UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): **May 6, 2020**

NEOS THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

001-37508	**27-0395455**
(Commission File No.)	(IRS Employer Identification No.)

2940 N. Highway 360
Grand Prairie, TX 75050
(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: **(972) 408-1300**

Not applicable
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value $0.001 per share	NEOS	The Nasdaq Stock Market LLC

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

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

Item 1.01. Entry into a Material Definitive Agreement.

Amendment to Facility Agreement

On May 6, 2020, Neos Therapeutics, Inc. (the "**Company**"), the guarantor parties thereto, Deerfield Private Design Fund III, L.P. and Deerfield Partners, L.P. (together, the "**Lenders**") and Deerfield Mgmt, L.P., as collateral agent, entered into a Fifth Amendment to Facility Agreement (the "**Amendment**") to the Company's existing Facility Agreement, (as amended, the "**Agreement**") with the Lenders.

Pursuant to the terms of the Amendment, the Company deferred $5.0 million of principal ("**Deferred Principal**") otherwise due on May 11, 2020. The Company is required to pay the Deferred Principal in eight equal monthly installments beginning on September 11, 2020 through April 11, 2021 (the "**Installment Period**"). Any monthly payment of the Deerfield Principal otherwise due during the Installment Period will be deferred to May 11, 2021 if, during the 30 days immediately preceding the trading day prior to the date such installment is otherwise due, the volume weighted average price for the Company's common stock is above $1.50 for 10 consecutive days. In addition, to the extent the Lenders convert principal pursuant to the Convertible Notes, the amount of principal so converted will be applied to reduced amortization payments in the order in which they are due, beginning with principal amounts payable during the Installment Period. A $250,000 incremental exit fee will be due in cash when the facility is paid in full, or upon certain events such as acceleration of the facility, bankruptcy or insolvency of the Company or a change of control of the Company.

In addition, the parties further amended and restated the Senior Secured Convertible Notes (as amended and restated, the "**Convertible Notes**") to provide for the conversion of up to $10.0 million of the remaining principal due under the facility into the Company's common stock at a conversion price of $1.50 per share (the "**Fixed Price Conversion**"). The ability to issue shares upon a Fixed Price Conversion is also subject to customary beneficial ownership caps as described in the Convertible Notes. The Convertible Notes retained the variable price conversion price ("**Variable Price Conversion**") for any additional conversions, which remain subject to customary beneficial ownership caps and exchange caps as described therein. The shares of common stock issuable upon the Fixed Price Conversion and the Variable Price Conversion are referred to herein as the "**Conversion Shares**".

The foregoing descriptions of the material terms of the Convertible Notes and the Amendment do not purport to be complete and are subject to, and are qualified in their entirety by, reference to the form of Convertible Note and the Amendment, copies of which are attached to this Current Report on Form 8-K as Exhibit 4.1 and Exhibit 10.1, respectively.

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

See the discussion set forth in Item 1.01, "Entry into a Material Definitive Agreement" of this Current Report on Form 8-K, which discussion is incorporated herein by this reference.

Item 3.02. Unregistered Sale of Equity Securities.

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference. The Company relied on the exemption from registration contained in Section 4(a)(2) of the Securities Act for the issuance of the Convertible Notes and expect to rely on such exemption or Section 3(a)(9) under the Securities Act for any issuance of Conversion Shares.

Item 8.01. Other Events.

As previously disclosed, on April 18, 2020, the Company received a loan of $3,582,800 (the "**Loan**") from First Republic Bank (the "**Lender**") under the Small Business Administration Paycheck Protection Program of the Coronavirus Aid, Relief and Economic Security Act of 2020. On May 6, 2020, the Company initiated the immediate repayment of the full amount of the Loan to the Lender.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

The following exhibits relating to Items 1.01, 2.03 and 3.02 are attached hereto:

Number	Description
4.1	Form of Second Amended and Restated Senior Secured Convertible Note.
10.1	Fifth Amendment to Facility Agreement, dated as of May 6, 2020, by and among Neos Therapeutics, Inc., the guarantor parties thereto, Deerfield Private Design Fund III, L.P. and Deerfield Partners, L.P. and Deerfield Mgmt, L.P., as collateral agent (including schedules and exhibits thereto).

EXHIBIT INDEX

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SIGNATURES

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

NEOS THERAPEUTICS, INC.

Date: May 7, 2020

By: /s/ Richard I. Eisenstadt
Richard I. Eisenstadt
Chief Financial Officer

Exhibit 4.1

SECOND AMENDED AND RESTATED SENIOR SECURED CONVERTIBLE NOTE

Original Issuance Date: May 11, 2016 Principal: U.S. $[_]
Second Amendment and Restatement Date: May 6, 2020

FOR VALUE RECEIVED, NEOS THERAPEUTICS, INC., a Delaware corporation (the "**Company**"), hereby promises to pay to **[_]**, or its registered assigns (the "**Holder**") the principal amount of [_] dollars ($[_]), pursuant to, and in accordance with, the terms of that certain Facility Agreement, dated as of May 11, 2016, as amended by a First Amendment to Facility Agreement, dated as of June 1, 2017, a Second Amendment to Facility Agreement, dated as of November 5, 2018 (the "**Second Amendment**"), a Third Amendment to Facility Agreement, dated as of March 26, 2019 (the "**Third Amendment Date**"), a Fourth Amendment to Facility Agreement, dated as of October 2, 2019, and a Fifth Amendment to Facility Agreement, dated as of May 6, 2020 (the "**Fifth Amendment**"), in each case, by and among the Company, the Guarantors specified therein and the Lenders party thereto (as so amended, together with all exhibits and schedules thereto and as may be further amended, restated, modified and supplemented from time to time, the "**Facility Agreement**")). The Company hereby promises to pay accrued and unpaid Interest (as defined below) and premium, if any, on the Principal on the dates, at the rates and in the manner provided for in the Facility Agreement. This Second Amended and Restated Senior Secured Convertible Note (including all Senior Secured Convertible Notes issued in exchange, transfer or replacement hereof, and as any of the foregoing may be further amended, restated, supplemented or otherwise modified from time, this "**Note**") was originally issued on May 11, 2016, amended and restated on the First Amendment and Restatement Date, amended on the Third Amendment Date, and again amended and restated on the Second Amendment and Restatement Date, and is one of the Notes issued pursuant to the Facility Agreement (collectively, including all Notes issued in exchange, transfer or replacement thereof, as well as any of the foregoing may be further amended, restated, supplemented or otherwise modified from time to time, the "**Notes**" and "**Holders**" means, collectively, the Holder and each other "Holder" of any of the Notes (as defined in the other Notes)). All capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Facility Agreement.

The Principal of this Note may be prepaid prior to the Maturity Date, and shall be mandatorily prepayable, as provided in the Facility Agreement. At any time an Event of Default exists, the Principal of this Note, together with all accrued and unpaid Interest and any applicable premium due, if any, may be declared, or shall otherwise become, due and payable in the manner, at the price and with the effect provided in the Facility Agreement.

1. Definitions.

(a) Certain Defined Terms. For purposes of this Note, the following terms shall have the following meanings:

(i) "**Affiliate**" means any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act. With respect to a Holder, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Holder will be deemed to be an Affiliate of such Holder. As used in this definition of "Affiliate," the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or partnership or other ownership interest, by contract, or otherwise.

(ii) "**Applicable Percentage**" means, initially, 95%, provided that the Applicable Percentage shall be reduced by one full percentage point for each full or partial calendar month between the date of the applicable conversion and the date on which such principal payment would otherwise be due pursuant to Section 2.3(a) of the Facility Agreement at the time of such conversion; provided, that, in no event shall such percentage be reduced to less than 83%.

(iii) "**Common Stock**" means the common stock of the Company.

(iv) "**Conversion Amount**" means the portion of the Principal to be converted.

(v) "**Conversion Date**" means the date of delivery via facsimile or electronic mail of a Conversion Notice.

(vi) "**Conversion Price**" means, as of any Conversion Date, (i) with respect to each Fixed Price Conversion, $1.50, subject to adjustment for any Stock Event that occurs after the Second Amendment and Restatement Date, and (ii) with respect to each Variable Price Conversion, the Applicable Percentage of the greater of (A) $10.00, subject to adjustment for any Stock Event that occurs after the First Amendment and Restatement Date, and (B) the arithmetic average of the Volume Weighted Average Prices per Share on each of the three (3) Trading Days immediately preceding the Conversion Date (the "**Measurement Period**"); provided, that in the event that a stock split, stock combination, reclassification, payment of stock dividend, recapitalization or other similar transaction of such character that the Shares shall be changed into or become exchangeable for a larger or small number of shares (a "**Stock Event**") is consummated during the Measurement Period, the Volume Weighted Average Price for all Trading Days during the Measurement Period prior to the effectiveness of the Stock Event shall be appropriately adjusted to reflect such Stock Event.

(vii) "**Conversion Shares**" means fully paid and nonassessable shares of Common Stock.

(viii) "**Delisting Event**" means an event which shall be deemed to have occurred if the Shares cease to be listed, traded or publicly quoted on the Principal Market on which Shares are listed as of such date, and shall continue until such shares are relisted or requoted on either the New York Stock Exchange, the NYSE American, the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market or, in each case, any successor thereto (each, a "**Principal Market**").

(ix) "**First Amendment and Restatement Date**" means November 8, 2018.

(x) "**Fixed Price Conversion**" means a conversion of Principal into Shares hereunder that is designated by the Holder as a Fixed Price Conversion in the applicable Conversion Notice.

