonable best efforts to effect the listing of the Common Stock (including the Stock) on The NASDAQ Global Market.

(h) The Company, during the period when a Prospectus relating to the Stock is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the Securities Act, will file all documents required to be filed with the Commission pursuant to the Exchange Act within the time periods required by the Exchange Act and the rules and regulations promulgated thereunder. Additionally, the Company shall report the use of proceeds from the issuance of the Stock as may be required under Rule 463 under the Securities Act.

(i) The Company agrees that, unless it obtains the prior written consent of the Representative, it will not make any offer relating to the Stock that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a "free writing prospectus," or a portion thereof, required to be filed by the Company with the Commission or retained by the Company under Rule 433; provided that the Representative will be deemed to have consented to the Issuer Free Writing Prospectuses listed on **Schedule V** hereto and any "road show for an offering that is a written communication" within the meaning of Rule 433(d)(8)(i) that has been reviewed by the Representative. The Company represents that it has treated or agrees that it will treat each such free writing prospectus consented to, or deemed consented to, by the Representative as an "issuer free writing prospectus," as defined in Rule 433, and that it has complied and will comply with the applicable requirements of Rule 433 with respect thereto, including timely filing with the Commission where required, legending and record keeping. If at

any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or conflicts with the information contained at that subsequent time in the Registration Statement, the then-most recent Preliminary Prospectus or the Prospectus, and not superseded or modified at that subsequent time, or included or includes an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representative, will not thereafter use such Free Writing Prospectus and shall promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission unless such conflict, untrue statement or omission shall have been superseded or modified by the information contained at that subsequent time in the Registration Statement, the then-most recent Preliminary Prospectus or the Prospectus.

(j) If at any time following the distribution of any Written Testing-the-Waters Communication there occurred or occurs an event or development as a result of which such Written Testing-the-Waters Communication included or includes an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representative, will not thereafter use such Written Testing-the-Waters Communication and will promptly amend or supplement, at its own expense, such Written Testing-the-Waters Communication to eliminate or correct such untrue statement or omission unless such untrue statement or omission shall have been superseded or modified by the information contained at that subsequent time in the Registration Statement, the then-most recent Preliminary Prospectus or the Prospectus.

(k) For a period commencing on the date hereof and ending on the 180th day after the date of the Prospectus (the "*Lock-Up Period*"), the Company shall not, directly or indirectly, (A) offer for sale, sell, pledge, or otherwise dispose (or enter into any transaction or device that is designed to, or would reasonably be expected to, result in the disposition by any person at any time in the future) any shares of Common Stock or securities convertible into or exercisable or exchangeable for Common Stock (other than the Stock and securities issued pursuant to employee benefit plans, stock option plans or other equity compensation plans or arrangements existing on the date hereof or pursuant to currently outstanding options, warrants or rights not issued under one of those plans or arrangements), or sell or grant options, rights or warrants with respect to any shares of Common Stock or securities convertible into or exchangeable for Common Stock (other than the sale or grant of securities pursuant to employee benefit plans, stock option plans or other equity compensation plans or arrangements existing on the date hereof), (B) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of such shares of Common Stock, whether any such transaction described in clause (A) or (B) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise (other than the sale or grant of securities pursuant to employee benefit plans, stock option plans or other equity compensation plans or arrangements existing on the date hereof and disclosed in the Pricing Disclosure Package and the Prospectus), (C) file or cause to be filed a registration statement, including any amendments thereto, with respect to the registration of any shares of Common Stock or securities convertible, exercisable or exchangeable into Common Stock or any other securities of the

Company (other than any registration statement on Form S-8 or any successor form thereto), or (D) publicly disclose the intention to do any of the foregoing (other than actions permitted hereby), in each case without the prior written consent of the Representative, on behalf of the Underwriters, and to request each officer, director and stockholder of the Company set forth on **Schedule II** hereto to furnish to the Representative, prior to the Initial Delivery Date, a letter or letters, substantially in the form of **Exhibit A** hereto (the "**Lock-Up Agreements**").

(l) If the Representative, in its sole discretion, agrees to release or waive the restrictions set forth in a Lock-Up Agreement (a form of release or waiver is attached hereto as **Annex A**) for an officer or director of the Company and provides the Company with notice of the impending release or waiver at least three business days before the effective date of the release or waiver, the Company agrees to announce the impending release or waiver by issuing a press release substantially in the form of **Exhibit B** hereto, and containing such other lawful information as the Representative may require with respect to the circumstances of the release or waiver and/or the identity of the officer(s) and/or director(s) with respect to which the release or waiver applies, through a major news service at least two business days before the effective date of the release or waiver.

(m) The Company shall apply the net proceeds from the sale of the Stock being sold by the Company substantially in accordance with the description as set forth in the Prospectus under the caption "Use of Proceeds."

(n) If the Company elects to rely upon Rule 462(b) under the Securities Act, the Company shall file a Rule 462(b) Registration Statement with the Commission in compliance with Rule 462(b) under the Securities Act by 10:00 P.M., Eastern time, on the date of this Agreement, and the Company shall at the time of filing pay the Commission the filing fee for the Rule 462(b) Registration Statement or, if such fee cannot be paid at such time, as promptly thereafter as practicable and in any event within one business day.

(o) The Company shall promptly notify the Representative if the Company ceases to be an Emerging Growth Company at any time prior to the later of (A) the time when a prospectus relating to the offering or sale of the Stock is not required by the Securities Act to be delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule) and (B) completion of the Lock-Up Period.

(p) The Company shall not take, and shall direct its affiliates not to take, directly or indirectly, any action designed to or that has constituted or that reasonably would be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the offering of the Stock.

(q) The Company shall do and perform all things required or necessary to be done and performed under this Agreement by it prior to each Delivery Date, and shall use commercially reasonable efforts to cause all conditions precedent to the Underwriters' obligations hereunder to purchase the Stock to be satisfied.

(r) Each Underwriter, severally and not jointly, agrees that, unless it obtains the prior written consent of the Company, it will not make any offer relating to the Stock that would

constitute an “issuer free writing prospectus,” as defined in Rule 433 under the Securities Act, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405 under the Securities Act, required to be filed with the Commission, nor shall it use any “issuer information,” as defined in Rule 433 under the Securities Act, in a manner that would require the Company to make a filing under the Securities Act or the Securities Act Regulations. “**Permitted Issuer Information**” shall mean any such “issuer information” the use of which by an Underwriter shall have been consented to in writing by the Company. The Company consents to the use by any Underwriter of a free writing prospectus that (a) is not an “issuer free writing prospectus” as defined in Rule 433 under the Securities Act, and (b) contains only information that describes the final terms of the Stock.

