

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

FORM 8-K

CURRENT REPORT

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

July 9, 2020  
Date of Report (date of earliest event reported)

OpGen, Inc.  
(Exact name of Registrant as specified in its charter)

Delaware  
(State or other jurisdiction of incorporation  
or organization)

001-37367  
(Commission  
File Number)

06-1614015  
(I.R.S. Employer  
Identification Number)

708 Quince Orchard Road, Suite 205  
Gaithersburg, MD 20878  
(Address of principal executive offices)  
(240) 813-1260  
(Registrant's telephone number, including area code)

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 (see General Instruction A.2. below):

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock	OPGN	The Nasdaq Capital Market

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

Emerging growth company

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

## Item 1.01 Entry into a Material Definitive Agreement.

On July 9, 2020, OpGen, Inc. (the “Company”), as guarantor, Curetis GmbH (“Curetis”), a subsidiary of the Company, as borrower, Ares Genetics GmbH, a subsidiary of the Company (“Ares Genetics”), as guarantor, and the European Investment Bank, or, the Bank, entered into an Amendment and Restatement Agreement (the “Second Amendment and Restatement Agreement”), which provides for the further amendment of the Finance Contract, dated as of December 12, 2016, by and between the Borrower and the Bank, as amended and restated by the First Amendment and Restatement Agreement dated as of May 20, 2019 (the “Existing Finance Contract” and as amended pursuant to the Second Amendment and Restatement Agreement, the “Amended Finance Contract”).

### *Existing Finance Contract*

Curetis, as borrower, and the Bank, as lender, entered into the Existing Finance Contract, which originally provided for two term loan tranches in the aggregate principal amount of €25 million for the purpose of financing the development of novel test panels, as well as future panels on platforms such as the Unyvero Platform. The loan amount was split into two tranches, a first tranche of €10 million, which was drawn down in April 2017, and a second tranche of up to an additional €15 million, in respect of which a disbursement of €3 million was received on June 22, 2018 following the fulfillment of specified regulatory milestones. Subsequently, the disbursement of the balance of the second tranche, with an aggregate commitment of up to €12 million, was amended as follows: (i) a disbursement of up to €5 million became available subject to Curetis N.V., the former parent of Curetis, having raised cumulative new equity of at least €13.5 million and (ii) the remaining distribution amount of up to €7 million became available subject to Curetis having installed 350 Unyvero Analyzers globally as well as Curetis’ consolidated revenues being at least €10 million over the 12 months preceding the request for the loan disbursement. In return for the Bank waiving certain conditions precedent to disbursing this aforementioned €5 million tranche mentioned in (i) above, the parties agreed on a 2.1% participation percentage interest. Upon maturity of this tranche, i.e. not before around mid-2024 (and no later than mid-2025), the Bank will be entitled to an additional payment that is equity-linked and equivalent to 2.1% of the then total valuation of Curetis.

The Existing Finance Contract was backed by a guarantee from the European Fund for Strategic Investment. Receipt of the loans is limited to the purpose of financing the development of novel test panels, as well as future panels on platforms such as the Unyvero Platform (collectively, the “Financed Project”), provided that the loans made available by the Bank do not exceed 50% of the total cost of the Financed Project.

Each loan under the Existing Finance Contract matures on the fifth anniversary of the disbursement of that loan and is to be repaid as a single installment on its maturity date. Each loan bears interest in the form of (i) a cash interest element at a floating rate of EURIBOR plus a cash pay margin and (ii) a deferred interest element of a fixed interest rate to be paid on the maturity date of the relevant loan. As of June 30, 2020, €18.0 million plus deferred interest in the amount of approximately €3.4 million was outstanding under the Existing Finance Contract.

The Existing Finance Contract provided for certain compulsory prepayment events, such as if (i) the credit granted by the Bank exceeds 50% (fifty percent) of the total cost of the Financed Project by the Existing Finance Contract, (ii) the borrower, any guarantor or other member of the Curetis group of businesses (the “Curetis Group”) voluntarily prepaid a part or the whole of any other financing arrangements, (iii) a change of control, defined as a person or group acting in concert gaining control of more than 50% of the equity (or gains the power to direct the management and policies) of the borrower, the guarantor or other member of the Curetis Group or any of the foregoing entities engaging in certain merger transactions or selling all or substantially all of its assets, occurs, (iv) the borrower’s or a guarantor’s ability to perform its obligations under this Existing Finance Contract or the guarantees would be materially impaired due to a change in or amendment to law, rule or regulation or (v) it becomes unlawful for the Bank to perform its obligations under the finance documents or to fund or maintain the loans.

The Existing Finance Contract contains undertakings on the part of the borrower to use the funds drawn down under the contract to finance the Financed Project and to maintain and insure the Financed Project, as well as certain restrictions, including restrictions on the borrower’s ability to dispose of assets, engage in hedging activities, violate applicable law, dispose of the shares of its material subsidiaries, engage in certain acquisitions, grant guarantees and security other than certain types of permitted guarantees and security, and incur additional financial indebtedness other than certain types of permitted indebtedness. The borrower is required to repay the loan together with accrued interest and any deferred interest upon demand by the Bank in the event of default, including payment defaults subject to a three-day grace period, certain insolvency or bankruptcy events, or the inability of the borrower or guarantor to fulfill its other obligations under the Existing Finance Contract or the guarantees.

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## *Second Amendment and Restatement Agreement*

The Second Amendment and Restatement Agreement (i) amends certain provisions the Existing Finance Contract to reflect the changes made as a result of the Company's acquisition of the Borrower, including the addition of the Company and Ares Genetics as guarantors, and (ii) provides for an additional €5 million in available borrowings, payable upon satisfaction of certain conditions, to fund certain research and development costs in relation to the Borrower's project to develop diagnostic solutions for COVID-19. The conditions to the disbursement of the additional €5 million in available borrowings include, among others things, the entry into a security agreement by Ares Genetics pursuant to which Ares Genetics will grant the Bank a security interest in certain patents.

Pursuant to the terms of the Second Amendment and Restatement Agreement, each of the Company and Ares Genetics also entered into Guarantee and Indemnity Agreements, each dated July 9, 2020, with the Bank, pursuant to which the Company and Ares Genetics guaranteed the obligations and liabilities of the Borrower under the Amended Finance Contract. Under the terms of the Guarantee Agreements, the Company and Ares Genetics provide customary representations and warranties and are subject to customary affirmative and restrictive covenants.

Copies of the Second Amendment and Restatement Agreement, which includes the Amended Finance Contract, are attached as Exhibits 10.1 and 10.2 hereto, respectively, and are incorporated herein by reference. Copies of the Guarantee and Indemnity Agreements with the Company and Ares Genetics are attached hereto as Exhibits 10.3 and 10.4, respectively, and are incorporated herein by reference. The foregoing description of the Second Amendment and Restatement, the Amended Finance Contract, and the Guarantee and Indemnity Agreements does not purport to be complete and is qualified in its entirety by reference to such exhibits.

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

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

### **Item 8.01 Other Events.**

On July 9, 2020, the Company issued a press release announcing the entry into the Second Amendment and Restatement Agreement with the Bank as described above in Item 1.01 and Item 2.03 of this Current Report on Form 8-K. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

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

#### (d) Exhibits

Exhibit No.	Document
10.1	<a href="#">Amendment and Restatement Agreement, dated as of July 9, 2020, by and among Curetis GmbH, as borrower, the Company, as guarantor, Ares Genetics GmbH, as guarantor, and European Investment Bank</a>
10.2	<a href="#">Finance Contract, as amended and restated pursuant to the First Amendment and Restatement Agreement dated May 20, 2019 and the Second Amendment and Restatement Agreement dated as of July 9, 2020, by and between the European Investment Bank and Curetis GmbH*</a>
10.3	<a href="#">Guarantee and Indemnity Agreement, dated as of July 9, 2020, by and between European Investment Bank and the Company</a>
10.4	<a href="#">Guarantee and Indemnity Agreement, dated as of July 9, 2020, by and between European Investment Bank and Ares Genetics</a>
99.1	<a href="#">Press Release issued by OpGen, Inc. dated July 9, 2020</a>

\* Confidential treatment has been requested for certain portions of this agreement. The unredacted document will be provided supplementally to the Securities and Exchange Commission upon request.

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**SIGNATURES**

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

Date: July 13, 2020

**OpGen, Inc.**

By: /s/ Timothy C. Dec  
Name: Timothy C. Dec  
Title: Chief Financial Officer

Dated

9 July 2020

FI N° 86508, FI N° 87226, FI N° 92628, and FI N° 82693  
Serapis N° 2016-0480

**CURETIS GMBH**  
**(AS BORROWER)**

- AND -

**OpGen, Inc.**  
**(AS GUARANTOR)**

- AND -

**Ares Genetics GmbH**  
**(AS GUARANTOR)**

- AND -

**EUROPEAN INVESTMENT BANK**  
**(AS BANK)**

**AMENDMENT AND RESTATEMENT AGREEMENT IN RELATION TO  
THE FINANCE CONTRACT DATED 12 DECEMBER 2016 AS AMENDED AND RESTATED BY THE FIRST AMENDMENT AND RESTATEMENT AGREEMENT DATED 20  
MAY 2019**

**Execution Version**



F3/AMT/ODT/6695769  
1M0186.000485

Hogan Lovells International LLP, Atlantic House, Holborn Viaduct, London EC1A 2FG

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THIS AGREEMENT is made on 2020

**BETWEEN:**

- (1) **Curetis GmbH**, a company incorporated in Germany, having its registered office at Max-Eyth-Strasse 42, 71088 Holzgerlingen, Germany (the "**Borrower**");
- (2) **OpGen, Inc.**, a company incorporated under the laws of the State of Delaware having its principal executive office at 708 Quince Orchard Road, Gaithersburg Maryland 20878, USA ("**OpGen**");
- (3) **Ares Genetics GmbH**, a company incorporated in Austria with company number FN 468899 H and registered office at Karl-Farkas-Gasse 18, A-1030, Vienna, Austria ("**Ares Genetics**" and together with OpGen, the "**Guarantors**"); and
- (4) **The European Investment Bank**, having its seat at 100 boulevard Konrad Adenauer, L-2950 Luxembourg (the "**Bank**").

**WHEREAS:**

- (A) This Agreement is supplemental to a Finance Contract dated 12 December 2016 and made between the Borrower and the Bank (as variously amended and restated including most recently pursuant to an Amendment and Restatement Agreement dated 20 May 2019 (the "**Existing Finance Contract**")).
  - (B) The Existing Finance Contract is guaranteed by Curetis NV, Curetis USA (each as defined in the Existing Finance Contract) and Ares Genetics, pursuant to the New Curetis NV Guarantee, the New Curetis USA Guarantee and the New Ares Genetics respectively (each as defined in the Existing Finance Contract).
  - (C) The Borrower has notified the Bank that the Borrower has been purchased by OpGen (the "**Acquisition**").
  - (D) As a result of the Acquisition, all of Curetis NV's assets and liabilities (including, without limitation, the shares of the Borrower) have been transferred to OpGen and the Parties acknowledge that, from the date of the Acquisition, Curetis NV will no longer trade. The Parties also acknowledge that as a result of the Acquisition Curetis USA will no longer trade.
  - (E) In consideration for the Bank agreeing to the amendments affected by this Amendment and Restatement Agreement, OpGen has agreed to guarantee the obligations of the Obligors under the Finance Documents (each as defined in the Amended and Restated Finance Contract) pursuant to the terms of the OpGen Guarantee. OpGen is Party to this Agreement in order to acknowledge the terms of the Amended and Restated Finance Contract.
  - (F) In addition, the Borrower has requested a further loan of EUR 5,000,000 to fund certain research and product development costs in relation to the Borrower's project to develop diagnostic solutions for COVID-19.
  - (G) The Bank and the Borrower now therefore wish to amend the terms of the Existing Finance Contract including: (1) by introducing the COVID-19 Tranche (as defined in the Amended and Restated Finance Contract); and (2) by amending certain other provisions of the Existing Finance Contract to reflect the changes made to the structure of the Group (as defined in the Existing Facility Agreement) as a result of the Acquisition.
-

IT IS AGREED AS FOLLOWS:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Incorporation of defined terms:** Unless otherwise provided (including in the rest of this Clause 1) or unless the context otherwise requires, all words and expressions defined in the Existing Finance Contract shall have the same respective meanings in this Agreement.

1.2 **Definitions:** In this Agreement, the following expressions shall have the following meanings:

**"Ares Genetics Second Guarantee"** means the guarantee and indemnity agreement dated 20 May 2019 entered into between the Bank and Ares Genetics (as Guarantor) (referred to as the Ares Genetics Second Guarantee Agreement in the Amended and Restated Finance Contract).

**"Ares Genetics Third Guarantee"** means the guarantee agreement to be entered into between the Bank and Ares Genetics (as Guarantor) on or around the date of this Agreement substantially in the form of the Ares Genetics Second Guarantee.