(xi) "**Interest**" means any interest (including any default interest) accrued on the Principal pursuant to the terms of this Note and the Facility Agreement.

(xii) "**Market Disruption Event**" means, with respect to any trading day and any security, (a) a failure by the Principal Market to open for trading during its entire regular trading session, (b) the occurrence or existence prior to 1:00 p.m., New York City time, on such day for such securities for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant securities exchange or otherwise) in such securities or in any options, contracts or future contracts relating to such securities, or (c) to the extent "Volume Weighted Average Price" is determined in accordance with clause (b) of the definition thereof, the suspension of trading for the one-half hour period ending on the scheduled close of trading on such day (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in such securities.

(xiii) "**Principal**" means the outstanding principal amount of this Note as of any date of determination.

(xiv) "**Principal Market**" shall have the meaning set forth in the definition of Delisting Event above.

(xv) "**Required Holders**" means, as of any date of determination, holders of Notes representing more than 50% of the aggregate principal amount of the Notes outstanding as of such date.

(xvi) "**SEC**" means the United States Securities and Exchange Commission.

(xvii) "**Second Amendment and Restatement Date**" means May 6, 2020.

(xviii) **"Securities Act**' means the Securities Act of 1933, as amended, and the rules and regulations promulgated by the SEC thereunder.

(xix) "**Shares**" means shares of Common Stock, $0.001 par value of the Company.

(xx) "**Trading Day**" means any day on which the Common Stock is traded for any period on the Principal Market; provided, that for purposes of the definition of "Conversion Shares," Trading Day shall not include any Trading Day on which there is a Market Disruption Event.

(xxi) "**Variable Price Conversion**" means a conversion of Principal into Shares hereunder designated as a Variable Price Conversion in the applicable Conversion Notice.

(xxii) "**Volume Weighted Average Price**" for any security as of any Trading Day means (a) the volume weighted average sale price of such security on the principal U.S. national or regional securities exchange on which such security is traded as reported by Bloomberg Financial Markets or an equivalent, reliable reporting service mutually acceptable to and hereinafter designated by the Required Holders and the Company ("**Bloomberg**"), or (b) if no volume weighted average sale price is reported for such security, then the closing price per share of such security as reported by Bloomberg, or, if no closing price per share is reported for such security by Bloomberg, the average of the last bid and last ask price (or if more than one in either case, the average of the average last bid and average last ask prices) on such Trading Day as reported in the composite transactions for the principal U.S. national or regional securities exchange on which such security is traded. If the security is not listed for trading on a U.S. national or regional securities exchange on the relevant Trading Day, then the Volume Weighted Average Price will be the average of the mid-point of the last bid and last ask prices of the security in the over-the-counter market on the relevant Trading Day as reported by the OTC Markets Group, Inc. or similar organization. If the Volume Weighted Average Price cannot be calculated for such security on such date in the manner provided above, the Volume Weighted Average Price shall be the fair market value as mutually determined by the Company and the holders of a majority in interest of the Notes being converted (based on the principal amount being converted by each such holder) for which the calculation of the Volume Weighted Average Price is required in order to determine the Conversion Price of such Notes. Volume Weighted Average Price will be determined without regard to after-hours trading or any other trading outside of the regular trading hours.

2. Conversion Rights. The Principal may be converted, in whole or in part, into Shares on the terms and conditions set forth in this Section 2 and subject to Section 2.3(e) of the Facility Agreement. For the avoidance of doubt, the conversion of Principal hereunder shall not affect the obligation of the Company to pay all accrued Interest thereon.

(a) Conversion at Option of the Holder. At any time prior to the close of business on the fifth Business Day immediately prior to the Maturity Date, subject to (i) the 4.985% Cap (as defined below), (ii) in the case of a Fixed Price Conversion (but not a Variable Price Conversion), the limitation applicable thereto contained in Section 2(g)(iii) hereof, and (iii) in the case of a Variable Price Conversion (but not a Fixed Price Conversion), the Exchange Cap (as defined below), the Holder shall be entitled to convert all or any part of the outstanding Principal, as of the date of the Conversion Notice therefor delivered in accordance with this Section 2, into Conversion Shares in accordance with this Section 2 at the Conversion Rate (as defined in Section 2(b)). The Company shall not issue any fraction of a Share upon any conversion. If the issuance would result in the issuance of a fraction of a Share, then the Company shall round such fraction of a Share up or down to the nearest whole share (with 0.5 rounded up).

(b) Conversion Rate. The number of Conversion Shares issuable upon a conversion of any portion of this Note pursuant to Section 2 shall be determined according to the following formula (the "**Conversion Rate**"):

Conversion Amount
Conversion Price

(c) Mechanics of Conversion. The conversion of Principal ("**Conversion**") shall be conducted in the following manner:

(i) Holder's Delivery Requirements. To convert a Conversion Amount into Conversion Shares pursuant to Section 2(a) above on any date, the Holder shall transmit by facsimile or electronic mail (or otherwise deliver), for receipt on or prior to 5:00 p.m. New York City time on such date, a copy of a conversion notice in the form attached hereto as Exhibit A (the "**Conversion Notice**") to the Company (Attention: Richard Eisenstadt, Fax: (972) 408-1143, Email: reisenstadt@neostx.com). The Conversion Notice shall designate the Conversion as a Fixed Price Conversion or a Variable Price Conversion.

(ii) Company's Response. Subject to Section 2(g)(ii), upon receipt or deemed receipt by the Company of a copy of a Conversion Notice, the Company (I) shall promptly send, via electronic mail a confirmation of receipt of such Conversion Notice to the Holder and the Company's designated transfer agent (the "**Transfer Agent**"), which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein, and (II) on or before the second (2nd) Business Day following the date of receipt or deemed receipt by the Company of such Conversion Notice (or, if earlier, the end of the then standard settlement period for U.S. broker-dealer securities transactions) (the "**Share Delivery Date**"), (A) provided the Holder (or its designee) is eligible to receive such Conversion Shares through The Depository Trust Company ("**DTC**") DTC (which shall include any time at which the Unrestricted Conditions (as defined below) are satisfied), credit such aggregate number of Conversion Shares to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian ("**DWAC")** system, or (B) if the foregoing shall not apply, issue and deliver to the address as specified in the Conversion Notice, a stock certificate, registered in the name of the Holder or its designee, in each case, for the number of Conversion Shares to which the Holder shall be entitled. The Conversion Shares will be free-trading, and freely transferable, and will not contain a legend (or stop transfer instructions) restricting the resale or transferability of the Conversion Shares if any of the Unrestricted Conditions (as defined below) is met.

(iii) Dispute Resolution. In the case of a dispute as to the determination of the Conversion Price or the arithmetic calculation of the Conversion Rate, the Company shall instruct the Transfer Agent to issue to the Holder the number of Conversion Shares that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to the Holder via electronic mail within two (2) Business Days of receipt or deemed receipt of the Holder's Conversion Notice or other date of determination. If the Holder and the Company are unable to agree upon the determination of the Conversion Price or arithmetic calculation of the Conversion Rate within one (1) Business Day of such disputed determination or arithmetic calculation being transmitted to the Holder, then the Company shall promptly (and in any event within two (2) Business Days) submit via electronic mail (A) the disputed determination of the Conversion Price to an independent, reputable investment banking firm agreed to by the Company and the Required Holders, or (B) the disputed arithmetic calculation of the Conversion Rate to the Company's independent registered public accounting firm, as the case may be. The Company

shall direct the investment bank or the accounting firm, as the case may be, to perform the determination or calculation and notify the Company and the Holder of the results no later than two (2) Business Days from the time it receives the disputed determination or calculation. Such investment bank's or accounting firm's determination or calculation, as the case may be, shall be binding upon all parties absent manifest error. The fees and expenses of such investment bank or accountant shall be paid by the Company. Notwithstanding the existence of a dispute contemplated by this paragraph, if requested by the Holder, the Company shall issue to the Holder the Conversion Shares not in dispute in accordance with the terms hereof.

(iv) Record Holder. The person or persons entitled to receive the Conversion Shares issuable upon a Conversion shall be treated for all purposes as the legal and record holder or holders of such Shares upon delivery by the Holder of the Conversion Notice, or in the case of Conversion Shares the issuance of which is subject to a *bona fide* dispute that is subject to and being resolved pursuant to, and in compliance with the time periods and other provisions of, the dispute resolution provisions of Section 2(c)(iii), the first Business Day after the resolution of such *bona fide* dispute.

(v) Company's Failure to Timely Convert.