6. *Expenses.* The Company agrees, whether or not the transactions contemplated by this Agreement are consummated or this Agreement is terminated, to pay all expenses, costs, fees and taxes incident to and in connection with (a) the authorization, issuance, sale and delivery of the Stock and any stamp duties or other taxes payable in that connection, and the preparation and printing of certificates for the Stock; (b) the preparation, printing and filing under the Securities Act of the Registration Statement (including any exhibits thereto), any Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus, any Written Testing-the-Waters Communication, and any amendment or supplement thereto; (c) the distribution of the Registration Statement (including any exhibits thereto), any Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus, any Written Testing-the-Waters Communication, and any amendment or supplement thereto, all as provided in this Agreement; (d) the production and distribution of this Agreement, any supplemental agreement among Underwriters, and any other related documents in connection with the offering, purchase, sale and delivery of the Stock; (e) any required review by FINRA of the terms of sale of the Stock (including related reasonable and documented fees and expenses of counsel to the Underwriters in an amount that is not greater than \$20,000); (f) the listing of the Stock on The NASDAQ Global Market and/or any other exchange; (g) the qualification of the Stock under the securities laws of the several jurisdictions as provided in Section 5(e) and the preparation, printing and distribution of a Blue Sky Memorandum (including related reasonable and documented fees and expenses of counsel to the Underwriters in an amount that is not greater than \$15,000); (h) the preparation, printing and distribution of one or more versions of the Preliminary Prospectus and the Prospectus for distribution in Canada, including in the form of a Canadian “wrapper” (including related reasonable and documented fees and expenses of counsel, including any Canadian counsel, to the Underwriters in an amount that is not greater than \$10,000); (i) the investor presentations on any “road show” or any Testing-the-Waters Communication, undertaken in connection with the marketing of the Stock, including, without limitation, expenses associated with any electronic road show, travel and lodging expenses of the representatives and officers of the Company (but specifically excluding the travel and lodging expenses of any representatives of the Underwriters) and one-half of the cost of any aircraft chartered in connection with the road show with the prior written consent of the Company; and (j) all other costs and expenses incident to the performance of the obligations of the Company under this Agreement; *provided that*, except as provided in this Section 6 and in Section 11, the Underwriters shall pay their own costs and expenses, including travel and lodging of their representatives, the costs and expenses of their counsel, any transfer taxes on the Stock which they may sell and the expenses of advertising any offering of the Stock made by the Underwriters (which shall be limited to a customary “tombstone” advertisement). For the

avoidance of doubt, neither the Representative nor any other Underwriter is or has been authorized to incur or pay on behalf of the Company any expenses, costs, fees and taxes without the prior consent of the Company.

7. *Conditions of Underwriters' Obligations.* The respective obligations of the Underwriters hereunder are subject to the accuracy, when made and on each Delivery Date, of the representations and warranties of the Company contained herein, to the performance by the Company of its obligations hereunder, and to each of the following additional terms and conditions:

(a) The Registration Statement, including any Rule 462(b) Registration Statement, shall have become effective and, at such Delivery Date, no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto shall have been issued under the Securities Act, no order preventing or suspending the use of any Preliminary Prospectus or the Prospectus shall have been issued and no proceedings for any of those purposes shall have been instituted or shall be pending or, to the Company's knowledge, threatened; and the Company shall have complied with each request (if any) from the Commission for additional information. The Prospectus shall have been filed with the Commission in the manner and within the time frame required by Rule 424(b) (without reliance on Rule 424(b)(8)) or a post-effective amendment providing such information shall have been filed with, and declared effective by, the Commission in accordance with the requirements of Rule 430A.

(b) No Underwriter shall have discovered and disclosed to the Company on or prior to such Delivery Date that the Registration Statement, the Prospectus or the Pricing Disclosure Package, or any amendment or supplement thereto, contains an untrue statement of a fact which, in the opinion of counsel for the Underwriters, is material or omits to state a fact which, in the opinion of such counsel, is material and is required to be stated therein or is necessary in order to make the statements therein (in the case of the Prospectus or the Pricing Disclosure Package or any amendment or supplement thereto, in the light of the circumstances under which they were made) not misleading.

(c) All corporate proceedings and other legal matters incident to the authorization, form and validity of this Agreement, the Stock, the Registration Statement, the Prospectus, the Pricing Disclosure Package and any Issuer Free Writing Prospectus, and all other legal matters relating to this Agreement and the transactions contemplated hereby shall be reasonably satisfactory in all material respects to counsel for the Underwriters, and the Company shall have furnished to such counsel all documents and information (other than additional opinions of counsel) that they may reasonably request to enable them to pass upon such matters.

(d) Foley Hoag LLP shall have furnished to the Representative its written opinion, as counsel to the Company, addressed to the Underwriters and dated such Delivery Date, in form and substance reasonably acceptable to the Representative.

(e) Sunstein Kann Murphy & Timbers LLP shall have furnished to the Representative its written opinion, as intellectual property counsel to the Company, addressed to the Underwriters and dated such Delivery Date, in form and substance reasonably acceptable to the Representative.

(f) The Representative shall have received from Lowenstein Sandler LLP, counsel for the Underwriters, such opinion or opinions, dated such Delivery Date, with respect to the issuance and sale of the Stock, the Registration Statement, the Prospectus and the Pricing Disclosure Package and other related matters as the Representative may reasonably require, and the Company shall have furnished to such counsel such documents (other than additional opinions of counsel) as they reasonably request for the purpose of enabling them to pass upon such matters.

(g) At the time of execution of this Agreement, the Representative shall have received from Marcum LLP a letter, in form and substance satisfactory to the Representative, addressed to the Underwriters and dated the date hereof (i) confirming that they are independent public accountants within the meaning of the Securities Act and are in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X of the Commission, and (ii) stating, as of the date hereof (or, with respect to matters involving changes or developments since the respective dates as of which specified financial information is given in the most recent Preliminary Prospectus, as of a date not more than three days prior to the date hereof), the conclusions and findings of such firm with respect to the financial information and other matters ordinarily covered by accountants' "comfort letters" to underwriters in connection with registered public offerings.

(h) With respect to the letter of Marcum LLP referred to in the preceding paragraph and delivered to the Representative concurrently with the execution of this Agreement (the "**initial letter**"), the Company shall have furnished to the Representative a letter (the "**bring-down letter**") of such accountants, addressed to the Underwriters and dated such Delivery Date (i) confirming that they are independent public accountants within the meaning of the Securities Act and are in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X of the Commission, (ii) stating, as of the date of the bring-down letter (or, with respect to matters involving changes or developments since the respective dates as of which specified financial information is given in the Prospectus, as of a date not more than three days prior to the date of the bring-down letter), the conclusions and findings of such firm with respect to the financial information and other matters covered by the initial letter, and (iii) confirming in all material respects the conclusions and findings set forth in the initial letter.