**"Amended and Restated Finance Contract"** means the amended and restated finance contract in the form set out in the Appendix to this Agreement.

**"CP Notification"** means the confirmation given by the Bank to the Borrower that the Bank has received (or has waived its requirement to receive) all of the documents and/ or evidence set out in Schedule 1 (*Conditions Precedent*) in each case in form and substance satisfactory to the Bank.

**"Effective Date"** means the date that the Bank gives the CP Notification.

**"OpGen Guarantee"** means the guarantee agreement to be entered into between the Bank and OpGen (as Guarantor) on or around the date of this Agreement.

**"Party"** means a party to this Agreement.

**"Supplemental Documents"** means the documents set out in paragraph 4 of Schedule 1 (*Conditions Precedent*).

1.3 **Construction of Schedules:** All defined terms used in Schedule 1 (*Conditions Precedent*), unless otherwise provided or unless the context otherwise requires, shall have the meaning attributed to them in the Amended and Restated Finance Contract (whether or not the Effective Date shall have occurred).

1.4 **Incorporation of terms:** The Interpretation and Definitions section of the Existing Finance Contract shall apply to this Agreement as if it were expressly set out in this Agreement with the necessary changes being made and with each reference in the Existing Finance Contract to "this Agreement" (or to like references) being deemed to be a reference to this Agreement.

2. **AMENDMENT AND RESTATEMENT**

**Amendment and restatement:** On the Effective Date, the Existing Finance Contract shall be amended and restated on the terms set out in the Amended and Restated Finance Contract.

3. **APPROVAL OF DISSOLUTION OF CURETIS NV AND CURETIS USA**

On and from the Effective Date, the Bank consents to the dissolution of Curetis NV and Curetis USA.

4. **REPRESENTATIONS AND WARRANTIES**

- (a) The Borrower represents and warrants that the Repeating Representations in the Amended and Restated Finance Contract are true:
- (i) as at the date of this Agreement (whether or not the Effective Date shall have occurred by such date); and
  - (ii) as at the Effective Date,
- by reference to the facts and circumstances existing at such dates.
- (b) Ares Genetics represents and warrants that the representations set out at articles 6.01 (a) to (e), and (g) to (n) (in each case, inclusive) of the Ares Genetics Second Guarantee are true:
- (i) as at the date of this Agreement (whether or not the Effective Date shall have occurred by such date); and
  - (ii) as at the Effective Date,
- by reference to the facts and circumstances existing at such dates.
- (c) OpGen represents and warrants that the representations set out at article 5.01 of the OpGen Guarantee are true as at the Effective Date by reference to the facts and circumstances existing at such dates.

5. **CONSTRUCTION**

5.1 **Confirmation:** Subject to Clause 2 (*Amendment and Restatement*) and except where inconsistent with the provisions of this Agreement, the terms of the Existing Finance Contract are confirmed and shall remain in full force and effect.

5.2 **Construction:** As of and after the Effective Date, the Existing Finance Contract and this Agreement shall be read and construed as one document and references in the Existing Finance Contract and in each of the Finance Documents to the Existing Finance Contract shall be read and construed as references to the Existing Finance Contract as amended and restated by this Agreement.

5.3 **Designation:** This Agreement is hereby designated as a Finance Document.

6. **AFFIRMATION AND FURTHER ASSURANCE**

6.1 **Affirmation:**

- (a) The Borrower and each Guarantor confirms:

(i) its knowledge and acceptance of the Amended and Restated Finance Contract coming into effect on and from the Effective Date;

(b) In addition, Ares Genetics confirms that from the Effective Date:

(i) the guarantee given by it in the Ares Genetics Second Guarantee (as applicable) will continue in full force and effect; and

(ii) such guarantee will extend to all obligations of the Borrower under the Amended and Restated Finance Contract and the other Finance Documents.

6.2 **Binding nature:** The Bank and the Borrower hereby agree that, with effect from the Effective Date, they shall be bound by the terms of the Amended and Restated Finance Contract.

6.3 **Further assurance:** The Borrower shall, at the request of the Bank and at its own expense, do all such acts and things necessary or desirable to give effect to the amendments effected or to be effected pursuant to this Agreement.

## 7. RELEASE OF GUARANTEES

7.1 With effect from the Effective Date, the Bank:

(a) releases Curetis NV from:

(i) the Initial Guarantee Agreement; and

(ii) the Curetis NV Second Guarantee (each as defined in the Amended and Restated Finance Contract (whether or not the Effective Date shall have occurred)); and

(b) releases Curetis USA from:

(i) the Curetis USA First Guarantee Agreement; and

(ii) the Curetis USA Second Guarantee Agreement (each as defined in the Amended and Restated Finance Contract (whether or not the Effective Date shall have occurred)).

## 8. MISCELLANEOUS

8.1 **Incorporation of terms:** The provisions of Article 10.04 (*Non-Waiver*), Article 11.10 (*Counterparts*), Article 11.04 (*Place of performance*), Article 11.08 (*Invalidity*), Article 11.09 (*Amendments*) of the Existing Finance Contract shall apply to this Agreement as if they were expressly set out in this Agreement with the necessary changes being made and with each reference in the Existing Finance Contract to "this Agreement" or like references being deemed to be a reference to this Agreement.

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

9. **GOVERNING LAW AND JURISDICTION**

- 9.1 **Governing law:** This Agreement and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed and take effect in accordance with law of England and Wales.
- 9.2 **Jurisdiction:** The provisions of Article 11.02 (*Jurisdiction*) of the Existing Finance Contract shall be deemed to be incorporated herein as if set out in full in this Agreement with the necessary changes being made and with each reference in the Existing Finance Contract to "this Agreement" (or like references) being construed as references to this Agreement.
- 9.3 **Agent of Service:** Without prejudice to any other mode of service allowed under any relevant law, the Borrower hereby irrevocably appoints Vistra (UK) Ltd., 3rd Floor, 11-12 St James's Square, London SW1Y 4LB, United Kingdom as its agent of service for the purposes of accepting service on its behalf of any writ, notice, order, judgement or other legal process. The Borrower agrees that failure by a process agent to notify it of the process will not invalidate the proceedings concerned.

**This Agreement has been entered into on the date stated at the beginning of this Agreement**

Schedule 1

CONDITIONS PRECEDENT

1. **BORROWER**

- (a) A copy of the constitutional documents of the Borrower.
- (b) A copy of a resolution passed at a general meeting of the shareholders of the Borrower:
  - (i) approving the terms of the Supplemental Documents and resolving that it execute, deliver and perform the Supplemental Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute this Agreement on its behalf;
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Supplemental Documents to which it is a party; and
- (c) A certificate of the Borrower (signed by an authorised signatory):
  - (i) confirming that borrowing or guaranteeing or securing, as appropriate, the Credit would not cause any borrowing, guarantee, security or similar limit binding on the Borrower to be exceeded; and
  - (ii) certifying that each copy document relating to it specified in this Schedule 1 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.

2. **OPGEN**

- (a) A copy of the constitutional documents of OpGen.
- (b) A copy of the Action by Unanimous Written Consent of the Board:
  - (i) approving the terms of the Supplemental Documents and resolving that it execute, deliver and perform the Supplemental Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Supplemental Documents to which it is a party on its behalf;
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Supplemental Documents to which it is a party;
- (c) To the extent required by the Bank, a specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above;
- (d) A certificate of OpGen (signed by an authorised signatory):

- (i) confirming that borrowing or guaranteeing or securing, as appropriate, the Credit would not cause any borrowing, guarantee, security or similar limit binding on that Guarantor to be exceeded; and
- (ii) certifying that each copy document relating to it specified in this Schedule 1 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.

**3. ARES GENETICS**

- (a) A copy of the constitutional documents of Ares Genetics.
- (b) A copy of a resolution passed by the shareholder of Ares Genetics:
  - (i) approving the terms of the Supplemental Documents and resolving that it execute, deliver and perform the Supplemental Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Supplemental Documents to which it is a party on its behalf;
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Supplemental Documents to which it is a party;
- (c) A certificate of Ares Genetics (signed by an authorised signatory):
  - (i) confirming that borrowing or guaranteeing or securing, as appropriate, the Credit would not cause any borrowing, guarantee, security or similar limit binding on that Guarantor to be exceeded; and
  - (ii) certifying that each copy document relating to it specified in this Schedule 1 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.

**4. LEGAL OPINIONS**

- (a) A legal opinion of Hogan Lovells International LLP, legal advisors to the Bank as to English law, substantially in the form distributed to the Bank prior to signing this Agreement.
- (b) A legal opinion of CMS Hasche Sigle, Partnerschaft von Rechtsanwälten und Steuerberatern mbB, legal advisers to the Borrower as to German law, on the valid existence of the Borrower, the authority and capacity of the Borrower to enter into this Agreement, substantially in the form distributed to the Bank prior to signing this Agreement.
- (c) A legal opinion of Ballard Spahr LLP, legal advisers to OpGen as to Delaware law, on the valid existence of OpGen, the authority and capacity of OpGen to enter into the OpGen Guarantee and on the due execution of the OpGen Guarantee, substantially in the form distributed to the Bank prior to signing this Agreement.
- (d) A legal opinion of CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH, legal advisers to the Borrower as to Austrian law, on the valid existence of Ares Genetics, the authority and capacity of Ares Genetics to enter into the Ares Genetics Third Guarantee and on the due execution of the Ares Genetics Third Guarantee, substantially in the form distributed to the Bank prior to signing this Agreement.

5. **SUPPLEMENTAL DOCUMENTS**

- (a) This Agreement, executed by the Parties.
- (b) The OpGen Guarantee, executed by the Parties thereto.
- (c) The Ares Genetics Third Guarantee, executed by the Parties thereto.

6. **OTHER DOCUMENTS AND EVIDENCE**

- (a) Evidence that the process agent referred to in clause 7.3 (*Agent of Service*) has accepted its appointment; and evidence that the process agent referred to in the OpGen Guarantee and/or the Ares Genetics Third Guarantee has accepted its appointment.
- (b) A group structure chart of the Group as at the date of this Agreement.
- (c) Evidence that any fees, costs and expenses then due from the Borrower have been paid or will be paid by the Effective Date.
- (d) A copy of any other Authorisation or other document, opinion or assurance which the Bank considers to be reasonably necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by this Agreement or for the validity and enforceability of any Finance Document.

**THE BORROWER**

**Curetis GmbH**

By: /s/ Oliver Schacht, Ph.D.

Name: Oliver Schacht, Ph.D.

Title: Managing Director

By: /s/ Johannes Bacher

Name: Johannes Bacher

Title: Managing Director

**THE GUARANTORS**

**OpGen, Inc.**

By: /s/ Oliver Schacht, Ph.D.

Name: Oliver Schacht, Ph.D.

Title: President & Chief Executive Officer

By: /s/ Timothy C. Dec

Name: Timothy C. Dec

Title: Chief Financial Officer

**Ares Genetics GmbH**

By: /s/ Dr. Andreas Posch

Name: Dr. Andreas Posch

Title: Managing Director and Chief Executive Officer

By: /s/ Dr. Achim Plum

Name: Dr. Achim Plum

Title: Managing Director

**THE BANK**

**EUROPEAN INVESTMENT BANK**

ACTING BY ITS DULY AUTHORISED SIGNATORY

By: /s/ Garth Grisbrook

Name: Garth Grisbrook

Title: Head of Division

By: /s/ Imanol Lecue Gurtubay

Name: Imanol Lecue Gurtubay

Title: Legal Counsel

**APPENDIX**

**The Amended and Restated Finance Contract**

*{\*inserted overleaf\*}*

CERTAIN INFORMATION IN THIS EXHIBIT MARKED [\*\*\*] HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED.