(A) Cash Damages. If by the Share Delivery Date, the Company shall fail to issue the Conversion Shares and deliver a certificate to the Holder for, or credit the Holder's or its designee's balance account with DTC with, the number of Conversion Shares, as applicable, (free of any restrictive legend, provided any of the Unrestricted Conditions is satisfied) (a "**Delivery Failure**"), then, in addition to all other available remedies that the Holder may pursue hereunder and under the Facility Agreement, the Company shall pay additional damages to the Holder for each day after the Share Delivery Date such conversion is not timely effected in an amount equal to two percent (2%) of the product of (I) the number of Conversion Shares not issued to the Holder or its designee on or prior to the Share Delivery Date and to which the Holder is entitled and (II) the Volume Weighted Average Price of the Common Stock on the Share Delivery Date (such product is referred to herein as the "**Share Product Amount**"). Alternatively in lieu of the foregoing damages, subject to Section 2(c)(iii), at the written election of the Holder made in the Holder's sole discretion, if, on or after the applicable Conversion Date, the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Holder of Conversion Shares that such Holder anticipated receiving from the Company (such purchased shares, "**Buy-In Shares**"), the Company shall be obligated to promptly pay to such Holder (in addition to all other available remedies that the Holder may otherwise have), 110% of the amount by which (A) such Holder's total purchase price (including brokerage commissions, if any) for such Buy-In Shares exceeds (B) the net proceeds received by such Holder from the sale of the number of Conversion Shares such Holder was entitled to receive but had not received on the Share Delivery Date. If the Company fails to pay the additional damages set forth in this Section 2(c)(v)(A) within five (5) Business Days of the date incurred, then the Holder entitled to such payments shall have the right at any time, so long as the Company continues to fail to make such payments, to require the Company, upon written notice, to immediately issue, in lieu of such cash damages, the number of Shares equal to the quotient of (X) the aggregate amount of the damages payments described herein divided by (Y) the Conversion Price specified by the Holder in the Conversion Notice. Amounts payable pursuant to this Section 2(c)(v) shall be paid

on or before the fifth (5th) Business Day of each month following a month in which such payment accrued.

(B) Void Conversion Notice. If for any reason the Holder has not received all of the Conversion Shares prior to the tenth (10th) Business Day after the Share Delivery Date with respect to a Conversion (a "**Conversion Failure**"), then the Holder, upon written notice to the Company (a "**Void Conversion Notice**"), may void its Conversion with respect to, and retain or have returned, as the case may be, any portion of Principal that has not been converted pursuant to the Holder's Conversion Notice; provided, that the voiding of the Holder's Conversion Notice shall not affect the Company's obligations to make any payments that have accrued prior to the date of such notice pursuant to Section 2(c)(v)(A) or otherwise.

(vi) Book-Entry. Notwithstanding anything to the contrary set forth herein, upon Conversion or repayment of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company.

(d) Taxes. The Company shall pay any and all taxes (excluding income taxes, franchise taxes or other taxes levied on gross earnings, profits or the like of the Holder) that may be payable with respect to the issuance and delivery of Conversion Shares upon the conversion of this Note, unless the tax is due because the Holder requests any Conversion Shares to be issued in a name other than the Holder's name, in which case the Holder will pay that tax.

(e) Legends.

(i) Restrictive Legend. The Holder understands that until such time as the Conversion Shares have been registered under the Securities Act as contemplated by the Registration Rights Agreement or otherwise may be sold pursuant to Rule 144 under the Securities Act or an exemption from registration under the Securities Act without any restriction as to the number of securities as of a particular date that can then be immediately sold, the Conversion Shares, as applicable, may bear a restrictive legend in substantially the following form (and a stop-transfer order consistent therewith may be placed against transfer of the certificates for such securities):

> THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAW. THE SECURITIES MAY NOT BE SOLD, TRANSFERRED OR ASSIGNED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT, INCLUDING PURSUANT TO RULE 144 UNDER THE SECURITIES ACT OR PURSUANT TO A PRIVATE SALE EFFECTED UNDER SECTION 4(a)(7) OF THE SECURITIES ACT OR APPLICABLE FORMAL OR INFORMAL SEC INTERPRETATION OR GUIDANCE, SUCH AS A SO-CALLED "4[(a)](1) AND A HALF SALE." NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

(ii) Removal of Restrictive Legends. The certificates evidencing the Conversion Shares shall not contain or be subject to (and the Holder shall be entitled to the removal of) any legend or stop transfer instructions restricting the transfer thereof (including the legend set forth above in subsection 2(e)(i)): (A) while a registration statement covering the resale of such security by the Holder is effective under the Securities Act, (B) following any sale of such Conversion Shares pursuant to Rule 144, (C) if such Conversion Shares are eligible for sale under Rule 144(b)(1), (D) if the Holder certifies at any time that the Holder is not an "affiliate" of the Company (as such term is used under Rule 144 pursuant to the Securities Act), and the Holder's holding period for purposes of Rule 144 and subsection (d)(3)(iii) thereof with respect to the Conversion Shares is at least six (6) months (it being acknowledged and agreed by the Company that the Holder's holding period for the Conversion Shares shall be deemed to have commenced on the Second Amendment Date), or (E) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the SEC) (the "**Unrestricted Conditions**"). Promptly following such time as any of the Unrestricted Conditions has been satisfied, the Company shall cause its counsel to issue a legal opinion or other instruction to the Transfer Agent (if required by the Transfer Agent) to effect the issuance of the Conversion Shares without a restrictive legend or, in the case of Conversion Shares that have previously been issued, the removal of the legend thereunder. If any of the Unrestricted Conditions is met at the time of issuance of the Conversion Shares, then the Conversion Shares shall be issued free of all legends. The Company agrees that following such time as any of the Unrestricted Conditions is met or such legend is otherwise no longer required under this Section 2(e), it will, no later than two (2) Trading Days (or if earlier, the number of Trading Days comprising the then standard settlement period for U.S. broker-dealer securities transactions) following the delivery (the "**Unlegended Shares Delivery Deadline**") by the Holder to the Company or the Transfer Agent of any certificate representing Conversion Shares, as applicable, issued with a restrictive legend (such fourth Trading Day, the "**Legend Removal Date**"), deliver or cause to be delivered to such Holder a certificate (or electronic transfer) representing such shares that is free from all restrictive and other legends. The Company shall assume (and the Holder shall be deemed to represent) that the Holder is not an affiliate of the Company, unless the Holder has otherwise advised the Company in writing. The Company acknowledges that, as of the Second Amendment and Restatement Date, at least one of the Unrestricted Conditions has been satisfied.

(iii) Sale of Unlegended Shares. Holder agrees that the removal of the restrictive legend from any certificates representing securities as set forth in Section 2(e)(i) above is predicated upon the Company's reliance that the Holder will sell any Conversion Shares pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if such securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein.

(f) Reservation of Shares. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting Conversions of this Note, such number of Shares as shall from time to time be sufficient to effect the conversion of the Note (without giving effect to the 4.985% Cap); and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of the entire Principal amount convertible under this Note, the Company will use

its best efforts to take such corporate action as may, in the opinion of counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose. The Company covenants and agrees that, upon any Conversion of this Note, all Shares issuable upon such Conversion shall be duly and validly issued, fully paid and nonassessable and not subject to preemptive rights, rights of first refusal or similar rights of any Person.

(g) Limitations on Conversion.

(i) Beneficial Ownership Limitation. Notwithstanding anything herein to the contrary, the Company shall not be required to issue to the Holder, and the Holder may not acquire, a number of Shares upon Conversion or otherwise issue any Shares of Common Stock pursuant hereto or the Facility Agreement to the extent that, upon such Conversion, the number of Shares then beneficially owned by the Holder and its Affiliates and any other persons or entities whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which the Holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) would exceed 4.985% of the total number of shares of common stock then issued and outstanding (the "**4.985% Cap**"); provided, however, that the 4.985% Cap shall only apply to the extent that the Common Stock is deemed to constitute an "equity security" pursuant to Rule 13d-1(i) promulgated under the Exchange Act. For purposes hereof (including the representation contemplated by the second paragraph of this Section 2(g)(i)), "group" has the meaning set forth in Section 13(d) of the Exchange Act and applicable regulations of the SEC, and the percentage held by the Holder shall be determined in a manner consistent with the provisions of Section 13(d) of the Exchange Act. For purposes hereof (including the representation contemplated by the second paragraph of this Section 2(g)(i)), in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as stated in the Company's most recent quarterly or annual report filed with the SEC, or any current report filed by the Corporation with the SEC subsequent thereto. Upon the written request of the Holder, the Company shall, within two (2) Trading Days, confirm orally and in writing to the Holder the number of Shares then outstanding, and the Holder shall be entitled to rely upon such confirmation for purposes hereof (including the representation contemplated by the second paragraph of this Section 2(g)(i)).

Delivery of a Conversion Notice by the Holder shall constitute a representation by the Holder that the issuance of Common Stock in accordance with such Conversion Notice will not cause the Holder (together with its Affiliates, and any other Person whose beneficial ownership of Common Stock would be aggregated with such Holder's for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the SEC) to beneficially own a number of shares of Common Stock in excess of the 4.985% Cap, as determined in accordance with, and subject to the terms, conditions, qualifications and assumptions set forth in, the immediately preceding paragraph.

(ii) Principal Market Regulation. The Company shall not be required to issue any Shares upon a Variable Price Conversion if the issuance of such Shares together with any previous issuances of Shares pursuant to Variable Price Conversions of the Notes by the Holders hereof (which, for the avoidance of doubt, shall exclude Shares issued in satisfaction of

Interest payments pursuant to the Facility Agreement) from and after the First Amendment and Restatement Date would exceed 3,796,668 shares of Common Stock, subject to appropriate adjustment for any Stock Event that occurs after the First Amendment and Restatement Date (the "**Exchange Cap**"). Upon any conversion of this Note, the Company shall issue the maximum amount of the number of Shares set forth in the applicable Conversion Notice that may be issued without exceeding the Exchange Cap. For the avoidance of doubt, to the extent the conversion of any Principal of this Note pursuant to any Conversion Notice in respect of a Variable Price Conversion would have resulted in an issuance of Shares in excess of the Exchange Cap, such Principal shall not be converted (the Company having no obligation to net cash settle such conversion), and such Principal shall remain outstanding and shall be repaid in cash in accordance with the terms of this Note and the Facility Agreement. For the avoidance of doubt, the Exchange Cap shall not apply to any Fixed Price Conversion.