(i) The Company shall have furnished to the Representative a certificate, dated such Delivery Date, of each of its Chief Executive Officer and its Chief Financial Officer on behalf of the Company stating:

(i) That the representations and warranties of the Company in Section 1 are true and correct on and as of such Delivery Date, and the Company has complied in all material respects with all its agreements contained herein and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to such Delivery Date;

(ii) That no stop order suspending the effectiveness of the Registration Statement has been issued; and no proceedings or examination for that purpose have been instituted or, to the knowledge of such officer, threatened;

(iii) That he or she has examined the Registration Statement, the Prospectus and the Pricing Disclosure Package, and, in his or her opinion, (A) (1) the Registration Statement, as of the Effective Date and on the applicable Delivery Date did not contain any untrue statement of a material fact and did not omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (2) the Prospectus, as of its date and on the applicable Delivery Date did not and does not contain any untrue statement of a material fact and did not and does not omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and (3) the Pricing Disclosure Package, as of the Applicable Time, did not contain any untrue statement of a material fact and did not omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and (B) since the Effective Date, no event has occurred that should have been set forth in a supplement or amendment to the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus and that has not been so set forth; and

(iv) To the effect of Section 7(j) (*provided* that no representation with respect to the judgment of the Representative need be made).

(j) Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (i) neither the Company nor any Subsidiary shall have sustained, since the date of the latest balance sheet included in the Registration Statement, the Pricing Disclosure Package and the Prospectus, any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, or (ii) since such date there shall not have been any change in the capital stock or long-term debt of the Company or any change, or any development involving a prospective change, in or affecting the condition (financial or otherwise), results of operations, stockholders' equity, assets, properties, management, business or prospects of the Company and the Subsidiaries taken as a whole, the effect of which, in any such case described in clause (i) or (ii), is, individually or in the aggregate, in the judgment of the Representative, so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Stock being delivered on such Delivery Date on the terms and in the manner contemplated in the Prospectus.

(k) Subsequent to the execution and delivery of this Agreement there shall not have occurred any of the following: (i) (A) trading in securities generally on the New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or The NASDAQ Capital Market, or (B) trading in any securities of the Company on any exchange, shall have been suspended or materially limited or the settlement of such trading generally shall have been materially disrupted or minimum prices shall have been established on any such exchange or such market by the Commission, by such exchange or by any other regulatory body or governmental authority having jurisdiction, (ii) a general moratorium on commercial banking activities shall have been declared by federal or New York state authorities, (iii) the United

States shall have become engaged in hostilities, there shall have been an escalation in hostilities involving the United States or there shall have been a declaration of a national emergency or war by the United States, or (iv) there shall have occurred such a material adverse change in general economic, political or financial conditions, including, without limitation, as a result of terrorist activities after the date hereof (or the effect of international conditions on the financial markets in the United States shall be such), as to make it, in the judgment of the Representative, impracticable or inadvisable to proceed with the public offering or delivery of the Stock being delivered on such Delivery Date on the terms and in the manner contemplated in the Prospectus.

(l) The NASDAQ Stock Market, Inc. shall have approved the Stock for listing on The NASDAQ Global Market, subject only to official notice of issuance and evidence of satisfactory distribution.

(m) The Lock-Up Agreements between the Representative and the officers, directors and stockholders of the Company set forth on **Schedule II**, delivered to the Representative on or before the date of this Agreement, shall be in full force and effect on such Delivery Date.

(n) FINRA shall have confirmed that it has not raised any objection with respect to the fairness and reasonableness of the underwriting terms and arrangements relating to the offering and the Stock.

(o) On or prior to each Delivery Date, the Company shall have furnished to the Underwriters such further certificates and documents (other than additional opinions of counsel) as the Representative may reasonably request.

All opinions, letters, evidence and certificates mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Underwriters.

8. Indemnification and Contribution.

(a) The Company hereby agrees to indemnify and hold harmless each Underwriter, its affiliates, directors, officers and employees and each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof (including, but not limited to, any loss, claim, damage, liability or action relating to purchases and sales of Stock), to which that Underwriter, affiliate, director, officer, employee or controlling person may become subject, under the Securities Act or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in (A) any Preliminary Prospectus, the Pricing Disclosure Package, the Registration Statement, the Prospectus or in any amendment or supplement thereto, (B) any Issuer Free Writing Prospectus or in any amendment or supplement thereto, (C) any Permitted Issuer Information used or referred to in accordance with this Agreement in any "free writing prospectus" (as defined in Rule 405 under the Securities Act) used or referred to by any Underwriter, (D) any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Stock, including any "road show" (as defined in Rule 433 under the

Securities Act) not constituting an Issuer Free Writing Prospectus and any Written Testing-the-Waters Communication (“*Marketing Materials*”), or (E) any Blue Sky application or other document prepared or executed by the Company (or based upon any written information furnished by the Company for use therein) specifically for the purpose of qualifying any or all of the Stock under the securities laws of any state or other jurisdiction (any such application, document or information being hereinafter called a “*Blue Sky Application*”) or (ii) the omission or alleged omission to state in any Preliminary Prospectus, the Pricing Disclosure Package, the Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or in any amendment or supplement thereto or in any Permitted Issuer Information, any Marketing Materials or any Blue Sky Application, any material fact required to be stated therein or necessary in order to make the statements therein (except in the case of the Registration Statement, in the light of the circumstances under which they were made) not misleading, and shall reimburse each Underwriter and each such affiliate, director, officer, employee or controlling person promptly upon demand for any legal or other expenses reasonably incurred by that Underwriter, affiliate, director, officer, employee or controlling person in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred, subject to delivery to the Company of reasonable documentation thereof; *provided, however*, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement or omission or alleged omission made in any Preliminary Prospectus, the Pricing Disclosure Package, the Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or in any amendment or supplement to any of the foregoing or in any Permitted Issuer Information, any Marketing Materials or any Blue Sky Application, in reliance upon and in conformity with written information concerning such Underwriter furnished to the Company through the Representative by or on behalf of any Underwriter specifically for inclusion therein, which information consists solely of the information specified in Section 8(e). The foregoing indemnity agreement is in addition to any liability which the Company may otherwise have to any Underwriter or to any affiliate, director, officer, employee or controlling person of that Underwriter.