FI N° 86508, FI N° 87226, FI N° 92628, and FI N° 82693  
Serapis N° 2016-0480

## Curetis (EGFF)

### Finance Contract

as amended and restated pursuant to the First Amendment and Restatement Agreement dated 20 May 2019 and the Second Amendment and Restatement Agreement dated  
2020

*between the*

European Investment Bank

*and*

Curetis GmbH

Luxembourg

on 12 December 2016

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CLAUSE PAGE

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**THIS CONTRACT IS MADE ON 12 DECEMBER 2016 (AND REFERENCES TO "THE DATE OF THIS CONTRACT" SHALL BE CONSTRUED ACCORDINGLY) AND IS SET OUT BELOW AS AMENDED AND RESTATED PURSUANT TO THE FIRST AMENDMENT AND RESTATEMENT AGREEMENT AND THE SECOND AMENDMENT AND RESTATEMENT AGREEMENT (EACH AS DEFINED BELOW) BETWEEN:**

The European Investment Bank having its seat at 100  
boulevard Konrad Adenauer, L-2950 Luxembourg,  
represented by Vice-President Ambroise Fayolle

(the "Bank")

Curetis GmbH, a company incorporated in Germany, having  
its registered office at Max-Eyth-Strasse 42, 71088  
Holzgerlingen, Germany, represented by its Managing  
Directors Oliver Schacht and Johannes Bacher

(the "Borrower")

---

**WHEREAS:**

- (1) The Borrower has stated that it is undertaking a project as more particularly described in the technical description (the "**Technical Description**") set out in Schedule A (the "**Initial Project**").
- (2) The total cost of the Initial Project, as estimated by the Bank, is EUR 50,000,000 (fifty million euros) and the Borrower has stated that it intends to finance the Project as follows:

Source	Amount (EUR m)
Own funds	25,000,000
Credit from the Bank	25,000,000
<b>TOTAL</b>	<b>50,000,000</b>

- (3) The Borrower has also stated that it is undertaking certain research and product development in relation to a project to develop diagnostic solutions for COVID-19 (the "**COVID-19 Project**" and together with the Initial Project, the "**Project**").
- (4) The total cost of the COVID-19 Project, as estimated by the Bank, is EUR 10,000,000 (ten million euros) and the Borrower has stated that it intends to finance the COVID-19 Project as follows:

Source	Amount (EUR m)
Own funds	5,000,000
Credit from the Bank	5,000,000
<b>TOTAL</b>	<b>10,000,000</b>

- (5) In order to fulfil the financing plans set out in Recitals (2) and (4), the Borrower has requested from the Bank a credit of EUR 30,000,000 (thirty million euros).
- (6) The Bank considering that the financing of the Project falls within the scope of its functions, and having regard to the statements and facts cited in these Recitals, has decided to give effect to the Borrower's request providing to it a credit in an amount of EUR 30,000,000 (thirty million euros) under this Finance Contract (the "**Contract**"); provided that the amount of the Bank loan shall not, in any case, exceed 50% (fifty per cent) of the total cost of the Project set out in Recitals (2) and (4).
- (7) The Managing Directors of the Borrower have authorised the borrowing of the sum of EUR 30,000,000 (thirty million euros) represented by this credit on the terms and conditions set out in this Contract and it has been duly certified that such borrowing is within the corporate powers of the Borrower.
- (8) The financial obligations of the Borrower under this Contract are guaranteed by OpGen and Ares Genetics (each as defined below) under:
- (a) the guarantee and indemnity agreement entered into between the Bank and Ares Genetics, governed by English law and dated 29 November 2017 (the "**Ares Genetics First Guarantee Agreement**");
  - (b) the guarantee and indemnity agreement entered into between the Bank and Ares Genetics, governed by English law and dated 20 May 2019 (the "**Ares Genetics Second Guarantee Agreement**"); and

- (c) the guarantee and indemnity agreement entered into between the Bank and OpGen, governed by English law and dated on or about the date of the Second Amendment and Restatement Agreement (the "**OpGen Guarantee Agreement**"); and
  - (d) the guarantee and indemnity agreement entered into between the Bank and Ares Genetics, governed by English law and dated on or about the date of the Second Amendment and Restatement Agreement (the "**Ares Genetics Third Guarantee Agreement**");
- (9) To avoid doubt, following the Effective Date the following guarantee and indemnity agreements have been released by the Bank:
- (a) the guarantee and indemnity agreement entered into between the Bank and Curetis NV, governed by English law and dated 12 December 2016 (the "**Initial Guarantee Agreement**");
  - (b) the guarantee and indemnity agreement entered into between the Bank and Curetis USA, governed by English law and dated 22 December 2017 (the "**Curetis USA First Guarantee Agreement**");
  - (c) the guarantee and indemnity agreement entered into between the Bank and Curetis NV, governed by English law and dated 20 May 2019 (the "**Curetis NV Second Guarantee Agreement**");
  - (d) the guarantee and indemnity agreement entered into between the Bank and Curetis USA, governed by English law and dated 20 May 2019 (the "**Curetis USA Second Guarantee Agreement**").
- (10) This operation benefits from a guarantee from the European Union under the European Fund for Strategic Investments ("**EFSI**").
- (11) The statute of the Bank provides that the Bank shall ensure that its funds are used as rationally as possible in the interests of the European Union; and, accordingly, the terms and conditions of the Bank's loan operations must be consistent with relevant policies of the European Union.
- (12) The Bank considers that access to information plays an essential role in the reduction of environmental and social risks, including human rights violations, linked to the projects it finances and has therefore established its transparency policy, the purpose of which is to enhance the accountability of the EIB Group towards its stakeholders and the citizens of the European Union in general.
- (13) The processing of personal data shall be carried out by the Bank in accordance with applicable European Union legislation on the protection of individuals with regard to the processing of personal data by the European Union institutions and bodies and on the free movement of such data.

NOW THEREFORE it is hereby agreed as follows:

## INTERPRETATION AND DEFINITIONS

### (a) Interpretation

In this Contract:

- (i) References to Articles, Recitals, Schedules and Annexes are, save if explicitly stipulated otherwise, references respectively to articles of, and recitals, schedules and annexes to this Contract.
- (ii) References to a provision of law are references to that provision as amended or re-enacted.
- (iii) References to any other agreement or instrument are references to that other agreement or instrument as amended, novated, supplemented, extended or restated.
- (iv) References to "accrued interest" includes any Deferred Interest.

### (b) Definitions

In this Contract:

**"Acceptance Deadline"** for a notice means:

- (a) 16h00 Luxembourg time on the day of delivery, if the notice is delivered by 14h00 Luxembourg time on a Business Day; or
- (b) 11h00 Luxembourg time on the next following day which is a Business Day, if the notice is delivered after 14h00 Luxembourg time on any such day or is delivered on a day which is not a Business Day.

**"Accountant"** means any firm of accountants approved in advance by the Bank (such approval not to be unreasonably withheld or delayed).

**"Accounting Reference Date"** means 31 December.

**"Affiliates"** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

**"Ares Genetics"** means Ares Genetics GmbH (a company incorporated in Austria with company number FN 468899 H and registered office at Karl-Farkas-Gasse 18, A-1030, Vienna, Austria).

**"Authorisation"** means an authorisation, permit, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

**"BPE"** means, the British Private Equity & Venture Capital Association.

**"Business Day"** means a day (other than a Saturday or Sunday) on which the Bank and commercial banks are open for general business in Luxembourg.

**"Cash Pay Margin"** has the meaning given in Article 3.01.

**"Change-of-Control Event"** has the meaning given to it in Article 4.03A(3).

**"Change in the Beneficial Ownership"** means a change in the ultimate ownership or control of the Borrower according to the definition of "beneficial owner" set out in article 3(6) of Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

"**Change-of-Law Event**" has the meaning given to it in Article 4.03A(4).

"**Compliance Certificate**" means a certificate substantially in the form set out in Schedule D.2.

"**Contract**" has the meaning given to it in Recital (6).

"**COVID-19**" means the COVID-19 coronavirus disease, declared as a "pandemic" by the World Health Organisation on 11 March 2020.

"**COVID-19 Tranche**" means the EUR 5,000,000 Tranche of the Second Credit which the Borrower may drawdown pursuant to Article 1.05(d).

"**COVID-19 Tranche Due Payment**" has the meaning given to that term in Article 3.05C.

"**Credit**" means the First Credit and the Second Credit.

"**Curetis NV**" means Curetis NV in liquidation (a company incorporated in the Netherlands with company number 64302679 and registered office at Max-Eyth-Strasse 42, 71088 Holzgerlingen, Germany).

"**Curetis USA**" means Curetis USA Inc., (a company incorporated under the laws of the State of Delaware with registration number 607544 and having its principal executive office at 10525 Vista Sorrento Parkway, Suite 104, San Diego, CA 92121, United States of America).

"**Deferment Indemnity**" means a fee calculated on the amount of the disbursement deferred or suspended being the higher of:

- (a) 0.125% (twelve point five basis points), per annum; and
- (b) the percentage rate by which:
  - (i) the interest rate that would have been applicable to such amount had it been disbursed to the Borrower on the Scheduled Disbursement Date, exceeds
  - (ii) the rate calculated as EURIBOR (one month rate) less 0.125% (twelve point five basis points) (provided that such rate shall not be less than zero),

and such fee shall accrue from the Scheduled Disbursement Date to the Disbursement Date or, as the case may be, until the date of cancellation of the Notified Tranche in accordance with this Contract.

"**Deferred Interest**" means the component of the interest defined in Article 3.02.

"**Deferred Interest Rate**" means the rate of interest quantified in Article 3.02.

"**Disbursement Date**" means the date on which actual disbursement of a Tranche is made by the Bank.

"**Disbursement Notice**" means a notice from the Bank to the Borrower pursuant to and in accordance with Article 1.02C.

"**Disbursement Request**" means a notice substantially in the form set out in Schedule C.1.

"**Disruption Event**" means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with this Contract; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of either the Bank or the Borrower, preventing that party:
  - (i) from performing its payment obligations under this Contract; or
  - (ii) from communicating with other parties in accordance with the terms of this Contract,

and which disruption (in either such case as per (a) or (b) above) is not caused by, and is beyond the control of, the party whose operations are disrupted.

"**EBITDA**" means, in respect of any Relevant Period, the consolidated operating profit of the Group before taxation (excluding the results from discontinued operations):

- (a) **before deducting** any interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments whether paid, payable or capitalised by any member of the Group (calculated on a consolidated basis) in respect of that Relevant Period;
- (b) **not including** any accrued interest owing to any member of the Group;
- (c) **after adding back** any amount attributable to the amortisation or depreciation of assets of members of the Group;
- (d) **before taking into account** any Exceptional Items;
- (e) **after deducting** the amount of any profit (or adding back the amount of any loss) of any member of the Group which is attributable to minority interests;
- (f) **plus or minus** the Group's share of the profits or losses (after finance costs and tax) of Non-Group Entities;
- (g) **before taking into account** any unrealised gains or losses on any financial instrument (other than any derivative instrument which is accounted for on a hedge accounting basis); and
- (h) **before taking into account** any gain arising from an upward revaluation of any other asset,

in each case, to the extent added, deducted or taken into account, as the case may be, for the purposes of determining operating profits of the Group before taxation.

"**Effective Date**" has the meaning given to that term in the Second Amendment and Restatement Agreement.

"**EFSI**" has the meaning given in Recital (10).

"**EFSI Regulation**" means the Regulation 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments.

"**Environment**" means the following, in so far as they affect human health and social well-being:

- (a) fauna and flora;
- (b) soil, water, air, climate and the landscape; and
- (c) cultural heritage and the built environment,

and includes, without limitation, occupational and community health and safety.

**"Environmental Approval"** means any Authorisation required by Environmental Law.

**"Environmental Claim"** means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.

**"Environmental Law"** means:

- (a) European Union law, including principles and standards;
- (b) national laws and regulations; and
- (c) applicable international treaties,

of which a principal objective is the preservation, protection or improvement of the Environment.

**"EURIBOR"** has the meaning given to it in Schedule B.

**"EUR"** or **"euro"** means the lawful currency of the Member States of the European Union which adopt or have adopted it as their currency in accordance with the relevant provisions of the Treaty on European Union and the Treaty on the Functioning of the European Union or their succeeding treaties.

**"Event of Default"** means any of the circumstances, events or occurrences specified in Article 10.01.

**"Exceptional Items"** means any material items of an unusual or non-recurring nature which represent gains or losses including those arising on:

- (a) the restructuring of the activities of an entity and reversals of any provisions for the cost of restructuring;
- (b) disposals, revaluations, write downs or impairment of non-current assets or any reversal of any write down or impairment;
- (c) disposals of assets associated with discontinued operations; and
- (d) any other examples of "exceptional items" (as such term has the meaning attributed to it in IFRS).

**"FDA"** means the US Food and Drugs Administration.

**"Final Availability Date"** means,

- (a) in respect of each Tranche other than the COVID-19 Tranche, 12 December 2019; and
- (b) in respect of the COVID-19 Tranche, the date falling 9 months after the date of the Second Amendment and Restatement Agreement.

**"Finance Document"** means this Contract, any Guarantee Agreement, the First Amendment and Restatement Agreement, the Second Amendment and Restatement Agreement, the US Security Agreement (following its entry into force), and any other document designated from time to time as such between the Bank and the Borrower.

**"Finance Lease"** means any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance or capital lease.

**"Financial Quarter"** means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

**"Financial Year"** means the annual accounting period of the Group ending on the Accounting Reference Date.

**"First Amendment and Restatement Agreement"** means the amendment and restatement agreement in relation to this Contract made between the Bank, the Borrower, Curetis NV, Ares Genetics and Curetis USA and dated 20 May 2019.

**"Floating Rate"** means a fixed-spread floating interest rate, that is to say an annual interest rate determined by the Bank for each successive Floating Rate Reference Period equal to EURIBOR plus the Cash Pay Margin. If the Floating Rate for any Floating Rate Reference Period is calculated to be below zero, it will be set at zero.