(iii) Fixed Price Conversion Cap. Notwithstanding anything to the contrary contained herein, the Company shall not be required to issue Shares pursuant to a Fixed Price Conversion to the extent that the Principal amount of this Note being converted pursuant to the applicable Conversion Notice, together with the aggregate Principal amount of this Note converted into Conversion Shares after the Second Amendment and Restatement Date and prior to the delivery of such Conversion Notice, would exceed the Holder's Pro Rata Share of $10,000,000 (the "**Fixed Price Conversion Cap**") (provided, for the avoidance of doubt, that upon any Fixed Price Conversion of this Note, the Company shall convert the maximum portion of Principal amount set forth in the applicable Conversion Notice that may be converted into Shares without so exceeding the Fixed Price Cap at the Fixed Conversion Price).

3. Reserved.

4. Voting Rights. Except as required by law, the Holder shall have no voting rights with respect to any of the Conversion Shares until the Conversion Date relating to the conversion of this Note upon which such Conversion Shares are issuable (or in the case of Conversion Shares the issuance of which is subject to a *bona fide* dispute that is subject to and being resolved pursuant to, and in compliance with the time periods and other provisions of, the dispute resolution provisions of Section 2(c)(iii), the first Business Day after the resolution of such *bona fide* dispute).

5. Amendment; Waiver. The terms and provisions of this Note shall not be amended or waived except in a writing signed by the Company and the Holder.

6. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note, the Facility Agreement, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy, and nothing herein shall limit the Holder's right to pursue actual damages for any failure by the Company to comply with the terms of this Note. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The

Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies (at law or in equity), to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

7. Specific Shall Not Limit General; Construction. No specific provision contained in this Note shall limit or modify any more general provision contained herein. This Note shall be deemed to be jointly drafted by the Company and all purchasers of Notes pursuant to the Facility Agreement and shall not be construed against any Person as the drafter hereof.

8. Failure or Indulgence Not Waiver. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

9. Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 6.1 of the Facility Agreement.

10. Restrictions on Transfer.

(a) Registration or Exemption Required. This Note has been issued in a transaction exempt from the registration requirements of the Securities Act. None of the Note or the Conversion Shares may be transferred, sold, assigned, hypothecated or otherwise disposed of except pursuant to an effective registration statement or an exemption to the registration requirements of the Securities Act and applicable state securities laws including, without limitation, pursuant to Section 4(a)(7) of the Securities Act, Rule 144 under the Securities Act or a so-called "4[(a)](1) and a half" transaction.

(b) Assignment. The Holder may sell, transfer, assign, pledge, hypothecate or otherwise dispose of this Note, in whole or in part; provided that (i) the Holder shall deliver a written notice to the Company, substantially in the form of the Assignment attached hereto as Exhibit B, indicating the Person or Persons to whom the Note shall be assigned and the respective principal amount of the Note to be assigned to each assignee, and (ii) the transferee shall have complied with Section 2.5(d) of the Facility Agreement. The Company shall effect the assignment (including by making appropriate notation of such transfer on the Register) within three (3) business days (the "**Transfer Delivery Period**"), and shall deliver to the assignee(s) designated by Holder a Note or Notes of like tenor and terms for the appropriate principal amount. This Note and the rights evidenced hereby shall inure to the benefit of and be binding upon the successors and assigns of the Holder. The provisions of this Note are intended to be for the benefit of all Holders from time to time of this Note, and shall be enforceable by any such Holder.

11. Payment of Collection, Enforcement and Other Costs. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; or (b) an attorney is retained to represent the Holder in any bankruptcy, reorganization,

receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the costs incurred by the Holder for such collection, enforcement or action, including reasonable attorneys' fees and disbursements.

12. Cancellation. After all Principal, Interest and other amounts at any time owed under, or on account of, this Note have been paid in full or converted into Shares in accordance with the terms hereof, this Note shall automatically be deemed cancelled, shall be surrendered to the Company for cancellation and shall not be reissued.

13. Registered Note. This Note may be transferred only upon notation of such transfer on the Register, and no assignment thereof shall be effective until recorded therein.

14. Waiver of Notice. To the extent permitted by law, the Company hereby waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Facility Agreement.

15. Governing Law. This Note shall be governed by and construed and enforced in accordance with the laws of the State of New York applicable to contracts made and to be performed in such State. All legal proceedings concerning the interpretation and enforcement of this Note shall be commenced exclusively in the state commercial division courts or federal courts sitting in The City of New York, Borough of Manhattan. The Company hereby and each Holder (by its acceptance of this Note) irrevocably submits to the exclusive jurisdiction of such courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or other proceeding is improper or is an inconvenient venue for such proceeding. The Company hereby and each Holder (by its acceptance of this Note) irrevocably waives personal service of process and consents to process being served in any such suit, action or other proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such person at the address in effect for notices to it under Section 6.1 of the Facility Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. EACH OF THE COMPANY AND THE HOLDER (BY ACCEPTANCE HEREOF) IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT TO ENFORCE ANY PROVISION OF THIS NOTE OR ANY OTHER TRANSACTION DOCUMENT. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE. EACH OF THE COMPANY AND THE HOLDER (BY ITS ACCEPTANCE HEREOF (A) CERTIFIES THAT NO OTHER PARTY AND NO AGENT, REPRESENTATIVE OR OTHER PERSON AFFILIATED WITH OR RELATED TO ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 15.

16. Interpretative Matters. Unless the context otherwise requires, (a) all references to Sections or Exhibits are to Sections or Exhibits contained in or attached to this Note, (b) each accounting term not otherwise defined in this Note has the meaning assigned to it in accordance with GAAP, (c) words in the singular or plural include the singular and plural and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter and (d) the use of the word "including" in this Note shall be by way of example rather than limitation. If a stock split, stock dividend, stock combination or other similar event occurs during any period over which an average price is being determined, then an appropriate adjustment will be made to such average to reflect such event.

17. Execution. A facsimile, telecopy, PDF or other reproduction of this Note may be delivered by the Company, and an executed copy of this Note may be delivered by the Company by facsimile, e-mail or other similar electronic transmission device pursuant to which the signature of or on behalf of the Company can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes. The Company hereby agrees that it shall not raise the execution of facsimile, PDF or other reproduction of this Note, or the fact that any signature was transmitted by facsimile, e-mail or other similar electronic transmission device, as a defense to the Company's execution of this Note. Notwithstanding the foregoing, the Company shall be required to deliver an originally executed Note to the Holder.

[Signature page follows]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the date first set forth above.

COMPANY:

NEOS THERAPEUTICS, INC.

By: _____
Name:
Title:

Exhibit A

CONVERSION NOTICE

Reference is made to the Second Amended and Restated Senior Secured Convertible Note (the "**Note**") of NEOS THERAPEUTICS, INC., a Delaware corporation (the "**Company**"), in the original principal amount of $15,000,000.00. In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into Shares of Common Stock, par value $0.001 per share (the "**Common Stock**"), of the Company, as of the date specified below.

Date of Conversion:_____

Amount of Principal to be converted: _____

Please confirm the following information:

The Conversion is designated as:

☐ Fixed Price Conversion

☐ Variable Price Conversion

If a Variable Price Conversion, Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the Note is being converted in the following name and, if physical certificates are applicable, to the following address:

Issue to: _____

DTC Participant Number and Name: _____
Account Number:_____

Exhibit B

ASSIGNMENT

(To be executed by the registered holder
desiring to transfer the Note)

FOR VALUE RECEIVED, the undersigned holder of the attached Second Amended and Restated Senior Secured Convertible Note (the "**Note**") hereby sells, assigns and transfers unto the person or persons below named the right to receive the principal amount of $_____ from Neos Therapeutics, Inc., a Delaware corporation (the "**Company**"), evidenced by the attached Note and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

Dated: _____ _____
Signature

Fill in for new registration of Note:

_____
Name

_____
Address

_____
Please print name and address of assignee
(including zip code number)

NOTICE

The signature to the foregoing Assignment must correspond to the name as written upon the face of the attached Note. In every particular, without alteration or enlargement or any change whatsoever.

Exhibit 10.1

Execution Version

FIFTH AMENDMENT TO FACILITY AGREEMENT

This FIFTH AMENDMENT TO FACILITY AGREEMENT (this "Amendment") is entered into as of May 6, 2020, by and among NEOS THERAPEUTICS, INC., a Delaware corporation (the "Borrower"), NEOS THERAPEUTICS COMMERCIAL, LLC, a Delaware limited liability company ("Commercial"), NEOS THERAPEUTICS BRANDS, LLC, a Delaware limited liability company ("Brands"), NEOS THERAPEUTICS, LP, a Texas limited partnership ("Neos LP"), PHARMAFAB TEXAS, LLC, a Texas limited liability company ("PharmaFab", together with Commercial, Brands and Neos LP, each individually a "Guarantor", and collectively, the "Guarantors"), DEERFIELD PRIVATE DESIGN FUND III, L.P. ("DPDF"), DEERFIELD PARTNERS, L.P. ("DP", and together with DPDF collectively referred to as the "Lenders"), and DEERFIELD MGMT, L.P., as collateral agent for itself, the Lenders and the other Secured Parties (in such capacity, together with its successors and assigns in such capacity, "Collateral Agent" and together with the Borrower, the Guarantors and Agent, collectively, the "Parties").