(b) Each Underwriter, severally and not jointly, shall indemnify and hold harmless the Company, its directors, officers and employees, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof (including, but not limited to, any loss, claim, damage, liability or action relating to purchases and sales of Stock), to which the Company or any such director, officer, employee or controlling person may become subject, under the Securities Act or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in any Preliminary Prospectus, the Pricing Disclosure Package, the Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or in any amendment or supplement to any of the foregoing or in any Marketing Materials or Blue Sky Application, or (ii) the omission or alleged omission to state in any Preliminary Prospectus, the Pricing Disclosure Package, the Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or in any amendment or supplement to any of the foregoing or in any Marketing Materials or Blue Sky Application, any material fact required to be stated therein or necessary in order to make the statements therein not misleading, but in each case only to the extent that the untrue statement or alleged untrue statement or omission or

alleged omission was made in reliance upon and in conformity with written information concerning such Underwriter furnished to the Company through the Representative by or on behalf of that Underwriter specifically for inclusion therein, which information is limited to the information set forth in Section 8(e). The foregoing indemnity agreement is in addition to any liability that any Underwriter may otherwise have to the Company or any such director, officer, employee or controlling person.

(c) Promptly after receipt by an indemnified party under this Section 8 of notice of any claim or the commencement of any action, the indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, notify the indemnifying party in writing of the claim or the commencement of that action; *provided, however*, that the failure to notify the indemnifying party shall not relieve it from any liability which it may have under this Section 8 except to the extent it has been materially prejudiced (through the forfeiture of substantive rights and defenses) by such failure and, *provided, further*, that the failure to notify the indemnifying party shall not relieve it from any liability which it may have to an indemnified party otherwise than under this Section 8. If any such claim or action shall be brought against an indemnified party, and it shall notify the indemnifying party thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel reasonably satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable to the indemnified party under this Section 8 for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation; *provided, however*, that the indemnified party shall have the right to employ counsel (limited to one firm plus, for each relevant jurisdiction, one local counsel firm, if necessary) to represent jointly the indemnified party and those other indemnified parties and their respective directors, officers, employees and controlling persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought under this Section 8 if (i) the indemnified party and the indemnifying party shall have so mutually agreed; (ii) the indemnifying party has failed within a reasonable time to retain counsel reasonably satisfactory to the indemnified party; (iii) the indemnified party and its directors, officers, employees and controlling persons shall have reasonably concluded that there may be legal defenses available to them that are different from or in addition to those available to the indemnifying party; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the indemnified parties or their respective directors, officers, employees or controlling persons, on the one hand, and the indemnifying party, on the other hand, and representation of both sets of parties by the same counsel would be inappropriate due to actual or potential differing interests between them, and in any such event the fees and expenses of such separate counsel shall be paid by the indemnifying party. No indemnifying party shall (x) without the prior written consent of the indemnified parties (which consent shall not be unreasonably withheld, delayed or conditioned), settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding and does not include a statement as to, or an admission of fault, culpability or a failure to act by or on behalf of any indemnified

party, or (y) be liable for any settlement, compromise or consent judgment of any such action effected without its written consent (which consent shall not be unreasonably withheld, delayed or conditioned), but if settled with the written consent of the indemnifying party or if there be a final judgment for the plaintiff in any such action, the indemnifying party agrees to indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment to the extent set forth in this Section 8. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by Section 8(a) or (b) hereof, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request or disputed in good faith the indemnified party's entitlement to such reimbursement prior to the date of such settlement.

(d) If the indemnification provided for in this Section 8 shall for any reason be unavailable to or insufficient to hold harmless an indemnified party under Section 8(a) or 8(b) in respect of any loss, claim, damage or liability, or any action in respect thereof, referred to therein, then each indemnifying party shall, in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability, or action in respect thereof, (i) in such proportion as shall be appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other, from the offering of the Stock, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Underwriters, on the other, with respect to the statements or omissions that resulted in such loss, claim, damage or liability, or action in respect thereof, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Underwriters, on the other, with respect to such offering shall be deemed to be in the same proportion as the total net proceeds from the offering of the Stock purchased under this Agreement (before deducting expenses) received by the Company, as set forth in the table on the cover page of the Prospectus, on the one hand, and the total underwriting discounts and commissions received by the Underwriters with respect to the shares of the Stock purchased under this Agreement, as set forth in the table on the cover page of the Prospectus, on the other hand. The relative fault shall be determined by reference to whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or the Underwriters, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contributions pursuant to this Section 8(d) were to be determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this Section 8(d) shall be deemed to include, for purposes of this Section 8(d), any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 8(d), in no event shall an Underwriter

be required to contribute any amount in excess of the amount by which the total underwriting discounts and commissions received by such Underwriter with respect to the offering of the Stock exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute as provided in this Section 8(d) are several in proportion to their respective underwriting obligations and not joint.

(e) The Underwriters severally confirm and the Company acknowledges and agrees that the following statements are correct and constitute the only information concerning such Underwriters furnished in writing to the Company by or on behalf of the Underwriters specifically for inclusion in any Preliminary Prospectus, the Pricing Disclosure Package, the Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or in any amendment or supplement to any of the foregoing or in any Marketing Materials: (i) the sentence on the cover page of the Prospectus regarding delivery of shares by the Underwriters (and corresponding sentences in each Preliminary Prospectus, the Pricing Disclosure Package and the Registration Statement), and (ii) the fourth, sixth, fourteenth, sixteenth, eighteenth (excluding the information in the bulleted subparagraphs, but including the sixth sentence of the second bulleted subparagraph), twenty-second, twenty-third (the second sentence only) and twenty-fourth (the first sentence only and only with respect to Roth Capital Partners, LLC) paragraphs appearing under the caption "Underwriting" in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

9. Defaulting Underwriters.

(a) If, on any Delivery Date, any Underwriter defaults in its obligations to purchase the Stock that it has agreed to purchase under this Agreement, the remaining non-defaulting Underwriters may in their discretion arrange for the purchase of such Stock by the non-defaulting Underwriters or other persons satisfactory to the Company on the terms contained in this Agreement. If, within 36 hours after any such default by any Underwriter, the non-defaulting Underwriters do not arrange for the purchase of such Stock, then the Company shall be entitled to a further period of 36 hours within which to procure other persons reasonably satisfactory to the non-defaulting Underwriters to purchase such Stock on such terms. In the event that within the respective prescribed periods, the non-defaulting Underwriters notify the Company that they have so arranged for the purchase of such Stock, or the Company notifies the non-defaulting Underwriters that it has so arranged for the purchase of such Stock, either the non-defaulting Underwriters or the Company may postpone such Delivery Date for up to seven full business days in order to effect any changes that in the opinion of counsel for the Company or counsel for the Underwriters may be necessary in the Registration Statement, the Prospectus or any other document or arrangement, and the Company agrees to promptly prepare any amendment or supplement to the Registration Statement, the Prospectus or any such other document or arrangement that effects any such changes. As used in this Agreement, the term "Underwriter" includes, for all purposes of this Agreement unless the context requires otherwise, any party not listed in Schedule I hereto that, pursuant to this Section 9, purchases Stock that a defaulting Underwriter agreed but failed to purchase.