**"Floating Rate Reference Period"** means each period from one Payment Date to the next relevant Payment Date; the first Floating Rate Reference Period shall commence on the date of disbursement of the Tranche.

**"GAAP"** means generally accepted accounting principles in Germany and the United States of America, including German GAAP (HGB), IFRS and US-GAAP.

**"Group"** means OpGen and its Affiliates from time to time, and the Borrower and its Affiliates.

**"Guarantee"** means any guarantee and indemnity that is the subject of a Guarantee Agreement.

**"Guarantee Agreement"** means the Initial Guarantee Agreement and/or any Subsequent Guarantee Agreement.

**"Guarantor"** means any person which enters into a Guarantee Agreement in the capacity as a guarantor.

**"Hedging Policy"** means any derivative transaction by a member of the Group to hedge actual or projected exposure arising in the ordinary course of trading or any derivative instrument of a member of the Group which is accounted for on a hedge accounting basis and does not include any derivative transaction and/or instrument for speculative purposes.

**"Holding Company"** means, in relation to a person, any other person in respect of which it is a Subsidiary.

**"IFRS"** means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

**"Illegal Activities"** means any of the following illegal activities or activities carried out for illegal purposes: tax evasion, tax fraud, fraud, corruption, coercion, collusion, obstruction, money laundering, financing of terrorism, organised crime or any illegal activity that may affect the financial interests of the EU, according to applicable laws.

**"Indebtedness"** means any:

- (a) obligations for borrowed money;
- (b) indebtedness under any acceptance credit;
- (c) indebtedness under any bond, debenture, note or similar instrument;
- (d) instrument under any bill of exchange;
- (e) indebtedness in respect of any interest rate or currency swap or forward currency sale or purchase or other form of interest or currency hedging transaction (including without limit caps, collars and floors);

- (f) indebtedness under any Finance Lease;
- (g) indebtedness (actual or contingent) under any guarantee, bond security, indemnity or other agreement;
- (h) indebtedness (actual or contingent) under any instrument entered into for the purpose of raising finance;
- (i) indebtedness in respect of a liability to reimburse a purchaser of any receivables sold or discounted in the event that any amount of those receivables is not paid;
- (j) indebtedness arising under a securitisation; or
- (k) other transaction which has the commercial effect of borrowing.

**"Indemnifiable Prepayment Event"** means a Prepayment Event other than those specified in Articles 4.03A(2) or 4.03A(5).

**"Initial Guarantee Agreement"** has the meaning given to it in Recital (8).

**"Intellectual Property Rights"** means, including without limitation, intellectual property of every designation (including patents, utility patents, copyrights, design rights, trademarks, service marks and know how) whether capable of registration or not.

**"IPEV Valuation Standards"** means, the International Private Equity and Venture Capital Valuation Guidelines published by, amongst others, BPE in December 2018 as may be amended, updated or replaced from time-to-time.

**"Joint Venture"** means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity.

**"Lead Organisation"** means reputable international, standard-setting institutions and organisations including the European Union, the United Nations, the International Monetary Fund, the Financial Stability Board, the Financial Action Task Force and the Organisation for Economic Co-operation and Development Global Forum on Transparency and Exchange of Information for Tax Purposes.

**"Loan"** means the aggregate amount of Tranches disbursed from time to time by the Bank under this Contract.

**"Market Capitalisation"** means:

- (a) at any time that:
  - (i) OpGen holds all the voting shares in the Borrower, and
  - (ii) OpGen is listed on the OpGen Exchange or another regulated market exchange,
 

the market value in Euros (as determined by the Bank, and with any necessary currency exchanges being calculated at the Bank's spot rate of exchange) of OpGen on a PPI Demand Date calculated as the sum of:

    - (iii) the non-weighted average closing price per share over the 90 Trading Days prior to that PPI Demand Date, multiplied by the total number of issued shares as at that PPI Demand Date; and
    - (i) the aggregate of all dividends and other distributions or similar payments made to any shareholder of OpGen in the period from the Disbursement Date of the PPI Tranche or the COVID-19 Tranche (as applicable) until the relevant PPI Payment Date; and
- (b) at any other time, the sum of (as determined by the Bank):

- (i) the market value of the Borrower in Euros on a PPI Demand Date as determined by an Accountant (at the cost of the Borrower) in accordance with IPEV Valuation Standards (with any necessary currency exchanges being calculated at the Bank's spot rate of exchange);
- (ii) the aggregate of all dividends and other distributions or similar payments made to any shareholder of OpGen in the period from the Disbursement Date of the PPI Tranche or the COVID-19 Tranche (as applicable) until the relevant PPI Payment Date (with any necessary currency exchanges being calculated at the Bank's spot rate of exchange).

**"Market Disruption Event"** means any of the following circumstances:

- (a) there are, in the reasonable opinion of the Bank, events or circumstances adversely affecting the Bank's access to its sources of funding;
- (b) in the opinion of the Bank, funds are not available from its ordinary sources of funding in order to adequately fund a Tranche in the relevant currency and/or for the relevant maturity and/or in relation to the reimbursement profile of such Tranche;
- (c) in relation to a Tranche in respect of which interest is or would be payable at Floating Rate:
  - (A) the cost to the Bank of obtaining funds from its sources of funding, as determined by the Bank, for a period equal to the Floating Rate Reference Period of such Tranche (i.e. in the money market) would be in excess of EURIBOR;or
  - (B) the Bank determines that adequate and fair means do not exist for ascertaining EURIBOR for the relevant currency of such Tranche or it is not possible to determine EURIBOR in accordance with the definition contained in Schedule B.

**"Material Adverse Change"** means, any event or change of condition, which, in the reasonable opinion of the Bank has a material adverse effect on:

- (a) the ability of any Obligor to perform its obligations under any Finance Document to which it is party;
- (b) the business, operations, property or financial conditions or prospects of any Obligor or the Group as a whole; or
- (c) the validity or enforceability of, or the effectiveness or ranking of, or the value of any security granted to the Bank, or the rights or remedies of the Bank under any Finance Document.

**"Material Subsidiary"** means any Subsidiary of OpGen from time to time (other than, to avoid doubt, Curetis USA) whose gross revenues, total assets or EBITDA represents not less than 10% (ten per cent) of (i) the consolidated gross revenues of the Group taken as a whole and attributable to the shareholders of the Borrower or, (ii) the consolidated total assets of the Group taken as a whole or, (iii) as the case may be, the consolidated EBITDA of the Group taken as a whole, as each of the foregoing is calculated based on the then latest consolidated audited accounts of the Group .

**"Maturity Date"** means, in relation to each Tranche, the date falling on the 5th anniversary of the Scheduled Disbursement Date of that Tranche.

**"Merck Promissory Note"** means the senior secured promissory note dated 14 July 2015 issued by OpGen in favour of Merck Global Health Innovation Fund in a principal amount of up to US\$1,000,000 (as amended and restated from time-to-time including most recently on 28 June 2017).

**"Merck Security Agreement"** means the Security Agreement, dated 14 July 2015, entered into between OpGen, AvanDx Inc., and Merck Global Innovation Fund LLC pursuant to which OpGen and AvanDx Inc., granted security interests in all their assets, including IP, as collateral security for secured amounts outstanding under the Merck Promissory Note in favour of Merck Global Innovation Fund LLC.

**"Merck Supplemental Security Agreements"** means each of (i) the Patent Security Agreement dated 14 July 2015, entered into between OpGen, AvanDx Inc., and Merck Global Innovation Fund LLC as a supplement to the Merck Security Agreement for purposes of filing with the United States Patent and Trademark Office and (ii) the Trademark Security Agreement, dated 14 July 2015, entered into between OpGen, AvanDx Inc., and Merck Global Innovation Fund LLC as a supplement to the Merck Security Agreement for purposes of filing with the United States Patent and Trademark Office.

**"Non-Group Entity"** means any investment or entity (which is not itself a member of the Group (including associates and Joint Ventures)) in which any member of the Group has an ownership interest.

**"Notified Tranche"** means a Tranche in respect of which the Bank has issued a Disbursement Notice.

**"Obligor"** means the Borrower and any Guarantor.

**"OpGen"** means OpGen, Inc., a company incorporated under the laws of the State of Delaware having its principal executive office at 708 Quince Orchard Road, Gaithersburg Maryland 20878, USA.

**"OpGen Exchange"** means the NASDAQ Capital Market (or any replacement exchange).

**"Payment Date"** means quarterly, semi-annual or annual dates specified in the Disbursement Notice of a Tranche until, and including the Maturity Date for such Tranche, save that, in case any such date is not a Relevant Business Day, it means for a Tranche, the next day, if any, of that calendar month that is a Relevant Business Day or, failing that, the nearest preceding day that is a Relevant Business Day, in all cases with corresponding adjustment to the interest due under Article 3.01.

**"Permitted Acquisition"** means an acquisition:

- (a) by the Borrower or any other member of the Group of shares or other ownership interests by way of acquisition of a wholly owned shelf company, provided that such company is incorporated in a country that is a member of either or both of the European Union or the Organisation of Economic Co-Operation and Development;
- (b) for which the prior written consent of the Bank has been received;
- (c) of the Gyronimo platform and all related intellectual property, know-how and assets from Carpegen and Systec (the "Gyronimo Acquisition") for (i) an initial up front-payment of no more than EUR 5,000,000, (ii) potential future milestone payments of EUR 2,500,000 in total, and (iii) royalties of [\*\*\*]% of net sales on Gyronimo application cartridges and Gyronimo analyzers (capped at EUR 9,000,000); provided that the Gyronimo Acquisition will be signed by 31 January 2017; or
- (d) of shares or other ownership interests in a Target Entity, which do not exceed an aggregate amount of EUR 1,000,000 (one million euros) during the term of the Credit,

but, in relation to paragraphs (a), and (d) above, only if:

- (i) no Event of Default is continuing on the date the relevant acquisition agreement is entered into or would occur as a result of the acquisition;
- (ii) the acquired Target Entity, business or undertaking is engaged in a business similar or complementary to the business carried on by the Group as at the date of this Contract;
- (iii) the acquired Target Entity, business or undertaking is not incorporated or located in a jurisdiction that is blacklisted by any Lead Organisation in connection with activities such as money laundering, financing of terrorism, tax fraud and tax evasion or harmful tax practices as such blacklist may be amended from time to time;
- (iv) a business plan (in the form of the most recent budget supplemented to account for the effects of the acquisition) in respect of the 3 (three) next following financial years and any due diligence reports received in connection with the acquisition (if any) are provided to the Bank; and
- (v) the Borrower demonstrates that the acquisition has been approved by the Borrower's Managing Directors.

**"Permitted Disposal"** means any act effecting a sale, transfer, lease or other disposal of assets which is for fair market value and on arms' length terms:

- (a) related to the sale of finished products and/or services made on arm's length terms in the ordinary course of business of the Borrower or other member of the Group;
- (b) by an Obligor to another member of the Group which is also an Obligor;
- (c) by any member of the Group which is not an Obligor to a member of the Group which is an Obligor;
- (d) for cash in an amount reflecting or exceeding the fair market value of such assets, which is reinvested in assets of comparable or superior type, value and quality;
- (e) made in exchange for other assets comparable or superior as to type, value and quality;
- (f) constituted by a licence of Intellectual Property Rights;
- (g) made in relation to non-material assets which have depreciated to less than 25% (twenty five per cent) of their initial value or which are obsolete;
- (h) excluding any disposal permitted under (a) to (g) above, disposals where the higher of the market value or consideration receivable for such disposals does not exceed EUR 5,000,000 (five million euros) during the term of the Credit;
- (i) arising as a result of Permitted Security; or
- (j) made with the prior written consent of the Bank.

**"Permitted Guarantees"** means guarantees issued in the ordinary course of business by any member of the Group:

- (a) under a Guarantee Agreement;
- (b) under any negotiable instruments;
- (c) in connection with any performance bond;
- (d) in connection with any Permitted Indebtedness;

- (e) by an Obligor to another member of the Group which is also an Obligor;
- (f) by any member of the Group which is not an Obligor to a member of the Group which is an Obligor; or
- (g) with the prior written consent of the Bank,

provided that the maximum aggregate liability in respect of any guarantees described above (excluding all Guarantee Agreements) shall not at any time exceed an aggregate amount equal 10% of the Total Assets at any time.

**"Permitted Indebtedness"** means Indebtedness of the Borrower and/or members of the Group incurred under:

- (a) this Contract;
- (b) a Permitted Loan;
- (c) any Finance Lease if the aggregate liability in respect of the equipment leased does not at any time exceed EUR 1,500,000 (one and a half million euros) (or its equivalent in another currency or currencies) for finance leases and EUR 100,000 (one hundred thousand euros) (or its equivalent in another currency or currencies) for capital leases (as defined by IFRS);
- (d) the leasing of the laser welding machine concluded in August 2012 which will be terminated on or before 31 May 2017;
- (e) any hedging or derivative transactions entered into in accordance with the Hedging Policy;
- (f) a working capital facility of an amount no more than EUR 3,000,000 (or its equivalent in another currency or currencies);
- (g) a Permitted Guarantee;
- (h) the Merck Promissory Note; or
- (i) any other Indebtedness incurred with the prior written consent of the Bank.