RECITALS:

A. The Borrower and the Lenders have entered into that certain Facility Agreement, dated as of May 11, 2016 (together with all exhibits and schedules thereto and as the same has been amended, restated, supplemented and/or otherwise modified from time to time to prior to (and not including) the date hereof, including by (i) that certain First Amendment to Facility Agreement, dated as of June 1, 2017, by and among the Borrower, the Guarantors party thereto and the Lenders, (ii) that certain Second Amendment to Facility Agreement, dated as of November 5, 2018, by and among the Borrower, the Guarantors party thereto and the Lenders, (iii) that certain Third Amendment to Facility Agreement, dated as of March 26, 2019, by and among the Borrower, the Guarantors party thereto and the Lenders, and (iv) that certain Fourth Amendment to Facility Agreement, dated as of October 2, 2019, by and among the Borrower, the Guarantors party thereto and the Lenders, the "Existing Facility Agreement"). The Existing Facility Agreement, as amended hereby and as may be amended, restated, supplemented and/or otherwise modified from time to time, is referred to as the "Facility Agreement").

B. As of the date hereof, $45,000,000 aggregate principal amount of the Loans evidenced by the Amended and Restated Senior Secured Convertible Notes issued pursuant to the Existing Facility Agreement (the "Existing Notes") remains outstanding.

C. The Borrower, the Guarantors, the Lenders and the Collateral Agent entered into that certain Consent dated as of April 6, 2020 (the "PPP Consent") pursuant to which the Lenders consented to the Borrower obtaining a PPP Loan (as defined therein) subject to the terms and conditions thereof, and the Borrower and the Guarantors received a PPP Loan in the aggregate principal amount of $3,582,800 (the "PPP Loan Proceeds"). The Borrower has not utilized any of the PPP Loan Proceeds and shall repay in full the PPP Loan Proceeds on or prior to May 14, 2020.

D. Pursuant to this Amendment, and subject to the terms and conditions hereof, (i) the Facility Agreement shall be amended to modify the schedule of certain principal repayments

thereunder and make certain other modifications thereto, (ii) the Notes shall be amended and restated to provide for the conversion of up to $10,000,000 of the principal under the Notes into Common Stock at a price of $1.50 per share, subject to adjustment as provided in the Notes (as amended hereby), and (iii) the Lenders shall provide their consent to the repayment in full by the Borrower of the PPP Loan.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the Parties agree as follows:

1. Defined Terms. Capitalized terms used herein which are defined in the Facility Agreement, unless otherwise defined herein, shall have the meanings ascribed to them in the Facility Agreement. The Recitals to this Amendment are incorporated herein in their entirety by this reference thereto.

2. Amendments to Facility Agreement. Subject to the satisfaction of the Conditions Precedent set forth in Section 5 of this Amendment, the Facility Agreement is hereby amended as follows:

a. Section 1.1 of the Facility Agreement is hereby amended to delete the defined terms "2019 Threshold" and "2020 Threshold."

b. Section 1.1 of the Facility Agreement is hereby amended to add the following additional defined terms in appropriate alphabetical order:

"Additional Exit Payment" has the meaning given to it in Section 2.3(c).

"Fifth Amendment" shall mean the Fifth Amendment to Facility Agreement, dated as of May 6, 2020, among the Borrower, the Guarantors and the Lenders.

"Fifth Amendment Date" shall mean May 6, 2020.

"Initial Exit Payment" has the meaning given to it in Section 2.3(c).

"Monthly Principal Payment" has the meaning given to it in Section 2.3(a)(iv).

"Monthly Principal Payment Date" has the meaning given to it in Section 2.3(a)(iv).

c. The following definitions in Section 1.1 of the Facility Agreement are hereby amended and restated in their entirety to read as follows:

"Loan Documents" means this Agreement (including the Fourth Amendment Perfection Certificate and all other attachments, schedules, annexes and exhibits hereto), the Notes, the Security Agreement, Intellectual Property security agreements, the Control Agreements, the First Amendment, the Second Amendment, the Registration Rights Agreement, the Second Amendment

Registration Rights Agreement, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Intercreditor Agreement (and any other subordination or intercreditor agreement entered into by any of the Lenders with respect to any Indebtedness permitted under the Loan Documents), any collateral assignment, all Post-Fourth Amendment Perfection Certificates, and any other amendment, restatement, supplement, modification, waiver, consent, agreement, document or instrument executed by the Borrower or any Subsidiary and delivered in connection with any of the foregoing and dated the Agreement Date or subsequent thereto, whether or not specifically mentioned herein or therein; provided, for the avoidance of doubt that shares of Common Stock, including any Interest Payment Shares, Principal Payment Shares and Conversion Shares, are excluded from "Loan Documents."

"Notes" means the Second Amended and Restated Senior Secured Convertible Notes issued to the Lenders evidencing the Loan in substantially the form of Exhibit A attached to the Fifth Amendment, as may be further amended, restated, supplemented, replaced or otherwise modified from time to time.

d. Section 2.3(a) of the Facility Agreement is hereby amended and restated in its entirety to read as follows:

"(a) Borrowers shall repay the outstanding principal amount of the Loan as follows:

(i) $7,500,000 of the outstanding principal amount of the Loan shall be repaid on the Effective Date (as defined in the Second Amendment) (the "**Second Amendment Principal Payment**")

(ii) $7,500,000 of the outstanding principal amount of the Loan shall be repaid on May 11, 2019 (the "**2019 Principal Payment**);

(iii) $10,000,000 of the outstanding principal amount of the Loan shall be repaid on May 11, 2020 (the "**2020 Principal Payment**");

(iv) an aggregate of $5,000,000 of the outstanding principal amount of the Loan shall be repaid in eight monthly installments (each, a "**Monthly Principal Payment**") of $625,000 on the 11th day of each calendar month commencing with (and including) September 2020 and ending with (and including) April 2021 (each such monthly payment date during such period, a "**Monthly Principal Payment Date**"); provided, however, that if the Volume Weighted Average Price (as defined in the Notes) of the Common Stock exceeds $1.50 (subject to appropriate adjustment for any Stock Event that occurs after the Fifth Amendment Date) on each of any ten (10) consecutive Trading Days during the period of 30 consecutive days ending on (and including) the Trading Day immediately preceding a Monthly Principal Payment Date, then the principal amount otherwise due on such Monthly Principal Payment Date (after giving effect to the application of conversions and prepayments in accordance with Section

2.3(e)) shall be deferred to, and shall be due and payable on, May 11, 2021 (together with all other amounts payable on such date);

(v) $15,000,000 of the outstanding principal amount of the Loan, together with any and all amounts deferred pursuant to Section 2.3(a)(iv) (subject to any reduction of such deferred amounts pursuant to Section 2.3(e)), shall be repaid on May 11, 2021 (the "**2021 Principal Payment**"); and

(vi) all outstanding principal and interest and all other outstanding Obligations shall be due and payable on May 11, 2022 (the principal portion of such payment, the "**2022 Principal Payment**" and such date, the "**Maturity Date**").

Subject to Sections 2.3(b) and 2.3(c) the Borrowers (i) may prepay the Obligations in whole or in part at any time and from time to time and (ii) shall prepay all of the outstanding Obligations upon the occurrence of a Change of Control. The amount of any prepayment of the Obligations shall be allocated among the Lenders in accordance with their respective Pro Rata Shares."

e. Section 2.3(c) of the Facility Agreement is hereby amended and restated in its entirety to read as follows:

"(c) Notwithstanding anything to the contrary in the Loan Documents (and in addition to the amounts payable pursuant to Section 2.3(b)), effective as of the date hereof, there shall be a fully due and owing non-refundable exit payment in cash in a total amount equal to $750,238.93 (the "**Initial Exit Payment**"), which Initial Exit Payment shall be deemed an Obligation and shall be deemed to have been fully earned as of the date hereof. Effective as of the Fifth Amendment Date, there shall be fully due and owing an additional non-refundable exit payment in cash of $250,000 (the "**Additional Exit Payment**" and, together with the Initial Exit Payment, each an "**Exit Payment**" and collectively, the "**Exit Payments**"), which Additional Exit Payment shall be deemed an Obligation and shall be deemed to have been fully earned as of the Fifth Amendment Date. The Loan Party Obligors' obligation to pay the Exit Payments will not be subject to any counterclaim or setoff for, or be otherwise affected by, any claim or dispute that any Loan Party Obligor may have. The Initial Exit Payment shall be paid, in cash, immediately without notice or further action by the Loan Party Obligors to the Lenders based on their respective Pro Rata Shares upon the earliest to occur of (i) the date when the remaining Loans are due, payable, paid, repaid, redeemed, prepaid or converted (in each case, whether in cash, in Freely Tradeable Shares, other Stock or otherwise, whether voluntary or involuntary and whether (A) before, at the time of or after (1) the Maturity Date, (2) any acceleration of any of the Obligations, (3) the filing of any voluntary or involuntary bankruptcy petition, (4) an insolvency, (5) the occurrence of an Event of Default, (6) a foreclosure or (7) a sale or disposition, (B) in the connection with a Change of Control or (C) by any other method, manner, action, event, circumstance, situation, procedure or process) in an amount that causes (or such lesser amount of outstanding Loans that are so due, payable, paid, repaid, redeemed, prepaid or converted that the Required Lenders have agreed to cause) the principal amount of remaining Loans outstanding to be (or a payment, repayment, redemption, prepayment or conversion is

required to be made that would cause such Loans, if such payment, repayment, redemption, prepayment or conversion would have been made to be) less than $10,000,000, including, without limitation, when the principal amount of the remaining Loans have been paid, repaid, redeemed, prepaid or converted in full; (ii) the Maturity Date, (iii) the date of any acceleration of any of the Obligations, (iv) the date of any filing of any voluntary or involuntary bankruptcy petition, (v) the date of any insolvency, the date of any foreclosure or (vi) the date any Change of Control occurs. The Additional Exit Payment shall be paid, in cash, immediately without notice or further action by the Loan Party Obligors to the Lenders based on their respective Pro Rata Shares upon the earliest to occur of any of the events described in clauses (i)-(vi) of the immediately preceding sentence; provided, that for purposes of this sentence, clause (i) will only be applicable if the principal amount of the remaining Loans has been paid, repaid, redeemed, prepaid or converted in full. The Loan Party Obligors and the other Parties acknowledge and agree that the Collateral Agent and the Lenders would not have entered into this Agreement (including the Fourth Amendment and the Fifth Amendment) or the other Loan Documents without the Loan Party Obligors agreeing to pay the Exit Payments in the aforementioned instances. The Loan Party Obligors and the other Parties further acknowledge and agree that the Exit Payments set forth in this Section 2.3(c) are not intended to act as a penalty or to punish the Borrower or any other Loan Party Obligors for any such payment, repayment, redemption, prepayment or conversion (or the requirement for such payment, repayment, redemption or conversion to be due, payable or made)."