(b) If, after giving effect to any arrangements for the purchase of the Stock of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Company as provided in paragraph (a) above, the total number of shares of the Stock that remains unpurchased does not exceed one-eleventh of the total number of shares of all the Stock, then the Company shall have the right to require each non-defaulting Underwriter to purchase the total number of shares of Stock that such Underwriter agreed to purchase hereunder plus such Underwriter's pro rata share (based on the total number of shares of Stock that such Underwriter agreed to purchase hereunder) of the Stock of such defaulting Underwriter or Underwriters for which such arrangements have not been made; *provided* that the non-defaulting Underwriters shall not be obligated to purchase more than 110% of the total number of shares of Stock that it agreed to purchase on such Delivery Date pursuant to the terms of Section 2.

(c) If, after giving effect to any arrangements for the purchase of the Stock of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Company as provided in paragraph (a) above, the total number of shares of Stock that remains unpurchased exceeds one-eleventh of the total number of shares of all the Stock, or if the Company shall not exercise the right described in paragraph (b) above, then this Agreement or, with respect to any Option Stock Delivery Date, the obligation of the Underwriters to purchase Stock on the Option Stock Delivery Date, shall terminate without liability on the part of the non-defaulting Underwriters. Any termination of this Agreement pursuant to this Section 9 shall be without liability on the part of the Company, except that the Company will continue to be liable for the payment of expenses as set forth in Sections 6 and 11 and except that the provisions of Section 8 shall not terminate and shall remain in effect.

(d) Nothing contained herein shall relieve a defaulting Underwriter of any liability it may have to the Company or any non-defaulting Underwriter for damages caused by its default.

10. *Termination.* The obligations of the Underwriters hereunder may be terminated by the Representative by notice given to and received by the Company prior to delivery of and payment for the Firm Stock if, prior to that time, any of the events described in Sections 7(j) and 7(k) shall have occurred or if the Underwriters shall decline to purchase the Stock for any reason permitted under this Agreement.

11. *Reimbursement of Underwriters' Expenses.* If (a) the Company shall fail to tender the Stock for delivery to the Underwriters for any reason, or (b) the Underwriters shall decline to purchase the Stock for any reason permitted under this Agreement, the Company will reimburse the Underwriters for all reasonable out-of-pocket expenses (including reasonable fees and disbursements of counsel for the Underwriters) incurred by the Underwriters in connection with this Agreement and the proposed purchase of the Stock, and upon demand the Company shall pay the full amount thereof to the Representative, subject to the delivery to the Company of reasonable documentation thereof. If this Agreement is terminated pursuant to Section 9 by reason of the default of one or more Underwriters, the Company shall not be obligated to reimburse any defaulting Underwriter on account of those expenses.

12. *Research Analyst Independence.* The Company acknowledges that the Underwriters' research analysts and research departments are required to be independent from their respective investment banking divisions and are subject to certain regulations and internal

policies, and that such Underwriters' research analysts may hold views and make statements or investment recommendations and/or publish research reports with respect to the Company and/or the offering that differ from the views of their respective investment banking divisions. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against the Underwriters with respect to any conflict of interest that may arise from the fact that the views expressed by their independent research analysts and research departments may be different from or inconsistent with the views or advice communicated to the Company by such Underwriters' investment banking divisions. The Company acknowledges that each of the Underwriters is a full service securities firm and as such from time to time, subject to applicable securities laws, may effect transactions for its own account or the account of its customers and hold long or short positions in debt or equity securities of the companies that may be the subject of the transactions contemplated by this Agreement.

13. *No Fiduciary Duty.* The Company acknowledges and agrees that in connection with this offering, the sale of the Stock or any other services the Underwriters may be deemed to be providing hereunder, notwithstanding any preexisting relationship, advisory or otherwise, between the parties or any oral representations or assurances previously or subsequently made by the Underwriters: (a) no fiduciary or agency relationship between the Company and any other person, on the one hand, and the Underwriters, on the other, exists; (b) the Underwriters are not acting as advisors, expert or otherwise, to the Company, including, without limitation, with respect to the determination of the public offering price of the Stock, and such relationship between the Company, on the one hand, and the Underwriters, on the other, is entirely and solely commercial, based on arms-length negotiations; (c) any duties and obligations that the Underwriters may have to the Company shall be limited to those duties and obligations specifically stated herein; and (d) the Underwriters and their respective affiliates may have interests that differ from those of the Company. The Company hereby waives any claims that the Company may have against the Underwriters with respect to any breach of fiduciary duty in connection with this offering.

14. *Notices, etc.* All statements, requests, notices and agreements hereunder shall be in writing, and:

(a) if to the Underwriters, shall be delivered or sent by mail, nationally recognized overnight courier service or facsimile transmission to Wedbush Securities Inc., Two Embarcadero Center, Suite 600, San Francisco, California 94111, Attention: Equity Capital Markets (Fax: 415-274-6824), with a copy to Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10022, Attention: John D. Hogoboom (Fax: 973-597-2383); and

(b) if to the Company, shall be delivered or sent by mail, nationally recognized overnight courier service or facsimile transmission to the address of the Company set forth in the Registration Statement, Attention: Chief Executive Officer (Fax: 510-742-6282), with a copy to Foley Hoag LLP, Seaport West, 155 Seaport Boulevard, Boston, Massachusetts 02210, Attention: Jeffrey L. Quillen, Esq. (Fax: 617-832-7000).

Any such statements, requests, notices or agreements shall take effect at the time of receipt thereof. The Company shall be entitled to act and rely upon any request, consent, notice or agreement given or made on behalf of the Representative. Each of the Representative and the Company may update the address for notices to the Underwriters and the Company, respectively, by notice given in accordance with this Section 14.

15. *Persons Entitled to Benefit of Agreement.* This Agreement shall inure to the benefit of and be binding upon the Underwriters, the Company, and their respective successors. This Agreement and the terms and provisions hereof are for the sole benefit of only those persons, except that (a) the representations, warranties, indemnities and agreements of the Company contained in this Agreement shall also be deemed to be for the benefit of the directors, officers and employees of the Underwriters and each person or persons, if any, who control any Underwriter within the meaning of Section 15 of the Securities Act, and (b) the indemnity agreement of the Underwriters contained in Section 8 of this Agreement shall be deemed to be for the benefit of the directors, officers and employees of the Company and any person controlling the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act. Nothing in this Agreement is intended or shall be construed to give any person, other than the persons referred to in this Section 15, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

16. *Survival.* The respective indemnities, representations, warranties and agreements of the Company and the Underwriters contained in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall survive the delivery of and payment for the Stock and shall remain in full force and effect, regardless of any investigation made by or on behalf of any of them or any person controlling any of them.