**"Permitted Loan"** means:

- (a) any trade credit extended by any member of the Group to its customers on normal commercial terms and in the ordinary course of its trading activities;
- (b) any loan made by the Borrower to a Guarantor or by a Guarantor to the Borrower;
- (c) any loan made by one member of the Group (other than the Borrower or a Guarantor) to another member of the Group (other than the Borrower or a Guarantor); or
- (d) any other Indebtedness or loan advanced to or made available by any member of the Group with the prior written consent of the Bank.

**"Permitted Merger"** means any amalgamation, demerger, merger or corporate reconstruction which does not result in a Material Adverse Change and which is on a solvent basis, and where:

- (a) only members of the Group are involved; and
- (b) the resulting entity will not be incorporated or located in a country which is in a jurisdiction that is blacklisted by any Lead Organisation in connection with activities such as money laundering, financing of terrorism, tax fraud and tax evasion or harmful tax practices as such blacklist may be amended from time to time; and

- (c) if an Obligor is involved, (i) the rights and obligations of that Obligor under the Finance Documents to which it is a party will remain with that Obligor, (ii) the surviving entity will be that Obligor and the statutory seat of that Obligor would not as a result of such merger be transferred to a different jurisdiction, (iii) the merger will not have an effect on the validity, legality or enforceability of any Obligor's obligations under the Finance Documents to which it is a party; and (iv) all of the business and assets of each Obligor are retained by it; or
- (d) any other amalgamation, demerger, merger or corporate reconstruction with prior written consent of the Bank.

**"Permitted Payments"** means

- (a) shares purchased from former employees, managers or directors, provided that such shares were awarded under a share programme of the Borrower or any Guarantor;
- (b) dividends of any member of the Group distributed to the Borrower in accordance with Article 6.15;
- (c) any payment made under a Permitted Loan; or
- (d) any payment made with prior written consent of the Bank,

in each case without double counting.

**"Permitted Security"** means the security listed in Schedule E (Existing Security) and as described in Article 7.02(b).

**"PIK Interest Rate"** means 10% (1000 basis points) per annum.

**"PPI"** means:

- (a) in relation to a PPI Tranche Due Payment and its PPI Demand Date, an amount in euros equal to:

$$\frac{\text{amount of PPI Tranche Due Payment}}{\text{amount of the PPI Tranche}} \times \text{PPI Amount}$$

- (b) in relation to a COVID-19 Tranche Due Payment and its PPI Demand Date, an amount in euros equal to:

$$\frac{\text{amount of COVID – 19 Tranche Due Payment}}{\text{amount of the COVID – 19 Tranche}} \times \text{PPI Amount}$$

**"PPI Amount"** means in relation to a PPI Demand Date, an amount in Euros equal to the PPI Rate multiplied by the relevant PPI Demand Date Market Capitalisation.

**"PPI Demand Date"** means the date of any written demand by the Bank for a payment of PPI delivered by the Bank to the Borrower in accordance with Article 3.05B.

**"PPI Payment Date"** means any date on which PPI becomes payable pursuant to Article 3.05B.

**"PPI Demand Date Market Capitalisation"** means the Market Capitalisation of the Borrower's entire issued share capital on a PPI Demand Date.

**"PPI Rate"** means:

- (a) in relation to the PPI Tranche, 0.3%; and
- (b) in relation to the COVID-19 Tranche, 0.7%.

"**PPI Tranche**" means the EUR 5,000,000 Tranche of the Second Credit (which is not the COVID-19 Tranche) which the Borrower may drawdown pursuant to Article 1.05(b).

"**PPI Tranche Due Payment**" has the meaning given to that term in Article 3.05B.

"**Prepayment Amount**" means the amount of a Tranche to be prepaid by the Borrower in accordance with Article 4.02A.

"**Prepayment Date**" means the date, which shall be a Payment Date, on which the Borrower proposes to effect prepayment of a Prepayment Amount.

"**Prepayment Event**" means any of the events described in Article 4.03(a).

"**Prepayment Fee**" means the fee payable in accordance with Article 4.02(b).

"**Prepayment Notice**" means a written notice from the Bank to the Borrower in accordance with Article 4.02C.

"**Prepayment Request**" means a written request from the Borrower to the Bank to prepay all or part of the Loan, in accordance with Article 4.02(b).

"**Project**" has the meaning given to it in Recital (3).

"**Quarter Date**" means each of 31 March, 30 June, 30 September and 31 December from the date of this Contract until the final Maturity Date.

"**Redeployment Rate**" means a fixed annual rate determined by the Bank, being a rate which the Bank would apply on the day of the indemnity calculation to a loan that has the same currency, the same terms for the payment of interest and the same repayment profile to the Maturity Date as the Tranche in respect of which a prepayment or cancellation is proposed or requested to be made. Such rate shall not be of negative value.

"**Relevant Business Day**" means a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007 (TARGET2) is open for the settlement of payments in EUR.

"**Relevant Period**" means each period of twelve months ending on or about the last day of the Financial Year and each period of twelve months ending on or about the last day of the second Financial Quarter of a Financial Year.

"**Repeating Representations**" means each of the representations and warranties set out in paragraphs (a) to (f), (h) to (m), (o) to (t), and (v) to (gg) (in each case inclusive) of clause 6.22 (*General Representations and Warranties*).

"**Revised Group Structure Chart**" means the group structure chart delivered by the Borrower to the Bank pursuant to paragraph 5(b) of Schedule 1 (*Conditions Precedent*) of the Second Amendment and Restatement Agreement.

"**Scheduled Disbursement Date**" means the date on which a Tranche is scheduled to be disbursed in accordance with Article 1.02.C.

"**Second Amendment and Restatement Agreement**" means the amendment and restatement agreement in relation to this Contract made between the Bank, the Borrower, OpGen and Ares Genetics and dated \_\_\_\_\_ 2020.

"**Security**" means any mortgage, pledge, lien, charge, assignment, hypothecation, or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Subsidiary**" means an entity of which OpGen has direct or indirect control or owns directly or indirectly more than 50% of the voting capital or similar right of ownership and "control" for this purpose means the power to direct the management and the policies of the entity, whether through the ownership of voting capital, by contract or otherwise.

"**Subsequent Guarantee Agreement**" means:

- (a) the Curetis NV Second Guarantee Agreement;
- (b) the Curetis USA First Guarantee Agreement;
- (c) the Curetis USA Second Guarantee Agreement;
- (d) the Ares Genetics First Guarantee Agreement;
- (e) the Ares Genetics Second Guarantee Agreement;
- (f) the Ares Genetics Third Guarantee Agreement;
- (g) the OpGen Guarantee Agreement; and
- (h) any other guarantee and indemnity in materially the same form as the Initial Guarantee Agreement executed by a member of the Group in favour of the Bank, as contemplated in Article 6.10A(e) (*Ownership*).

"**Target Entity**" means any limited liability company, corporation, limited liability partnership or any equivalent.

"**Tax**" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"**Technical Description**" has the meaning given to it in Recital (1).

"**Total Assets**" means the total consolidated assets of the Group, as shown in the Borrower's latest consolidated financial statements.

"**Trading Day**" means a day (other than a Saturday or Sunday) on which the OpGen Exchange or any other relevant regulated market exchange (as applicable) is open for trading.

"**Tranche**" means each disbursement made or to be made under this Contract. In case no Disbursement Notice has been delivered, Tranche shall mean a Tranche as requested under Article 1.02.B.

"**US Security Agreement**" means the New York law governed security agreement in respect of patents and utility patents granted by the Borrower in favour of the Bank to secure all amounts owing to the Bank under the Finance Documents.

"**USD**" means the lawful currency of the United States of America.

"**Yorkville Facility**" means the up to EUR 20,000,000 convertible note issuance to Ya II PN, LTD dated 2 October 2018.

## ARTICLE 1

### Credit and Disbursements

#### **1.01 Amount of Credit**

##### **1.01A First Credit**

By this Contract the Bank establishes in favour of the Borrower, and the Borrower accepts, a credit in an amount of EUR 10,000,000 (ten million euros) for the financing of the Project (the "**First Credit**").

**1.01B Second Credit**

By this Contract the Bank establishes in favour of the Borrower, and the Borrower accepts, a credit in an amount of EUR 20,000,000 (twenty million euros) for the financing of the Project (the "**Second Credit**").

**1.02 Disbursement procedure**

**1.02A Tranches**

The Bank shall disburse the Credit in Euros in up to five (5) Tranches. The amount of each Tranche, if not being the undrawn balance of the Credit, shall be in a minimum amount of EUR 3,000,000 (three million euros).

**1.02B Disbursement Request**

- (a) The Borrower may present to the Bank a Disbursement Request for the disbursement of a Tranche, such Disbursement Request to be received at the latest 15 (fifteen) days before the Final Availability Date. The Disbursement Request shall be in the form set out in Schedule C.1 and shall specify:
- (i) the amount and currency (to be EUR) of the Tranche;
  - (ii) the preferred disbursement date for the Tranche; such preferred disbursement date must be a Relevant Business Day falling at least 15 (fifteen) days after the date of the Disbursement Request and, in any event, on or before the Final Availability Date, it being understood that notwithstanding the Final Availability Date the Bank may disburse the Tranche up to 4 (four) calendar months from the date of the Disbursement Request;
  - (iii) the interest rate basis of the Tranche, pursuant to the relevant provisions of Article 3.01 and/ or Article 3.06 (as applicable);
  - (iv) the interest payment periodicity for the Tranche, determined in accordance with Article 3.01 and/ or Article 3.06 (as applicable);
  - (v) the terms for repayment of principal for the Tranche, chosen in accordance with Article 4.01;
  - (vi) the date for repayment of principal for the Tranche;
  - (vii) the IBAN code (or appropriate format in line with local banking practice) and SWIFT BIC of the bank account to which disbursement of the Tranche should be made in accordance with Article 1.02D;
  - (viii) the applicable PIK interest;
  - (ix) whether PPI is payable on the Tranche in accordance with Article 3.05 (to avoid doubt, failure to specify whether the PPI is payable on the Tranche shall not prevent the Bank from demanding PPI in accordance with the provisions of Article 3.05); and
  - (x) whether Deferred Interest is applicable to the Tranche in accordance with Article 3.02 (to avoid doubt, failure to specify whether Deferred Interest is applicable to the Tranche shall not prevent the Bank from demanding Deferred Interest in accordance with the provisions of this Contract).

- (b) Each Disbursement Request shall be accompanied by evidence of the authority of the person or persons authorised to sign it and the specimen signature of such person or persons or a declaration by the Borrower that no change has occurred in relation to the authority of the person or persons authorised to sign Disbursement Requests under this Contract.
- (c) Subject to Article 1.02C(b), each Disbursement Request is irrevocable.

**1.02C Disbursement Notice**

- (a) Not less than 10 (ten) days before the proposed Scheduled Disbursement Date of a Tranche the Bank shall, if the Disbursement Request conforms to this Article 1.02, deliver to the Borrower a Disbursement Notice which shall specify:
  - (i) the currency, and amount of the Tranche;
  - (ii) the Scheduled Disbursement Date;
  - (iii) the interest rate basis for the Tranche, pursuant to the relevant provisions of Article 3.01 and/ or Article 3.06 (as applicable);
  - (iv) the first interest Payment Date and the periodicity for the payment of interest for the Tranche;
  - (v) the terms for repayment of principal for the Tranche;
  - (vi) the date for repayment of principal for the Tranche;
  - (vii) the applicable Payment Dates for the Tranche; and
  - (viii) the Floating Rate and the Deferred Interest Rate applicable to the Tranche until the Maturity Date of the Tranche.
- (b) If one or more of the elements specified in the Disbursement Notice does not reflect the corresponding element, if any, in the Disbursement Request, the Borrower may following receipt of the Disbursement Notice revoke the Disbursement Request by written notice to the Bank to be received no later than 12h00 Luxembourg time on the next Business Day and thereupon the Disbursement Request and the Disbursement Notice shall be of no effect. If the Borrower has not revoked in writing the Disbursement Request within such period, the Borrower will be deemed to have accepted all elements specified in the Disbursement Notice.

**1.02D Disbursement Account**

Disbursement shall be made to such account of the Borrower as the Borrower shall notify in writing to the Bank not later than 15 (fifteen) days before the Scheduled Disbursement Date (with IBAN code or with the appropriate format in line with local banking practice).

Only one account may be specified for each Tranche.

**1.03 Currency of disbursement**

The Bank shall disburse each Tranche in EUR.