f. Section 2.3(e) of the Facility Agreement is hereby amended and restated in its entirety to read as follows:

"Any conversions of the Loans (and Notes evidencing such Loans) by any Lender into Conversion Shares (as defined in the Notes) and any prepayments of principal by the Borrower or any other Loan Party Obligor (whether in cash, through the issuance of Freely Tradeable Shares in accordance with Section 2.3(f) and Exhibit 2.3 or otherwise) shall be applied against, and reduce, principal repayments required pursuant to Section 2.3(a) with respect to each applicable Lender's Loans (and Notes evidencing such Loans) in the order set forth in Section 2.3(a), in each case, as of the date of the applicable Conversion Notice (as defined in the Notes), applicable Principal Share Issuance Closing Date or applicable cash prepayment until the earlier to occur of (A) the time such principal repayment obligation has been satisfied in full (whether by repayment or as a result of Conversions (as defined in the Notes) by the Lenders), and (B) 5:00 p.m. (New York City time) on the Trading Day immediately preceding the date such principal repayment is due (i.e. following the earlier of clause (A) and clause (B) such conversion or prepayment would be applied against the next principal repayment requirement pursuant to Section 2.3(a)). For the avoidance of doubt, any such conversion or prepayment that, in accordance with this Section 2.3(e), is applied against a Monthly Principal Payment shall reduce the amount of such Monthly Principal Payment due on the applicable Monthly Principal Payment Date, and the amount that would otherwise be deferred in respect of such Monthly Principal Payment in accordance with Section 2.3(a)(iv) shall be reduced on a dollar-for-dollar basis in the amount of such principal converted or prepaid."

3. Amendment of Notes. Effective as of the date hereof, each of the Existing Notes shall be amended and restated automatically (without the need for further action by any Party) to give effect to the amendments contained in the form of Second Amended and Restated Senior Secured Convertible Notes attached hereto as Exhibit A.

4. Consent. Notwithstanding anything to the contrary set forth in the PPP Consent, the Facility Agreement or any other Loan Document, subject to the accuracy of the representations contained in Section 6(l), the Lenders party hereto, constituting at least Required Lenders, hereby irrevocably consent to the Borrower repaying in full the PPP Loan.

5. Conditions Precedent. The amendments to the Facility Agreement contemplated hereby shall be effective upon the execution and delivery hereof by each of the Parties, subject to the fulfillment or waiver by the Lenders of the following conditions ("Conditions Precedent"):

a. Delivery of Documents. The Borrower and the Lenders shall each have executed and delivered this Amendment, and the Borrower shall have delivered to each Lender a Note substantially in the form of Exhibit A hereto in the aggregate principal amount set forth opposite such Lender's name on Schedule I hereto; provided, for the avoidance of doubt, that upon the delivery of such Notes and the effectiveness of this Amendment, the Existing Notes shall be immediately cancelled and of no further force and effect.

b. Performance; Representations and Warranties. The Borrower shall have performed and complied with all agreements and conditions contained in the Facility Agreement and the other Loan Documents to be performed by or complied with by the Borrower on or prior to the date hereof, the representations and warranties of the Borrower and the Guarantors contained herein shall be true and correct in all respects as of the date hereof, and the Lenders shall have received a certification from the chief executive officer or chief financial officer of the Borrower to the foregoing effect.

c. Opinion. The Lenders shall have received customary opinions of Goodwin Procter LLP, counsel to the Borrower.

d. Consent under Intercreditor. The Lenders shall have received the Consent Under Intercreditor in substantially the form attached as Exhibit B hereto, duly executed by each of Encina Business Credit, LLC, the Borrower and each Guarantor

6. Representations and Warranties of the Borrower. Each of the Borrower and the Guarantors, jointly and severally, hereby represents and warrants to the Lenders as of the date of this Amendment as follows, which representations and warranties shall survive the execution and delivery of this Amendment and continue in full force and effect until all of the Notes have been repaid in full:

a. Organization and Good Standing. Each of the Borrower and the Guarantors is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted.

b. Authority. Each of the Borrower and Guarantors has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Amendment, the Notes (as amended hereby) and the other Loan Documents as amended hereby and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Amendment by each of the Borrower and Guarantors, the execution and delivery of the Notes (as amended hereby) by the Borrower and the consummation by it of the transactions contemplated hereby, by the Notes (as amended hereby) and by the other Loan Documents as amended hereby have been duly authorized by all necessary action on its part, and no further action of its board of directors, managers, partners, stockholders or members is required in connection herewith or therewith.

c. Consents. Each of the Borrower and Guarantors is not required to obtain any consent from, authorization or order of, or make any filing or registration with (other than the filing with the SEC of the 8-K Filing), any Governmental Authority or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by this Amendment, the Facility Agreement, the Notes (as amended hereby) or the other Loan Documents (as amended hereby), to which it is a party, in each case, in accordance with the terms hereof or thereof. Except with respect to the minimum bid price requirement contained in NASDAQ Rule 5450(a)(i), the Borrower is not in violation of the requirements of NASDAQ and has no knowledge of any facts or circumstances which would reasonably be expected to lead to delisting or suspension of the Common Stock in the foreseeable future. The Borrower is not, and never has been, a "shell company" (as defined in Rule 12b-2 under the Exchange Act). The Common Stock is eligible for clearing through The Depository Trust Company ("DTC"), through its Deposit/Withdrawal At Custodian (DWAC) system, and the Borrower is eligible for and participating in the Direct Registration System (DRS) of DTC with respect to the its Common Stock. The transfer agent for the Common Stock is a participant in, and the Common Stock is eligible for transfer pursuant to, DTC's Fast Automated Securities Transfer Program. The Common Stock is not, and has not at any time been, subject to any DTC "chill," "freeze" or similar restriction with respect to any DTC services, including the clearing of transactions in shares of the Common Stock through DTC.

d. Valid and Binding Agreement. Each of this Amendment and the Notes (as amended hereby) has been duly executed and delivered by each of the Borrower and the Guarantors, as applicable, and constitutes its valid and binding obligations, enforceable against it in accordance with their respective terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

e. Non-Contravention. The execution and delivery of this Amendment and the Notes (as amended hereby) and the performance by each of the Borrower and the Guarantors of its obligations hereunder, thereunder and under the other Loan Documents as amended hereby does not and will not (i) violate any provision of its certificate of incorporation or formation, operating agreement, partnership agreement, bylaws or other organizational documents, as applicable (ii) conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which it is subject, or by which any of its property or assets is bound or affected, (iii) require any permit,

authorization, consent, approval, exemption or other action by, notice to or filing with, any court or other federal, state, local or other governmental authority or other Person, (iv) violate, conflict with, result in a material breach of, or constitute (with or without notice or lapse of time or both) a material default under, or an event which would give rise to any right of notice, modification, acceleration, payment, cancellation or termination under, or in any manner release any party thereto from any obligation under any permit or contract to which it is a party or by which any of its properties or assets are bound, or (v) result in the creation or imposition of any Lien on any part of its properties or assets. No Default or Event of Default exists.

f. Issuance of Shares. The Conversion Shares issuable upon conversion of the Notes (as amended hereby) are duly authorized and when issued upon any such conversion will be duly and validly issued, fully paid and non-assessable, free and clear of all Liens imposed by the Borrower, and will not be issued in violation of, or subject to, any preemptive or similar rights of any Person. The Borrower has reserved from its duly authorized capital stock the Conversion Shares issuable pursuant to the Notes (as amended hereby) (without regard to the 4.985% Cap or any other limitation on the conversion thereof).

g. SEC Reports. The Borrower has filed all reports, schedules, forms, statements and other documents required to be filed by it under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (or such shorter period as the Borrower was subject to such requirements) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "SEC Reports"). As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

h. Certain Fees. No brokerage or finder's fees or commissions are or will be required to be paid by the Borrower or any of its affiliates or representatives to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by this Amendment. The Lenders shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 6(h) that may be due in connection with the transactions contemplated hereby.