17. *Definition of the Terms "Business Day", "Affiliate" and "Subsidiary".* For purposes of this Agreement, (a) "**business day**" means each Monday, Tuesday, Wednesday, Thursday or Friday that is not a day on which banking institutions in New York are generally authorized or obligated by law or executive order to close, and (b) "**affiliate**" and "**subsidiary**" have the meanings set forth in Rule 405 under the Securities Act.

18. *Governing Law.* **This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles (other than Section 5-1401 of the General Obligations Law).**

19. *Waiver of Jury Trial.* The Company and the Underwriters hereby irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

20. *Counterparts.* This Agreement may be executed in one or more counterparts, including by facsimile or other electronic transmission, and, if executed in more than one counterpart, the executed counterparts shall each be deemed to be an original but all such counterparts shall together constitute one and the same instrument.

21. *Headings.* The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

If the foregoing correctly sets forth the agreement between the Company and the Underwriters, please indicate your acceptance in the space provided for that purpose below.

Very truly yours,

ZOSANO PHARMA CORPORATION

By: _____
Name:
Title:

Accepted:

WEDBUSH SECURITIES INC.

For Itself and as Representative of the several Underwriters
named in Schedule I hereto

By WEDBUSH SECURITIES INC.

By: _____
Authorized Representative

SCHEDULE I

| <u>Underwriters</u> | <u>Number of Shares of Firm Stock</u> |
|-------------------------------|---|
| Wedbush Securities Inc. | |
| Ladenburg Thalmann & Co. Inc. | |
| Roth Capital Partners, LLC | |
| Total | <u>6,400,000</u> |

SCHEDULE II

PERSONS DELIVERING LOCK-UP AGREEMENTS

Directors and Officers

Bruce D. Steel
M. James Barrett
Troy Wilson
Kleanthis G. Xanthopoulos
Vikram Lamba
Peter E. Daddona
Nandan Oza
Winnie W. Tso

Stockholders and Other Persons

Thorsten von Stein
BMV Direct SOTRS LP
BMV Direct SO LP
New Enterprise Associates 12, Limited Partnership
NEA Ventures 2006, Limited Partnership
ProQuest Investments IV, L.P.
ProQuest Management LLC
Nomura Phase4 Ventures L.P.
Hercules Technology Growth Capital
[other stockholders and/or holders of options, warrants or convertible securities]

SCHEDULE III

ORALLY CONVEYED PRICING INFORMATION

1. Price per share to the public: \$[]
2. Firm Stock offered: 6,400,000 shares
3. Option Stock offered: 960,000 shares

ISSUER FREE WRITING PROSPECTUSES
INCLUDED IN THE PRICING DISCLOSURE PACKAGE

[None.]

SCHEDULE IV

ISSUER FREE WRITING PROSPECTUSES – ROAD SHOW MATERIALS

[None.]

SCHEDULE V

ISSUER FREE WRITING PROSPECTUS

[None.]

SCHEDULE VI

WRITTEN TESTING-THE-WATERS COMMUNICATIONS

The 38-slide investor presentation entitled “Zosano Pharma [with company logo] – Better Therapeutics Through Innovative Delivery – Investor Presentation – Confidential – April 2014”

EXHIBIT A

FORM OF LOCK-UP LETTER AGREEMENT

WEDBUSH SECURITIES INC.
As Representative of the several
Underwriters named in Schedule I attached
to the Underwriting Agreement,
Two Embarcadero Center, Suite 600
San Francisco, California 94111

Ladies and Gentlemen:

The undersigned understands that you and certain other firms (the "**Underwriters**") propose to enter into an Underwriting Agreement (the "**Underwriting Agreement**") providing for the purchase by the Underwriters of shares (the "**Stock**") of Common Stock, par value \$0.0001 per share (the "**Common Stock**"), of Zosano Pharma Corporation, a Delaware corporation (the "**Company**"), and that the Underwriters propose to reoffer the Stock to the public (the "**Offering**").

In consideration of the execution of the Underwriting Agreement by the Underwriters, and for other good and valuable consideration, the undersigned hereby irrevocably agrees that, without the prior written consent of Wedbush Securities Inc. ("**Wedbush**"), on behalf of the Underwriters, the undersigned will not, directly or indirectly: (1) offer for sale, sell, pledge, or otherwise dispose of (or enter into any transaction or device that is designed to, or would reasonably be expected to, result in the disposition by any person at any time in the future of) any shares of Common Stock (including, without limitation, shares of Common Stock that may be deemed to be beneficially owned by the undersigned in accordance with Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") and shares of Common Stock that may be issued upon exercise of any options or warrants) or securities convertible into or exercisable or exchangeable for Common Stock; (2) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of shares of Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise; (3) make any demand for or exercise any right or cause to be filed a registration statement, including any amendments thereto, with respect to the registration of any shares of Common Stock or securities convertible into or exercisable or exchangeable for Common Stock or any other securities of the Company (other than (i) registration statements, including amendment thereto, for the Offering, and (ii) registration statements on Form S-8, including amendment thereto, for the issuance by the Company of shares of Common Stock); or (4) publicly disclose the intention to do any of the foregoing (other than with respect to registration statements, including any amendments thereto, excluded from the restrictions set forth in the foregoing clause (3)) for a period commencing on the date hereof and ending on the 180th day after the date of the prospectus relating to the Offering (such 180-day period, the "**Lock-Up Period**").

Exhibit A-1

The foregoing paragraph shall not apply to:

(a) bona fide gifts, sales or other dispositions or distributions, in each case that are made exclusively between and among the undersigned, members of the undersigned's family (including trusts, partnerships, corporations, limited liability companies and other tax and estate planning vehicles, in each case owned by, or held for the benefit of, the undersigned, the undersigned's family and charitable beneficiaries), the undersigned's partners (if a partnership), members (if a limited liability company) or stockholders (if a corporation) and affiliates of the undersigned (including funds or other entities managed by the same manager), and transfers or other dispositions by will, other testamentary document or intestate succession; *provided* that it shall be a condition to any transfer pursuant to this clause (a) that (i) the transferee/donee agrees to be bound by the terms of this Lock-Up Letter Agreement (including, without limitation, the restrictions set forth in the preceding sentence) to the same extent as if the transferee/donee were a party hereto, (ii) each party (donor, donee, transferor or transferee) shall not be required by law (including without limitation the disclosure requirements of the Securities Act of 1933, as amended (the "*Securities Act*"), and the Exchange Act) to make, and shall agree to not voluntarily make, any filing or public announcement of the transfer or disposition prior to the expiration of the Lock-Up Period (except that this clause (ii) shall not apply to transfers or other dispositions by will, other testamentary document or intestate succession), and (iii) the undersigned promptly notifies Wedbush of the transfer or disposition;