**1.04 Conditions of disbursement**

**1.04A First Tranche**

The disbursement of the first Tranche under Article 1.02 is conditional upon receipt by the Bank, in form and substance satisfactory to it, on or before the date falling 5 (five) Business Days before the Scheduled Disbursement Date, of the following documents or evidence:

- (a) a certified copy (certified by a Managing Director of the Borrower as a true and up to date copy) of the resolution of the competent body (general meeting of shareholders) of the Borrower duly authorising the execution of this Contract and duly authorising the person or persons signing this Contract on behalf of the Borrower together with the specimen signature of each such person or persons;
- (b) a certified copy (certified by a Managing Director of Curetis NV as a true and up to date copy) of the resolution of the competent body (board of directors and supervisory board) of Curetis NV duly authorising the execution of the Initial Guarantee Agreement and duly authorising the person or persons signing the Initial Guarantee Agreement on behalf of Curetis NV together with the specimen signature of each such person or persons;
- (c) evidence that the Borrower has obtained all necessary Authorisations required in connection with this Contract and the Project;
- (d) this Contract duly executed by the Borrower;
- (e) the duly executed Initial Guarantee Agreement;
- (f) a legal opinion of Hogan Lovells International LLP, addressed to the Bank, on the legality, validity and enforceability of each Finance Document governed by English law, such legal opinion to be in the form distributed to the Bank prior to the signing of this Contract;
- (g) a legal opinion of CMS Hasche Sigle, Partnerschaft von Rechtsanwälten und Steuerberatern mbB, addressed to the Bank in form and substance satisfactory to the Bank, on the valid existence of the Borrower, the authority and capacity of the Borrower to enter into this Contract and on the due execution and choice of law of this Contract;
- (h) a legal opinion of CMS Derks Star Busmann NV, addressed to the Bank in form and substance satisfactory to the Bank, on the valid existence of Curetis NV, the authority and capacity of Curetis NV to enter into the Initial Guarantee Agreement and on the due execution and choice of law of the Initial Guarantee Agreement;
- (i) copies of the latest audited consolidated financial statements of the Group and the latest unaudited financial statements of the Borrower and of Curetis NV;
- (j) copies of the constitutional documents of the Borrower and Curetis NV;
- (k) the group structure chart showing the Group as of the date of this Contract;
- (l) a certificate of an authorised signatory of the Borrower and Curetis NV certifying that each copy document relating to it specified in this Article 1.04A is correct, complete and in full force and effect as at a date no earlier than the date of this Contract;
- (m) evidence that insurances in accordance with the requirements of Article 6.05(c) are in place;
- (n) evidence of appointment and acceptance of the Borrower's and Curetis NV's agent of service;
- (o) evidence of payment of all the fees and expenses as required under the Finance Documents; and
- (p) a copy of any other document, authorisation, opinion or assurance which the Bank reasonably considers to be necessary (if it has notified the Borrower and Curetis NV accordingly) in connection with the entry into and performance of the Finance Documents.

#### 1.04B All Tranches

The disbursement of each Tranche under Article 1.02, including the first, is subject to the following conditions:

- (a) that the Bank has received, in form and substance satisfactory to it, on or before the date falling 5 (five) Business Days before the Scheduled Disbursement Date for the proposed Tranche, of the following documents or evidence:
    - (i) a certificate from the Borrower in the form of Schedule D.1, signed by an authorised representative of the Borrower and dated no earlier than the date falling 10 (ten) days before the Scheduled Disbursement Date;
    - (ii) a copy of any other authorisation or other document, opinion or assurance which the Bank has reasonably notified the Borrower is necessary in connection with the entry into and performance of, and the transactions contemplated by, this Contract or the validity and enforceability of the same;
  - (b) that on the Disbursement Date for the proposed Tranche:
    - (i) the representations and warranties which are repeated pursuant to Article 6.22 are materially correct in all respects; and
    - (ii) no event or circumstance has occurred and is continuing which constitutes or would with the expiry of a grace period and/or the giving of notice under this Contract constitute:
      - (aa) an Event of Default; or
      - (bb) a Prepayment Event other than pursuant to Articles 4.03A(1) (*Project Cost Reduction*) or 4.03A(2) (*Pari Passu to Non-EIB Financing*),
- or would, in each case, result from the disbursement of the proposed Tranche.

#### 1.05 Second Credit

The disbursement of a Tranche of the Second Credit is also subject to the following conditions and written evidence reasonably satisfactory for the Bank of:

- (a) for the disbursement of an amount of up to EUR 3,000,000: FDA clearance of Unyvero platform and LRT (Lower Respiratory Tract) application cartridge;
- (b) for the disbursement of an amount up to EUR 5,000,000: upon realisation of the condition under letter (a) above and following to the relevant disbursement indicated therein: a cumulative new equity raised by Curetis NV of at least EUR [\*\*\*]
- (c) for the disbursement of an amount up to EUR 7,000,000: upon realisation of the condition under paragraph (a) and (b) above and following to the relevant disbursements indicated therein:
  - (i) [\*\*\*]; and

- (ii) consolidated Group top-line revenues of at least EUR [\*\*\*] ([\*\*\*] euros) (or its equivalent in another currency or currencies) over the 12 months preceding the date of any Disbursement Request.
- (d) for the disbursement of the COVID-19 Tranche, being an amount up to EUR 5,000,000
- (i) realisation of the condition under paragraph (a) above;
  - (ii) the Borrower having raised additional equity of at least EUR 5,000,000 (such equity to be raised after 1 April 2020);
  - (iii) the US Security Agreement having been duly executed by the parties thereto and being in form and substance satisfactory to the Bank;
  - (iv) the Bank having been provided with evidence that the Security created (or purportedly created) pursuant to the US Security Agreement has been duly created and perfected as first ranking Security over all assets and rights subject to the US Security Agreement (it being understood that the Borrower will only be required to demonstrate perfection of such Security in the United States of America);
  - (v) receipt of such legal opinions in relation to the US Security Agreement as the Bank may reasonably require;
  - (vi) written evidence satisfactory to the Bank that the current review by the German Ministry of Economy and Energy of the Borrower's acquisition by OpGen and, if applicable, any other review or investigation commenced by any other competent authority in any jurisdiction (each a "**Review**") has been concluded and the acquisition of the Borrower by OpGen has been approved (or, to the extent not required to be approved, has not been prohibited or conditioned), and, in each case, no findings decisions coming out of, or related to, a Review prejudices the interests and the reputation of the Bank as lender to the Borrower and/or adversely affects the implementation or operation of the Project;
  - (vii) each Obligor is compliant in all respects with all laws, regulations and decisions to which the Borrower, such Obligor or the Project is subject; and
  - (viii) a copy of any other authorisation, document, opinion or assurance which the Bank considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with (1) the entry into and performance of the transactions contemplated by any US Security Agreement or for the validity and enforceability of US Security Agreement; or (2) the COVID-19 Tranche.

## **1.06 Deferral of disbursement**

### **1.06A Grounds for deferral**

Upon the written request of the Borrower, the Bank shall defer the disbursement of any Notified Tranche in whole or in part to a date specified by the Borrower being a date falling not later than 6 (six) months from the Scheduled Disbursement Date of the Tranche indicated in the Disbursement Notice. In such case, the Borrower shall pay the Deferral Indemnity calculated on the amount of disbursement deferred.

Any request for deferral shall have effect in respect of a Tranche only if it is made at least 5 (five) Business Days before its Scheduled Disbursement Date.

If for a Notified Tranche any of the conditions referred to in Article 1.04 is not fulfilled or waived as at the specified date and at the Scheduled Disbursement Date (or the date expected for disbursement in case of a previous deferment), disbursement will be deferred to a date agreed between the Bank and the Borrower falling not earlier than 5 (five) Business Days following the fulfilment or waiver of all conditions of disbursement (without prejudice to the right of the Bank to suspend and/or cancel the undisbursed portion of the Credit in whole or in part pursuant to Article 1.07B). In such case, the Borrower shall pay the Deferment Indemnity calculated on the amount of disbursement deferred for the period of the deferral.

**1.06B Cancellation of a disbursement deferred by more than 6 (six) months**

The Bank may, by notice in writing to the Borrower, cancel a disbursement which has been deferred under Article 1.06A by more than 6 (six) months in aggregate. The cancelled amount shall remain available for disbursement under Article 1.02.

**1.07 Cancellation and suspension**

**1.07A Borrower's right to cancel**

The Borrower may at any time by notice in writing to the Bank cancel, in whole or in part and with immediate effect, the undisbursed portion of the Credit. However, the notice shall have no effect in respect of (i) a Notified Tranche which has a Scheduled Disbursement Date falling within 5 (five) Business Days of the date of the notice or (ii) a Tranche in respect of which a Disbursement Request has been submitted but no Disbursement Notice has been issued.

**1.07B Bank's right to suspend and cancel**

- (a) The Bank may, by notice in writing to the Borrower, suspend and/or cancel the undisbursed portion of the Credit in whole or in part at any time and with immediate effect:
  - (i) upon the occurrence of a Prepayment Event other than pursuant to Articles 4.03A(1) or 4.03A(2), an Event of Default or an event or circumstance which would with the passage of time or giving of notice under this Contract constitute a Prepayment Event other than pursuant to Articles 4.03A(1) or 4.03A(2) or an Event of Default; or
  - (ii) by an amount equal to the amount by which it is entitled to cancel any Credit pursuant to Articles 4.03A(1) or 4.03A(2).
- (b) The Bank may also suspend the portion of any Credit in respect of which it has not issued a Disbursement Notice with immediate effect in the case that a Market Disruption Event occurs.
- (c) Any suspension shall continue until the Bank ends the suspension or cancels the suspended amount.

**1.07C Indemnity for suspension and cancellation of a Tranche**

**1.07C(1) SUSPENSION**

If the Bank suspends a Notified Tranche, whether upon an Indemnifiable Prepayment Event or an Event of Default or upon the occurrence of a Material Adverse Change, the Borrower shall pay to the Bank the Deferment Indemnity calculated on the amount of disbursement suspended for the period of deferral.

**1.07C(2) CANCELLATION**

- (a) If pursuant to Article 1.07A, the Borrower cancels any part of the Credit other than a Notified Tranche, no indemnity is payable.

- (b) If pursuant to Article 1.07A, a Borrower cancels a Tranche which is a Notified Tranche, the Borrower shall pay to the Bank a Prepayment Fee as per Article 4.02B.
- (c) If the Bank cancels a Notified Tranche upon an Event of Default, the Borrower shall indemnify the Bank under Article 10.03.

Save in the circumstances listed in paragraphs (b) and (c) above, no indemnity is payable upon cancellation of a Tranche by the Bank.

The indemnity shall be calculated on the basis that the cancelled amount is deemed to have been disbursed and repaid on the Scheduled Disbursement Date or, to the extent that the disbursement of the Tranche is currently deferred or suspended, on the date of the cancellation notice.

**1.08 Cancellation after expiry of the Credit**

On the day following the Final Availability Date, and unless otherwise specifically agreed to in writing by the Bank, the part of the Credit in respect of which no Disbursement Request has been made in accordance with Article 1.02B shall be automatically cancelled, without any notice being served by the Bank to the Borrower and without liability arising on the part of either party.

**1.09 Sums due under Article 1**

Sums due under Articles 1.06 and 1.07 shall be payable in EUR. They shall be payable within 15 (fifteen) days of the Borrower's receipt of the Bank's demand or within any longer period specified in the Bank's demand.

ARTICLE 2

**The Loan**

**2.01 Amount of Loan**

The Loan shall comprise the aggregate amount of Tranches disbursed by the Bank under the Credit, as confirmed by the Bank pursuant to Article 2.03.

**2.02 Currency of repayment, interest and other charges**

Interest, repayments and other charges payable in respect of each Tranche shall be made by the Borrower in EUR.

Any other payment shall be made in the currency specified by the Bank having regard to the currency of the expenditure to be reimbursed by means of that payment.

**2.03 Confirmation by the Bank**

Within 10 (ten) days after disbursement of each Tranche, the Bank shall deliver to the Borrower a schedule showing the Disbursement Date, currency, the amount disbursed, the repayment terms and the interest rate of and for that Tranche.

ARTICLE 3

**Interest**

**3.01 Rate of interest – Cash Pay Margin**

For the purposes of this Contract "Cash Pay Margin" means [\*\*\*] basis points ([\*\*\*]%).

The Borrower shall pay interest on the outstanding balance of each Tranche (other than the COVID-19 Tranche) at the Floating Rate quarterly, semi-annually or annually in arrears on the relevant Payment Dates, as specified in the Disbursement Notice commencing on the first such Payment Date following the Disbursement Date of the Tranche. If the period from the Disbursement Date to the first Payment Date is fifteen (15) days or less then the payment of interest accrued during such period shall be postponed to the following Payment Date.

The Bank shall notify the Floating Rate to the Borrower within 10 (ten) days following the commencement of each Floating Rate Reference Period.