i. Exemption from Registration. Assuming the accuracy of the Lenders' representations and warranties set forth in Section 7, no registration under the Securities Act or state securities laws is required for the offer and issuance of the Conversion Shares by the Borrower to the Lenders as contemplated hereby and by the Notes (as amended hereby). The amendments and transactions contemplated hereby, including the issuance and sale of the Conversion Shares do not contravene, or require stockholder approval pursuant to, the rules and regulations of NASDAQ. Assuming the Holder (as defined in the Notes (as amended hereby)) to which Conversion Shares are to be issued is not as of the date of issuance, and for a period of three (3) months prior to the date of issuance has not been, an Affiliate of the Borrower (which the Borrower shall assume (and the applicable Holder shall be deemed to represent unless such

Holder has otherwise advised the Borrower in writing), the Conversion Shares will be freely tradeable by such Holder without restriction or limitation (including volume limitation), and will not contain or be subject to any legend or stop transfer instructions restricting the sale or transferability thereof. The Borrower acknowledges and agrees that, for purposes of Rule 144(d) under the Exchange Act, each Lender shall be deemed to have acquired its Note (as amended hereby) on the Second Amendment Date.

j. No Integrated Offering. Neither the Borrower, nor any of its affiliates, nor any Person acting on its behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering and issuance of the Conversion Shares to be integrated with prior or contemporaneous offerings by the Borrower (i) for purposes of the Securities Act and which would require the registration of any such securities under the Securities Act, or (ii) for purposes of any applicable stockholder approval provisions of NASDAQ.

k. Protective Plans. The Borrower and the Borrower's board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination or other similar anti-takeover provision under the Borrower's certificate of incorporation, bylaws or the laws of the State of Delaware that is or could become applicable to any of the Lenders as a result of the transactions contemplated hereby or by the Notes (as amended hereby) and the other Loan Documents (in each case, as amended hereby) and the Borrower's fulfilling its obligations with respect thereto, including the Borrower's issuance of the Conversion Shares. The Borrower has not adopted a stockholders rights plan (or "poison pill") or similar arrangement relating to accumulations of beneficial ownership of Common Stock or a change in control of the Borrower (an such plan or arrangement, a "Rights Plan"), and after the date of this Amendment, the Borrower will not adopt any Rights Plan that in any way limits or restricts any Lender's (or any permitted transferee's) exercise in full of its rights under the Notes (as amended hereby) or otherwise with respect to any Conversion Shares.

l. PPP Loan. The Borrower and the Guarantors have not used, and will not use, the PPP Loan Proceeds other than for the repayment of the PPP Loan as contemplated by the consent herein. The Borrower and Guarantors shall repay the PPP Loans in full on or prior to May 14, 2020.

7. Representations and Warranties of the Lenders. Each Lender hereby severally represents and warrants to as follows:

a. Organization and Good Standing. Such Lender is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted.

b. Authority. Such Lender has the requisite power and authority to enter into and to consummate the transactions contemplated by this Amendment and otherwise to carry out its obligations hereunder. The execution and delivery of this Amendment by such Lender and the consummation by it of the transactions contemplated hereby and thereby have been duly

authorized by all necessary action on the part of such Lender and no further action is required in connection herewith or therewith.

c. Valid and Binding Agreement. This Amendment has been duly executed by such Lender and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligations of such Lender, enforceable against such Lender in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

d. Non-Contravention. The execution and delivery of this Amendment by such Lender and the performance by such Lender of its obligations hereunder does not and will not (i) violate any provision of such Lender's organizational or charter documents, (ii) conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which such Lender is subject, or by which any property or asset of such Lender is bound or affected, (iii) violate or result in a material breach of contract to which such Lender is a party or by which any of its properties or assets are bound.

8. Additional Covenants. Borrower covenants and agrees that:

a. Delivery of Notes. Immediately upon the effectiveness of this Amendment and the delivery of the Notes (as amended hereby) by the Borrower to the Lenders, the Existing Notes shall be cancelled and of no further force and effect. As promptly as reasonably practicable following the date hereof, each Lender shall deliver the Existing Notes to the Borrower for destruction. For the avoidance of doubt, the amendment and restatement of the terms of the Notes as provided therein, and the cancellation of the Existing Notes in connection therewith, shall not be conditioned upon, or be subject to, the delivery of the Notes by the Borrower to the Lenders, or the delivery of the Existing Notes by the Lenders to the Borrower.

b. Reservation of the Common Stock. On and after the date hereof, the Borrower shall at all times reserve and keep available, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Borrower to issue Conversion Shares pursuant to the Notes (as amended hereby) (without regard to the 4.985% Cap or any other limitation on the conversion thereof).

c. Blue Sky Filings. The Borrower shall take such action as is reasonably necessary in order to obtain an exemption for, or to qualify the Conversion Shares for, issuance and sale to the Lenders under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of such actions promptly upon request of any Lender.

d. Listing. The Borrower has submitted a notification of listing of additional shares for the listing of the Conversion Shares on The Nasdaq Global Market and will use its reasonable best efforts to secure such listing. The Borrower shall pay all fees and expenses in connection with satisfying its obligations under this Section 8(d).

e. Disclosure. On or before 8:00 a.m., New York time, on the first Business Day following the date of this Amendment, the Borrower shall file a Current Report on Form 8-K describing all the material terms of the transactions contemplated by this Amendment, attaching this Amendment (without redaction of any kind) and disclosing any other presently material non-public information (if any) provided or made available to any Lender (or any of their respective agents or representatives) on or prior to the date hereof (the "**8-K Filing**"). From and after the filing of the 8-K Filing, the Borrower shall have disclosed all material, non-public information (if any) provided or made available to either Lender (or any of their respective agents or representatives) by Borrower or any of their respective officers, directors, employees, Affiliates or agents in connection with the transactions contemplated by this Amendment or otherwise on or prior to the date hereof. Notwithstanding anything contained in this Amendment to the contrary and without implication that the contrary would otherwise be true, after giving effect to the 8-K Filing, the Borrower expressly acknowledges and agrees that no Lender shall have (unless expressly agreed to by a particular Lender after the date hereof in a written definitive and binding agreement executed by the Borrower and such particular Lender or customary oral (confirmed by e-mail) "wall-cross" agreement (it being understood and agreed that no Lender may bind any other Lender with respect thereto)), any duty of trust or confidence with respect to, or a duty not to trade in any securities on the basis of, any information regarding the Borrower.

f. Fees & Expenses. The Borrower shall promptly reimburse the Lenders for all of their reasonable out-of-pocket, costs, fees and expenses, including fees and disbursements of legal counsel, incurred in connection with the negotiation, drafting and execution of this Amendment and the consummation of the transactions contemplated hereby.

9. Acknowledgements: Borrower and the Guarantors, jointly and severally, irrevocably and unconditionally acknowledges, affirms and covenants to each Lender that:

a. such Lender is not in default under any of the Loan Documents and has not otherwise breached any obligations to Borrower or Guarantors; and

b. there are no offsets, counterclaims or defenses to the Obligations, including the liabilities and obligations of the Borrower or any Guarantor under the Notes and other Loan Documents (as amended hereby), or to the rights, remedies or powers of such Lender in respect of any of the Obligations or any of the Loan Documents, and the Borrower and each Guarantor agrees not to interpose (and each does hereby waive and release) any such defense, set-off or counterclaim in any action brought by such Lender with respect thereto.

10. Tax Treatment. Borrower, the Guarantors and the Lenders intend and agree that, except to the extent otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code or a change in law, the amendments made to the Existing Facility Agreement and the Existing Notes pursuant to this Amendment are part of and pursuant to a plan of recapitalization and reorganization of the Borrower described in Section 368(a)(1)(E) of the Code.

11. Miscellaneous. This Amendment is an amendment contemplated under Section 6.6 of the Facility Agreement. For the avoidance of doubt, this Amendment is governed by and

subject to the provisions of Article 6 of the Facility Agreement, which provisions are incorporated herein in their entirety by this reference thereto.

12. Effect of Amendment; Reservation of Rights. The parties hereto hereby agree that (a) the term "Notes" as used in the Loan Documents shall mean the Notes as amended and restated pursuant to the terms hereof, and (b) the term "Obligations" as used in the Loan Documents, as amended hereby, shall include all liabilities and obligations of the Borrower and Guarantors under this Amendment, under the Facility Agreement (including as amended hereby) under the Notes and under the other Loan Documents, and each of the parties hereto agrees not to take any contrary positions. Except as expressly set forth herein, none of the Lenders has agreed to any modification of the Facility Agreement or any other Loan Document, nor waived (nor hereby waives), any obligation of Borrower or any Guarantor, or any breach, default or Event of Default that may exist, under any of the Loan Documents, nor any of its rights or remedies thereunder, including any rights or remedies arising from any breach, default or Event of Default, and each of the Lenders expressly reserves all such rights and remedies.

13. Reaffirmation. The execution and delivery of this Amendment shall not operate as a waiver of any right, power or remedy of the Lenders, or constitute a waiver of any provision of the Facility Agreement or any other Loan Document. Each of the Borrower and the Guarantors, as issuer, debtor, grantor, pledgor, mortgagor, guarantor or assignor, or in other any other similar capacity in which such Person grants Liens or security interests in its property or otherwise acts as accommodation party or guarantor, as the case may be, hereby (i) acknowledges and agrees that it has reviewed this Amendment, (ii) ratifies and reaffirms all of its obligations, contingent or otherwise, under each of the Loan Documents (as amended hereby) to which it is a party (after giving effect hereto), and (iii) to the extent such Person granted Liens on or security interests in any of its property pursuant to any such Loan Document as security for or otherwise guaranteed the Obligations under or with respect to the Loan Documents, ratifies and reaffirms such guarantee and grant of security interests and Liens and confirms and agrees that such security interests and Liens hereafter secure all of the Obligations (as amended hereby). Each of the Borrower and the Guarantors hereby consents to this Amendment and acknowledges that this Amendment and each Note (as amended hereby) is a Loan Document and that each of the Loan Documents (as amended hereby) remains in full force and effect and is hereby ratified and reaffirmed. Neither this Amendment nor any prior amendment of any of the Loan Documents shall be construed or deemed to be a satisfaction, novation, cure, modification, amendment or release of any obligations (including the Obligations), the Facility Agreement or any of the other Loan Documents or establish a course of conduct with respect to future requests for amendments, modifications or consents.