(b) the exercise of warrants, the exercise of stock options granted pursuant to the Company's stock option/incentive plans or otherwise, or the conversion of securities, in each case outstanding on the date of the prospectus relating to the Offering; *provided*, that the restrictions set forth herein shall apply to shares of Common Stock issued upon such exercise or conversion;

(c) the establishment of any contract, instruction or plan intended to satisfy all of the requirements of Rule 10b5-1 (a "*Rule 10b5-1 Plan*") under the Exchange Act; *provided, however*, that no sales of Common Stock or securities convertible into, or exchangeable or exercisable for, Common Stock, shall be made pursuant to a Rule 10b5-1 Plan prior to the expiration of the Lock-Up Period; *provided further*, that the Company is not required to report the establishment of such Rule 10b5-1 Plan in any public report or filing with the Commission under the Exchange Act during the Lock-Up Period and does not otherwise voluntarily effect any such public filing or report regarding such Rule 10b5-1 Plan during the Lock-Up Period;

(d) any forfeiture, sale or other transfer to the Company in connection with the termination of the undersigned's employment with or services to the Company; and

(e) the transfer of shares to the Company to satisfy withholding taxes for any equity award granted prior to the date of the prospectus relating to the Offering, such as upon exercise, vesting, lapse of substantial risk of forfeiture, or other similar taxable event, in each case on a "cashless" or "net exercise" basis.

If the undersigned is an officer or director of the Company, (i) the undersigned agrees that the foregoing provisions shall be equally applicable to any issuer-directed Stock (as referred to in FINRA Rule 5131(d)(2)(A)) that the undersigned may purchase in the Offering pursuant to an allocation of Stock that is directed in writing by the Company, (ii) Wedbush agrees on behalf of the Underwriters that, at least three business days before the effective date of

any release or waiver of the foregoing restrictions in connection with a transfer of shares of Common Stock, Wedbush will notify the Company of the impending release or waiver, and (iii) the Company will undertake in the Underwriting Agreement to announce the impending release or waiver by issuing a press release through a major news service (as referred to in FINRA Rule 5131(d)(2)(B)) at least two business days before the effective date of the release or waiver. Any release or waiver granted by Wedbush on behalf of the Underwriters hereunder to any such officer or director shall only be effective two business days after the publication date of such press release. The provisions of this paragraph will not apply if both (a) the release or waiver is effected solely to permit a transfer not for consideration, and (b) the transferee has agreed in writing to be bound by the same terms described in this letter that are applicable to the transferor, to the extent and for the duration that such terms remain in effect at the time of the transfer.

In furtherance of the foregoing, the Company and its transfer agent are hereby authorized to (a) decline to make any transfer of securities if such transfer would constitute a violation or breach of this Lock-Up Letter Agreement and (b) place legends on and issue stop transfer instructions with respect to any Stock subject to this Lock-Up Letter Agreement.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Agreement. The undersigned hereby waives any applicable notice requirement concerning the Company's intention to file the Prospectus and sell Securities thereunder.

It is understood that, if the Company notifies the Underwriters in writing that it does not intend to proceed with the Offering, the undersigned will be released from its obligations under this Lock-Up Letter Agreement.

The undersigned understands that the Company and the Underwriters will proceed with the Offering in reliance on this Lock-Up Letter Agreement. The undersigned further understands that this Lock-Up Agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors and assigns.

Whether or not the Offering actually occurs depends on a number of factors, including market conditions. Any Offering will only be made pursuant to an Underwriting Agreement, the terms of which are subject to negotiation between the Company and the Underwriters and there is no assurance that the Company and the Underwriters will enter into an Underwriting Agreement with respect to the Offering or that the Offering will be consummated.

This Lock-Up Letter Agreement shall automatically terminate upon the earlier to occur, if any, of (1) the termination of the Underwriting Agreement before the sale of any Stock to the Underwriters, (2) December 31, 2014, in the event that the Underwriting Agreement has not been executed by that date or (3) the withdrawal of the registration statement filed with the Securities and Exchange Commission with respect to the Public Offering.

This Lock-Up Letter Agreement and any claim, controversy or dispute arising under or related to it, shall be governed by and construed in accordance with the laws of the State of California, without regard to its principles of conflicts of laws.

Exhibit A-3

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Letter Agreement. Any obligations of the undersigned shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned.

Very truly yours,

Name:

Dated: _____

Exhibit A-4

EXHIBIT B

Form of Press Release

Zosano Pharma Corporation
[], 2014

Zosano Pharma Corporation (the “*Company*”) announced today that Wedbush Securities Inc., the lead book-running manager in the Company’s recent public sale of 6,400,000 shares of common stock, is [waiving] [releasing] a lock-up restriction with respect to [] shares of the Company’s common stock held by [certain officers or directors] [an officer or director] of the Company. The [waiver] [release] will take effect on [*insert date*], and the shares may be sold or otherwise disposed of on or after such date.

This press release is not an offer for sale of the securities in the United States or in any other jurisdiction where such offer is prohibited, and such securities may not be offered or sold in the United States absent registration or an exemption from registration under the United States Securities Act of 1933, as amended.

Exhibit B-1

ANNEX A

Form of Waiver of Lock-up

**Zosano Pharma Corporation
Public Offering of Common Stock**

[Insert date]

[Insert Name and Address of
Officer or Director
Requesting Waiver]

Dear Mr./Ms. [Insert Name]:

This letter is being delivered to you in connection with the offering by Zosano Pharma Corporation (the “Company”) of 6,400,000 shares of common stock, \$0.0001 par value (the “Common Stock”), of the Company and the lock-up letter agreement dated [insert date] (the “Lock-Up Agreement”), executed by you in connection with such offering, and your request for a [waiver] [release] dated [insert date] with respect to _____ shares of Common Stock (the “Shares”).

Wedbush Securities Inc., on behalf of the Underwriters (as defined in the Lock-Up Agreement), hereby agrees (subject to the proviso below) to [waive] [release] the transfer restrictions set forth in the Lock-Up Agreement, but only with respect to the Shares, effective [insert date] (the “Anticipated Effective Date”); provided, however, that such [waiver] [release] shall not take effect until (and in any case not before the Anticipated Effective Date) two business days after the Company shall have announced the impending [waiver] [release] by issuing a press release through a major news service. This letter will serve as notice to the Company of the impending [waiver] [release].

Except as expressly [waived] [released] hereby, the Lock-Up Agreement shall remain in full force and effect.