If pursuant to Articles 1.06 and 1.07 disbursement of any Tranche (other than the COVID-19 Tranche) takes place after the Scheduled Disbursement Date EURIBOR, applicable to the first Floating Rate Reference Period shall apply as though the disbursement had been made on the Scheduled Disbursement Date.

Interest shall be calculated in respect of each Floating Rate Reference Period on the basis of Article 5.01. If the Floating Rate for any Floating Rate Reference Period is below zero, it will be set at zero.

### **3.02 Rate of interest – Deferred Interest**

For the purposes of this Contract "**Deferred Interest**" means, in addition to the interest mentioned in Article 3.01, interest at the Deferred Interest Rate which accrues on a daily basis on the outstanding amount of each Tranche (other than the COVID-19 Tranche) during the period starting on the Disbursement Date of such Tranche and ending on the Maturity Date of the relevant Tranche (or on any date earlier than that Maturity Date in the event of a prepayment or an acceleration of all or part of that Tranche).

For the purposes of this Contract "**Deferred Interest Rate**" means a fixed interest rate of 6% per annum.

The Borrower shall pay all accrued Deferred Interest in arrears on the Maturity Date of the relevant Tranche (or earlier on any prepayment or acceleration of all or part of that Tranche).

Deferred Interest shall be calculated in respect of each annual period following the Disbursement Date of each Tranche (other than the COVID-19 Tranche) on the basis of Article 5.01.

### **3.03 Interest on overdue sums**

Without prejudice to Article 10 and by way of exception to Article 3.01, if the Borrower fails to pay any amount payable by it under this Contract on its due date, interest shall accrue (subject to mandatory provisions of the applicable laws) on any overdue amount payable under the terms of this Contract from the due date to the date of actual payment at an annual rate equal to:

- (i) for overdue sums relating to Tranches (other than the COVID-19 Tranche), the applicable Floating Rate plus [\*\*\*]% ([\*\*\*] basis points);
- (ii) for overdue sums relating to the COVID-19 Tranche, the higher of (a) the PIK Interest Rate plus 2% (200 basis points) or (b) EURIBOR plus [\*\*\*]% ([\*\*\*] basis points); or
- (iii) for overdue sums other than under (i) or (ii) above, EURIBOR plus 2% (200 basis points),

and shall be payable in accordance with the demand of the Bank. For the purpose of determining EURIBOR in relation to this Article 3.03, the relevant periods within the meaning of Schedule B shall be successive periods of one month commencing on the due date.

If the overdue sum is in a currency other than the currency of the Loan, the following rate per annum shall apply, namely the relevant interbank rate that is generally retained by the Bank for transactions in that currency plus [\*\*\*]% ([\*\*\*] basis points), calculated in accordance with the market practice for such rate.

### **3.04 Market Disruption Event**

In relation to a specific Tranche, if at any time (i) from the issuance by the Bank of the Disbursement Notice in respect of such Tranche, and (ii) until the date falling thirty (30) calendar days prior to the Scheduled Disbursement Date, a Market Disruption Event occurs, the Bank may notify to the Borrower that this clause has come into effect. In such case, the rate of interest applicable to such Notified Tranche until the Maturity Date of such Notified Tranche shall be the percentage rate per annum which is the sum of:

- the Cash Pay Margin and
- the rate (expressed as a percentage rate per annum) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based upon the then applicable internally generated Bank reference rate or an alternative rate determination method reasonably determined by the Bank. The Borrower shall have the right to refuse in writing such disbursement within the deadline specified in the notification and shall bear charges incurred as a result, if any, in which case the Bank shall not effect the disbursement and the corresponding Credit shall remain available for disbursement under Article 1.02B. If the Borrower does not refuse the disbursement in time, the parties agree that the disbursement and the conditions thereof shall be fully binding for both parties.

### **3.05 PPI**

- 3.05A In addition to the interest payable pursuant to Articles 3.01 and 3.02 above, provided either the PPI Tranche or the COVID-19 Tranche is drawn, the Borrower shall pay PPI according to this Article 3.05.
- 3.05B Upon any repayment or prepayment of any part of the PPI Tranche becoming due (a "PPI Tranche Due Payment") (whether or not it is paid and to avoid doubt whether as a result of the occurrence of the PPI Tranche's Maturity Date, or following acceleration, or as a result of voluntary or mandatory prepayment, or otherwise), the Borrower shall pay the Bank the relevant PPI within 30 days of the Bank's written demand, provided that such demand is delivered by the Bank to the Borrower no later than the first anniversary of the PPI Tranche's Maturity Date.
- 3.05C Upon any repayment or prepayment of any part of the COVID-19 Tranche becoming due (a "COVID-19 Tranche Due Payment") (whether or not it is paid and to avoid doubt whether as a result of the occurrence of the COVID-19 Tranche's Maturity Date, or following acceleration, or as a result of voluntary or mandatory prepayment, or otherwise), the Borrower shall pay the Bank the relevant PPI within 30 days of the Bank's written demand, provided that such demand is delivered by the Bank to the Borrower no later than the first anniversary of the COVID-19 Tranche's Maturity Date.
- 3.05D For the avoidance of doubt the Bank has the right to demand the relevant PPI in relation to any PPI Tranche Due Payment and any COVID-19 Tranche Due Payment at any time up to (and including) the first anniversary of the PPI Tranche's Maturity Date or the COVID-19 Tranche's Maturity Date (as applicable).
- 3.05E The Borrower and the Bank hereby agree that the calculations illustrated as examples of the amount of PPI to be paid by the Borrower under Schedule F (Performance Participation Interest Example) fairly represent the intention of the parties.

### **3.06 Payment in kind (PIK) interest**

In relation to the COVID-19 Tranche, interest shall accrue daily on the outstanding balance of the COVID-19 Tranche at the PIK Interest Rate and shall be capitalised on each Payment Date and added to the outstanding principal amount of the relevant Loan. All such accrued interest shall, after being so capitalised, be treated as part of the principal amount of the relevant Loan, shall bear all interest in accordance with this Article 3.06 and shall be payable on the Maturity Date of the COVID-19 Tranche, or, where the COVID-19 Tranche is voluntarily prepaid or compulsorily prepaid on the relevant prepayment date (or, to avoid doubt, on such date as the COVID-19 Tranche becomes due and payable as a result of an acceleration).

## **ARTICLE 4**

### **Repayment**

#### **4.01 Normal repayment**

##### **4.01A Single instalment**

The Borrower shall repay each Tranche, together with all other amounts outstanding under this Contract in relation to that Tranche, in a single instalment on the Maturity Date of that Tranche.

#### **4.02 Voluntary prepayment**

##### **4.02A Prepayment option**

Subject to Articles 4.02B, 4.02C and 4.04, the Borrower may prepay all or part of any Tranche, together with accrued interest (including any Deferred Interest and, if applicable (in relation to the COVID-19 Tranche only), interest accruing at the PIK Interest Rate) and indemnities if any, upon giving a Prepayment Request with at least 1 (one) month's prior notice specifying (i) the Prepayment Amount, (ii) the Prepayment Date, (iii) the Prepayment Fee and (iv) the contract number ("FI nr") mentioned on the cover page of this Contract.

Subject to Article 4.02C the Prepayment Request shall be binding and irrevocable.

##### **4.02B Prepayment Fee**

Upon the prepayment of all or part of any Tranche under Article 4.02 or cancellation as per Article 1.07C(2)(b), the Borrower shall pay a fee for each Tranche being prepaid as follows:

- (a) a fee of [\*\*\*]% of the Prepayment Amount if the Prepayment Date is on or after the Disbursement Date but before the first anniversary of the Disbursement Date;
- (b) a fee of [\*\*\*]% of the Prepayment Amount if the Prepayment Date is on or after the first anniversary of the Disbursement Date but before the second anniversary of the Disbursement Date;
- (c) a fee of [\*\*\*]% of the Prepayment Amount if the Prepayment Date is on or after the second anniversary of the Disbursement Date but before the third anniversary of the Disbursement Date; or
- (d) a fee of [\*\*\*]% of the Prepayment Amount if the Prepayment Date is on or after the third anniversary of the Disbursement Date but on or before the fourth anniversary of the Disbursement Date,

with each fee being payable on the applicable Prepayment Date.

For the avoidance of doubt, no such fee shall be payable if the Prepayment Date is after the fourth anniversary of the Disbursement Date.

#### 4.02C **Prepayment mechanics**

Upon presentation by the Borrower to the Bank of a Prepayment Request, the Bank shall issue a Prepayment Notice to the Borrower, not later than 15 (fifteen) days prior to the Prepayment Date. The Prepayment Notice shall specify the Prepayment Amount, the accrued interest (including any Deferred Interest) due thereon, the Prepayment Fee payable under Article 4.02B or, as the case may be, that no Prepayment Fee is due, the indemnity payable under Article 4.04, if any, the method of application of the Prepayment Amount and the Acceptance Deadline.

If the Borrower accepts the Prepayment Notice no later than by the Acceptance Deadline, it shall effect the prepayment. In any other case, the Borrower may not effect the prepayment.

The Borrower shall accompany the prepayment by the payment of accrued interest (including any interest under Article 3.06), the indemnity payable under Article 4.04, if any, and the Prepayment Fee under Article 4.02B, if any, due on the Prepayment Amount, as specified in the Prepayment Notice.

#### 4.03 **Compulsory prepayment**

##### 4.03A **Prepayment Events**

##### 4.03A(1) **Project Cost Reduction**

If the total cost of the Project falls below the figure stated in Recital (2) so that the amount of the Credit exceeds 50% (fifty per cent) of such total cost, the Bank may forthwith, by notice to the Borrower, cancel the undisbursed portion of the Credit and/or demand prepayment of the Loan up to the amount by which the Credit exceeds 50% (fifty per cent) of the total cost of the Project. The Borrower shall effect payment of the amount demanded on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

##### 4.03A(2) **Pari Passu to Non-EIB Financing**

If the Borrower (or any other member of the Group) or any Guarantor voluntarily prepays (for the avoidance of doubt, prepayment shall include a repurchase, redemption or cancellation where applicable) a part or the whole of any Non-EIB Financing and:

- such prepayment is not made within a revolving credit facility (save for the cancellation of the revolving credit facility);
- such prepayment is not made out of the proceeds of a loan or other indebtedness having a term at least equal to the unexpired term of the Non-EIB Financing prepaid,

the Bank may, by notice to the Borrower, cancel the undisbursed portion of the Credit and demand prepayment of the Loan. The proportion of the Loan that the Bank may require to be prepaid shall be the same as the proportion that the prepaid amount of the Non-EIB Financing bears to the aggregate outstanding amount of all Non-EIB Financing.

The Borrower shall effect payment of the amount demanded on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

For the purposes of this Article, "**Non-EIB Financing**" includes any loan (save for the Loan and any other direct loans from the Bank to the Borrower (or any other member of the Group) or any Guarantor), credit bond or other form of financial indebtedness or any obligation for the payment or repayment of money originally granted to the Borrower (or any other member of the Group) or any Guarantor) for a term of more than 3 (three) years.

#### 4.03A(3) Change of Control

The Borrower shall promptly inform the Bank if a Change-of-Control Event has occurred or is likely to occur in respect of itself or any Guarantor. At any time after the occurrence of a Change-of-Control Event, the Bank may, by notice to the Borrower, cancel the undisbursed portion of the Credit and demand prepayment of the Loan, together with accrued interest and all other amounts accrued or outstanding under this Contract.

In addition, if the Borrower has informed the Bank that a Change-of-Control Event is about to occur, or if the Bank has reasonable cause to believe that a Change-of-Control Event is about to occur, the Bank may request that the Borrower consult with it. Such consultation shall take place within 30 (thirty) days from the date of the Bank's request. After the earlier of (a) the lapse of 30 (thirty) days from the date of such request for consultation, or (b) at any time thereafter, upon the occurrence of the anticipated Change-of-Control Event the Bank may, by notice to the Borrower, cancel the undisbursed portion of the Credit and demand prepayment of the Loan, together with accrued interest and all other amounts accrued or outstanding under this Contract.

The Borrower shall effect payment of the amount demanded on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

For the purposes of this Article:

- (a) a "**Change-of-Control Event**" occurs if:
  - (i) any person (to avoid doubt, other than OpGen) or group of persons acting in concert gains control of the Borrower or of the entity directly or ultimately controlling the Borrower, or a Material Subsidiary or a Guarantor;
  - (ii) the Borrower, any Guarantor or any Material Subsidiary, as the case may be, consolidates or merges into any other corporation (other than, to avoid doubt, OpGen), unless such consolidation or merger is a Permitted Merger; or
  - (iii) a sale of all or substantially all, in the reasonable opinion of the Bank, of the assets of the Borrower, any Guarantor or any Material Subsidiary, takes place (other than, to avoid doubt, to OpGen);
- (b) "**acting in concert**" means acting together pursuant to an agreement or understanding (whether formal or informal); and
- (c) "**control**" means (i) the ownership (whether legally or beneficially in any jurisdiction) of more than 50% of the ordinary shares of the Borrower, a Guarantor or any Material Subsidiary, as the case may be, or (iii) the power to direct the management and policies of an entity, whether through the ownership of voting capital, by contract or otherwise.