[Remainder of Page Intentionally Left Blank, Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first set forth above.

BORROWER:

NEOS THERAPEUTICS, INC.

By: /s/ Richard Eisenstadt
Name: Richard Eisenstadt
Title: Chief Financial Officer

GUARANTORS:

NEOS THERAPEUTICS COMMERCIAL, LLC

By: /s/ Richard Eisenstadt
Name: Richard Eisenstadt
Title: Chief Financial Officer

NEOS THERAPEUTICS BRANDS, LLC

By: /s/ Richard Eisenstadt
Name: Richard Eisenstadt
Title: Chief Financial Officer

NEOS THERAPEUTICS, LP

By: PharmaFab Texas, LLC, its general partner

By: /s/ Richard Eisenstadt
Name: Richard Eisenstadt
Title: Chief Financial Officer

PHARMAFAB TEXAS, LLC

By: /s/ Richard Eisenstadt
Name: Richard Eisenstadt
Title: Chief Financial Officer

LENDERS:

DEERFIELD PRIVATE DESIGN FUND III, L.P.

By: Deerfield Mgmt III, L.P., its General Partner
By: J.E. Flynn Capital III, LLC, its General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

DEERFIELD PARTNERS, L.P.

By: Deerfield Mgmt., L.P., its General Partner
By: J.E. Flynn Capital, LLC, its General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

COLLATERAL AGENT:

DEERFIELD MGMT, L.P.

By: J.E. Flynn Capital, LLC, General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

Schedule I

Lender	**Principal Amount of Note**
DEERFIELD PRIVATE DESIGN FUND III, L.P.	$30,000,000
DEERFIELD PARTNERS, L.P.	$15,000,000

EXHIBIT A

Notes

EXHIBIT B

Consent Under Intercreditor

CONSENT UNDER INTERCREDITOR AGREEMENT

This Consent under Intercreditor Agreement ("Consent") is entered into as of May 6, 2020, by and among ENCINA BUSINESS CREDIT, LLC, as ABL Agent for the ABL Lender Parties, DEERFIELD MGMT, L.P., as the Term Loan Agent, the Term Loan Lenders, NEOS THERAPEUTICS, INC., a Delaware corporation (the "Company"), NEOS THERAPEUTICS COMMERCIAL, LLC, a Delaware limited liability company ("NT Commercial"), NEOS THERAPEUTICS BRANDS, LLC, a Delaware limited liability company ("NT Brands"), NEOS THERAPEUTICS, LP, a Texas limited partnership ("NT LP"), and PHARMAFAB TEAS, LLC, a Texas limited liability company ("Pharma" and together with the Company, NT Commercial, NT Brands and NT LP, each, a "Loan Party Obligor" and collectively, the "Loan Party Obligors").

W I T N E S S E T H:

WHEREAS, ABL Agent, the Term Loan Agent, the Term Loan Lenders and the Loan Party Obligors have entered into that certain Intercreditor Agreement dated as of October 2, 2019 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Intercreditor Agreement");

WHEREAS, the Loan Party Obligors party thereto from time to time, ABL Agent and ABL Lenders have entered into a certain Loan and Security Agreement dated as of October 2, 2019 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "ABL Credit Agreement"), pursuant to which, among other things, the ABL Lenders have agreed, subject to the terms and conditions thereof, to make certain loans and financial accommodations to the Loan Party Obligors;

WHEREAS, the Loan Party Obligors party thereto from time to time and the Term Loan Lenders have entered into that certain Facility Agreement dated as of May 11, 2016 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Term Credit Agreement"), pursuant to which, among other things, the Term Loan Lenders have agreed, subject to the terms and conditions thereof, to make certain loans and financial accommodations to the Loan Party Obligors;

WHEREAS, the Company has requested that Term Loan Agent and the Term Loan Lenders enter into that certain Fifth Amendment to Facility Agreement of even date herewith in the form attached hereto as Exhibit A (the "Fifth Amendment to Term Credit Agreement");

WHEREAS, the Company and the other Loan Party Obligors have requested that ABL Agent consent to the Fifth Amendment to Term Credit Agreement and the documents and instruments to be executed and delivered in connection therewith; and

WHEREAS, it is a condition precedent to the execution and delivery of the Fifth Amendment to Term Credit Agreement that the Loan Party Obligors and ABL Agent shall have executed and delivered this Consent.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Defined Terms. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Intercreditor Agreement.

2. Consent. Notwithstanding anything contained in the Intercreditor Agreement, the ABL Credit Agreement or the Term Credit Agreement to the contrary, ABL Agent consents to the execution, delivery and performance of the Fifth Amendment to Term Credit Agreement and each of the other agreements, instruments and documents in connection therewith.

3. Waiver. ABL Agent hereby waives any Default or Event of Default (in each case, as defined in the ABL Credit Agreement) occurring or continuing in connection with the Loan Party Obligors' incurrence of a "paycheck protection program" loan under the Coronavirus Aid, Relief, and Economic Security Act (H.R. 748) and the Interim Final Rule set forth in 13 C.F.R. §120 – Business Loan, in each case so long as the proceeds of such loan are repaid in full on or prior to May 14, 2020 (the "PPP Loan"). The Term Loan Agent and Term Loan Lenders hereby acknowledge and agree that the Default or Event of Default (in each case, under the ABL Credit Agreement) being waived by the ABL Agent hereunder does not constitute a Triggering Event under the Intercreditor Agreement so long as the PPP Loan is repaid in full on or prior to May 14, 2020. The foregoing waiver and acknowledgement are limited and, in each case, shall not constitute (a) a modification or alteration of the terms, conditions or covenants of the ABL Credit Agreement or the Intercreditor Agreement, as applicable, (b) a waiver of any other Default or Event of Default (in each case as defined in the ABL Credit Agreement) in existence or that may occur after the date hereof, (c) a waiver, release or limitation upon the exercise by ABL Agent, Term Loan Agent or any Term Loan Lender of any of its rights, legal or equitable, thereunder or (d) establish a custom or course of dealing among any of the parties hereto.

4. Representations and Warranties. Each of the parties hereto hereby represents and warrants to the other that (a) it has full power, authority and legal right to make and perform this Consent and (b) this Consent is its legal, valid and binding obligation, enforceable against it in accordance with its terms.

5. Miscellaneous.

(a) Captions. Section captions used in this Consent are for convenience only, and shall not affect the construction of this Consent.

(b) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (BUT NOT THE LAW OF CONFLICTS) APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THAT STATE AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

(c) Counterparts. This Consent may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall be one and the same instrument. Receipt by telecopy, facsimile or email transmission of any executed signature page to this Consent shall constitute effective delivery of such signature page.

(d) Severability. Any provision of this Consent held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Consent and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

(e) Reaffirmation. Except as expressly amended hereby, the terms of the Intercreditor Agreement will remain in full force and effect.

(f) Successors and Assigns. This Consent shall be binding upon ABL Agent, the Term Loan Agent and each Term Loan Lender and their respective successors and assigns, and shall inure to the benefit of ABL Agent, the Term Loan Agent and each Term Loan Lender and their respective permitted successors and assigns.

(g) Reference. Any reference to the Intercreditor Agreement contained in any document, instrument or agreement executed in connection with the Intercreditor Agreement shall be deemed to be a reference to the Intercreditor Agreement as modified by this Consent.

[**Signature Pages Follow**]

IN WITNESS WHEREOF, ABL Agent, Term Loan Agent, each Term Loan Lender and each Loan Party Obligor have caused this Consent to be executed as of the date first above written.

ABL AGENT, on behalf of ABL Lender Parties:

ENCINA BUSINESS CREDIT, LLC

By: /s/ Jean R. Elie
Name: Jean R. Elie
Title: Authorized Signatory

TERM LOAN AGENT:

DEERFIELD MGMT, L.P.

By: J.E. FLYNN CAPITAL, LLC, General Partner

By: /s/ David Clark
Name: David Clark
Title: Authorized Signatory

LOAN PARTY OBLIGORS:

NEOS THERAPEUTICS COMMERCIAL, LLC

By: /s/Richard Eisenstadt
Name: Richard Eisenstadt
Its: Chief Financial Officer

NEOS THERAPEUTICS, LP

By: PHARMAFAB TEXAS, LLC, its general partner

By:
Name: Richard Eisenstadt
Its: Chief Financial Officer

PHARMAFAB TEXAS, LLC

By: /s/Richard Eisenstadt
Name: Richard Eisenstadt
Its: Chief Financial Officer

NEOS THERAPEUTICS, INC.

By: /s/Richard Eisenstadt
Name: Richard Eisenstadt
Its: Chief Financial Officer

NEOS THERAPEUTICS, INC.

By: /s/Richard Eisenstadt
Name: Richard Eisenstadt
Its: Chief Financial Officer

Exhibit A

Fifth Amendment to Term Credit Agreement

See attached.