Yours very truly,

cc: Zosano Pharma Corporation

Annex A

ZQ|CERT#|COY|CLS|RGSTRY|ACCT#|TRANSTYPE|RUN#|TRANS#

COMMON STOCK
PAR VALUE \$0.0001

COMMON STOCK

THIS CERTIFICATE IS TRANSFERABLE
IN CANTON, MA, JERSEY CITY, NJ AND
COLLEGE STATION, TX

Certificate
Number
ZQ00000000

Shares
*****00000*****
*****00000*****
*****00000*****
*****00000*****
*****00000*****



ZOSANO PHARMA CORPORATION
INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

THIS CERTIFIES THAT

**MR. SAMPLE & MRS. SAMPLE &
MR. SAMPLE & MRS. SAMPLE**

CUSIP 98979H 10 3

SEE REVERSE FOR CERTAIN DEFINITIONS

is the owner of

*****ZERO HUNDRED THOUSAND
ZERO HUNDRED AND ZERO*****

FULLY-PAID AND NON-ASSESSABLE SHARES OF COMMON STOCK OF

Zosano Pharma Corporation (hereinafter called the "Company"), transferable on the books of the Company in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed. This Certificate and the shares represented hereby, are issued and shall be held subject to all of the provisions of the Certificate of Incorporation, as amended, and the By-Laws, as amended, of the Company (copies of which are on file with the Company and with the Transfer Agent), to all of which each holder, by acceptance hereof, assents. This Certificate is not valid unless countersigned and registered by the Transfer Agent and Registrar.

Witness the facsimile seal of the Company and the facsimile signatures of its duly authorized officers.

Almanhanf.
President and Treasurer



DATED DD-MMM-YYYY
COUNTERSIGNED AND REGISTERED:
COMPUTERSHARE TRUST COMPANY, N.A.
TRANSFER AGENT AND REGISTRAR

By _____
AUTHORIZED SIGNATURE

1234567

ZOSANO PHARMA CORPORATION

THE COMPANY WILL FURNISH WITHOUT CHARGE TO EACH SHAREHOLDER WHO SO REQUESTS, A SUMMARY OF THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE, PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OF THE COMPANY AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND RIGHTS, AND THE VARIATIONS IN RIGHTS, PREFERENCES AND LIMITATIONS DETERMINED FOR EACH SERIES, WHICH ARE FIXED BY THE CERTIFICATE OF INCORPORATION OF THE COMPANY, AS AMENDED, AND THE RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE COMPANY, AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO DETERMINE VARIATIONS FOR FUTURE SERIES. SUCH REQUEST MAY BE MADE TO THE OFFICE OF THE SECRETARY OF THE COMPANY OR TO THE TRANSFER AGENT. THE BOARD OF DIRECTORS MAY REQUIRE THE OWNER OF A LOST OR DESTROYED STOCK CERTIFICATE, OR HIS LEGAL REPRESENTATIVES, TO GIVE THE COMPANY A BOND TO INDEMNIFY IT AND ITS TRANSFER AGENTS AND REGISTRARS AGAINST ANY CLAIM THAT MAY BE MADE AGAINST THEM ON ACCOUNT OF THE ALLEGED LOSS OR DESTRUCTION OF ANY SUCH CERTIFICATE.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

| | |
|--|--|
| TEN COM - as tenants in common | UNIF GIFT MIN ACT - _____ Custodian _____ (Cust) _____ (Minor) |
| TEN ENT - as tenants by the entireties | under Uniform Gifts to Minors Act _____ (State) |
| JT TEN - as joint tenants with right of survivorship and not as tenants in common | UNIF TRF MIN ACT - _____ Custodian (until age _____) (Cust) _____ under Uniform Transfers to Minors Act _____ (Minor) _____ (State) |

Additional abbreviations may also be used though not in the above list.

For value received, _____ hereby sell, assign and transfer unto _____ PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING POSTAL ZIP CODE, OF ASSIGNEE)

_____ Shares
of the capital stock represented by the within Certificate, and do hereby irrevocably constitute and appoint _____ Attorney
to transfer the said stock on the books of the within-named Company with full power of substitution in the premises.

Dated: _____ 20 _____
Signature: _____
Signature: _____

Notice: The signature to this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

Signature(s) Guaranteed: Medallion Guarantee Stamp
THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE
GUARANTOR INSTITUTION (Banks, Stockbrokers, Savings and Loan
Associations and Credit Unions) WITH MEMBERSHIP IN AN APPROVED
SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO
S.E.C. RULE 17Ad-15.

ZP Holdings, Inc.

List of Subsidiaries

| <u>Name of Subsidiary</u> | <u>State of Incorporation or Organization</u> |
|---------------------------|---|
| ZP Opco, Inc. | Delaware |
| Zosano, Inc. | Delaware |
| ZP Group LLC | Delaware |

ZOSANO PHARMA CORPORATION

Secretary's Certificate

July 25, 2014

The undersigned duly elected, qualified and incumbent Secretary of Zosano Pharma Corporation, a Delaware corporation (the "Company"), hereby certifies on behalf of the Company in such capacity that the following resolution was duly adopted by the Board of Directors of the Company on May 12, 2014, and such resolution has not been revoked, rescinded or amended and, on the date hereof, is in full force and effect:

RESOLVED: That each officer and director of the Company who may be required or authorized to execute the Registration Statement on Form S-1 under the Securities Act of 1933, as amended, with respect to an initial public offering by the Company of shares of the Company's common stock, or any application or document in connection with the registration or qualification for sale under the Blue Sky or securities laws of any jurisdiction with respect to any of the stock covered by the Registration Statement, or in connection with the registration of the Company as a broker or dealer in securities under such laws, whether on behalf of the Company or as an officer or director thereof, or to attest the seal of the Company, be, and they hereby are, and each of them acting singly hereby is, authorized to execute and deliver a power of attorney appointing the President and Chief Executive Officer and the Chief Financial Officer, and each of them acting singly, to act as his or her true and lawful attorneys-in-fact and agents, to execute in his or her name, place and stead (in any such capacity) the Registration Statement and any such application or document, to attest the seal of the Company thereon, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the SEC or any other regulatory agency or office, each of such attorneys-in-fact and agents to have power to act with or without the others, and to have full power and authority (including power of substitution) to do and perform, in the name and on behalf of each of such officers and directors, as the case may be, every act whatsoever necessary or advisable to be done in the premises as fully and to all intents and purposes as any such officer or director might or could do in person.

IN WITNESS WHEREOF, the undersigned has executed this Secretary's Certificate as of the date first written above.

/s/ Jeffrey L. Quillen
Jeffery L. Quillen, Secretary