#### 4.03A(4) Change of Law

The Borrower shall promptly inform the Bank if a Change-of-Law Event has occurred or is reasonably likely to occur. In such case, or if the Bank has reasonable cause to believe that a Change-of-Law Event has occurred or is about to occur, the Bank may request that the Borrower consult with it. Such consultation shall take place within 30 (thirty) days from the date of the Bank's request. If, after the lapse of 30 (thirty) days from the date of such request for consultation the Bank is of the opinion that the effects of the Change-of-Law Event cannot be mitigated to its satisfaction, the Bank may by notice to the Borrower, cancel the undisbursed portion of the Credit and demand prepayment of the Loan, together with accrued interest and all other amounts accrued or outstanding under any Finance Document.

The Borrower shall effect payment of the amount demanded on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

For the purposes of this Article "**Change-of-Law Event**" means the enactment, promulgation, execution or ratification of or any change in or amendment to any law, rule or regulation (or in the application or official interpretation of any law, rule or regulation) that occurs after the date of this Contract and which, in the reasonable opinion of the Bank, would materially impair the Borrower's or a Guarantor's ability to perform its obligations under this Contract or any guarantee or security provided in respect of this Contract.

#### 4.03A(5) **Illegality**

If it becomes unlawful in any applicable jurisdiction for the Bank to perform any of its obligations as contemplated in any Finance Document or to fund or maintain the Loan, the Bank shall promptly notify the Borrower and may immediately (i) suspend or cancel the undisbursed portion of the Credit and/or (ii) demand prepayment of the Loan, together with accrued interest and all other amounts accrued or outstanding under the Finance Documents on the date indicated by the Bank in its notice to the Borrower, provided such date is no earlier than five days prior to the notice, unless an immediate or earlier payment is required by law.

#### 4.03B **Prepayment mechanics**

Any sum demanded by the Bank pursuant to Article 4.03A, together with any interest (including any Deferred Interest) or other amounts accrued or outstanding under this Contract including, without limitation, any indemnity due under Article 4.04, if any, shall be paid on the date indicated by the Bank in its notice of demand.

#### 4.04 **General**

A repaid or prepaid amount may not be reborrowed. This Article 4 shall not prejudice Article 10.

If the Borrower prepays a Tranche on a date other than a relevant Payment Date, the Borrower shall indemnify the Bank in such amount as the Bank shall certify is required to compensate it for receipt of funds otherwise than on a relevant Payment Date.

### ARTICLE 5

#### Payments

#### 5.01 **Day count convention**

Any amount due by way of interest, indemnity or fee from the Borrower under this Contract, shall in respect of a fraction of a year, be calculated on the basis of a year of 360 (three hundred and sixty) days and the number of days elapsed.

#### 5.02 **Time and place of payment**

Unless otherwise specified in this Contract (including, without limitation, at article 3.05B) or in the Bank's demand, all sums other than sums of interest, indemnity and principal are payable within 15 (fifteen) days of the Borrower's receipt of the Bank's demand.

Each sum payable by the Borrower under this Contract shall be paid to the relevant account notified by the Bank to the Borrower. The Bank shall notify the account not less than 15 (fifteen) days before the due date for the first payment by the Borrower and shall notify any change of account not less than 15 (fifteen) days before the date of the first payment to which the change applies. This period of notice does not apply in the case of payment under Article 10.

The Borrower shall indicate in each payment made hereunder the contract number ("FI nr") found on the cover page of this Contract.

A sum due from the Borrower shall be deemed paid when the Bank receives it.

Any disbursements by and payments to the Bank under this Contract shall be made using account(s) acceptable to the Bank. For the avoidance of doubt, any account in the name of the Borrower held with a duly authorised financial institution in the jurisdiction where the Borrower is incorporated or where the Project is undertaken is deemed acceptable to the Bank.

**5.03 No set-off by the Borrower**

All payments to be made by the Borrower under this Contract shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

**5.04 Disruption to Payment Systems**

If either the Bank determines (in its discretion) that a Disruption Event has occurred or the Bank is notified by the Borrower that a Disruption Event has occurred:

- (a) the Bank may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Contract as the Bank may deem necessary in the circumstances;
- (b) the Bank shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes; and
- (c) the Bank shall not be liable for any damages, costs or losses whatsoever arising as a result of a Disruption Event or for taking or not taking any action pursuant to or in connection with this Article 5.04.

**5.05 Application of sums received**

(a) General

Sums received from the Borrower shall only discharge its payment obligations if received in accordance with the terms of this Contract.

(b) Partial payments

If the Bank receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under this Contract, the Bank shall apply that payment in or towards payment of:

- (i) first, any unpaid fees, costs, indemnities and expenses due under this Contract;
- (ii) secondly, any accrued interest due but unpaid under this Contract;
- (iii) thirdly, any principal due but unpaid under this Contract; and
- (iv) fourthly, any other sum due but unpaid under this Contract.

(c) Allocation of sums related to Tranches

In case of receipt of sums which cannot be identified as applicable to a specific Tranche, and on which there is no agreement between the Bank and the Borrower on their application, the Bank may apply these between Tranches at its discretion.

## ARTICLE 6

### **Borrower undertakings and representations**

The undertakings in this Article 6 remain in force from the date of this Contract for so long as any amount is outstanding under this Contract or the Credit is in force.

#### *A. Project undertakings*

#### **6.01 Use of Loan and availability of other funds**

The Borrower shall use all amounts borrowed by it under the Loan for the execution of the Project.

The Borrower shall ensure that it has available to it the other funds listed in Recital (2) and that such funds are expended, to the extent required, on the financing of the Project.

#### **6.02 Completion of Project**

The Borrower shall or shall procure that the Project is carried out in accordance with the Technical Description as may be modified from time to time with the approval of the Bank, and complete it by the final date specified in the Technical Description.

#### **6.03 Increased cost of Project**

If the total cost of the Project exceeds the estimated figure set out in Recital (2), the Borrower shall obtain the finance to fund the excess cost without recourse to the Bank, so as to enable the Project to be completed in accordance with the Technical Description. The plans for funding the excess cost shall be communicated to the Bank without delay.

#### **6.04 Procurement procedure**

The Borrower shall purchase equipment, secure services and order works for the Project (a) in so far as they apply to it or to the Project, in accordance with European Union law in general and in particular with the relevant applicable European Union Directives and (b) in so far as European Union Directives do not apply, by procurement procedures which, to the satisfaction of the Bank, respect the criteria of economy and efficiency and, in case of public contracts, the principles of transparency, equal treatment and non-discrimination on the basis of nationality.

#### **6.05 Continuing Project undertakings**

The Borrower shall:

- (a) **Maintenance:** maintain, repair, overhaul and renew all project assets as commercially reasonably required to keep such assets in good working order;
- (b) **Project assets:** unless the Bank shall have given its prior consent in writing retain title to and possession of all or substantially all the project assets or, as appropriate, replace and renew such assets and maintain the Project in substantially continuous operation in accordance with its original purpose; provided that the Bank may withhold its consent only where the proposed action would prejudice the Bank's interests as lender to the Borrower or would render the Project ineligible for financing by the Bank under its statute or under Article 309 of the Treaty on the Functioning of the European Union;

- (c) **Insurance:** insure all works and property forming part of the Project with reputable insurance companies to the extent such insurances are commercially reasonably required based on the relevant industry practice;
- (d) **Rights and Permits:** maintain in force all rights of way or use and all Authorisations necessary for the execution and operation of the Project; and
- (e) **Environment:**
  - (i) implement and operate the Project in compliance with Environmental Law;
  - (ii) obtain and maintain requisite Environmental Approvals for the Project; and
  - (iii) comply with any such Environmental Approvals;

On becoming aware of any breach of this Article 6.05(e):

  - (A) the Borrower shall promptly notify the Bank;
  - (B) the Borrower and the Bank will consult for 15 Business Days from the date of notification (the consultation period) with a view to agreeing the manner in which the breach should be rectified; and
  - (C) the Borrower will use its best endeavours to comply with the provisions set out in paragraphs (i) to (iii) (inclusive) above and shall in any event remedy the breach within 30 Business Days of the end of the consultation period.
- (f) **Integrity:** take, within a reasonable timeframe, appropriate measures in respect of any member of its management bodies who has been convicted by a final and irrevocable court ruling of an Illegal Activity perpetrated in the course of the exercise of his/her professional duties, in order to ensure that such member is excluded from any Borrower's activity in relation to the Loan or the Project;
- (g) **Integrity Audit Rights:** ensure that all contracts under the Project to be procured after the date of signature of this Contract in accordance with European Union Directives on procurement provide for:
  - (i) the requirement that the relevant contractor promptly informs the Bank of a genuine allegation, complaint or information with regard to Illegal Activities related to the Project;
  - (ii) the requirement that the relevant contractor keeps books and records of all financial transactions and expenditures in connection with the Project; and
  - (iii) the Bank's right, in relation to an alleged Illegal Activity, to review the books and records of the relevant contractor in relation to the Project and to take copies of documents to the extent permitted by law.

*B. General undertakings*

**6.06 Disposal of assets**

- (a) The Borrower shall not, and shall procure that no other member of the Group will, either in a single transaction or in a series of transactions whether related or not and whether voluntarily or involuntarily dispose of all or any part of the Borrower's or other Group member's business, undertaking or assets, including any Intellectual Property Rights.

(b) Paragraph (a) above does not apply to any disposal of assets which constitutes a Permitted Disposal.

For the purposes of this Article, "dispose" and "disposal" includes any act effecting sale, transfer, lease or other disposal.

**6.07 Compliance with laws; Hedging**

**6.07A Compliance with laws**

The Borrower and any Guarantor shall comply in all respects with all laws and regulations to which it or the Project is subject.

**6.07B Hedging**

The Borrower shall not, and shall procure that each other member of the Group shall not, enter into any derivative transaction other than in accordance with the Hedging Policy.

**6.08 Change in business**

The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower or the Group as a whole from that carried on at the date of this Contract.

**6.09 Merger**

The Borrower shall not, and shall ensure that no other member of the Group shall, enter into any amalgamation, demerger, merger or corporate reconstruction unless such amalgamation, demerger, merger or corporate reconstruction is a Permitted Merger.

**6.10 Ownership**

6.10A

- (a) The Borrower shall maintain not less than 100% (one hundred per cent) of the share capital, directly or indirectly, of each of its Material Subsidiaries, unless a prior written consent of the Bank is received by the Borrower.
- (b) The Borrower shall ensure that OpGen shall in aggregate maintain not less than 100% (one hundred per cent) of the share capital, directly or indirectly, of the Borrower, unless prior written consent of the Bank is received by the Borrower.
- (c) The Borrower shall immediately notify the Bank in the event of a new entity becoming a majority owned subsidiary (meaning ownership of 50.1% (fifty point one per cent) or more) through any means, including but not limited to acquisition, creation and spin-off.
- (d) The undertakings in paragraphs (a) and (b) above shall be calculated in accordance with GAAP as applied by the Borrower on the date of this Contract and as GAAP is amended from time to time and tested annually.
- (e) The Borrower shall procure that, as soon as any member of the Group becomes a Material Subsidiary, unless notified by the Bank to the Borrower to the contrary or unless the Bank determines that it is not reasonably practicable to do so, that member of the Group shall promptly enter into a Guarantee and provide the Bank with:

- (i) a certified copy of the constitutional documents of such Material Subsidiary;
- (ii) a certified copy of the resolution of the competent body (board of directors and/or general meeting of shareholders) of such Material Subsidiary duly authorising the execution of such Guarantee and duly authorising the person or persons signing such Guarantee on behalf of such Material Subsidiary together with the specimen signature of each such person or persons;
- (iii) evidence that such Material Subsidiary has obtained all necessary Authorisations required in connection with such Guarantee;
- (iv) a legal opinion in form and substance satisfactory to the Bank of a reputable law firm acceptable to the Bank in the jurisdiction of incorporation of such Material Subsidiary, addressed to the Bank covering materially the same issues as the opinions referred to in Articles 1.04A (f) and (h) and relating to the granting of the relevant Guarantee; and
- (v) a copy of any other authorisation or other document, opinion or assurance which the Bank reasonably considers to be necessary (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by such Guarantee or for the validity and enforceability of such Guarantee,

each in form and substance satisfactory to the Bank. If it is not practicable (in the sole opinion of the Bank) for the Material Subsidiary to grant a guarantee in favour of the Bank, the Bank may request alternative credit support in form and substance satisfactory to the Bank in its sole discretion.

#### **6.10B Minimum worth of Obligors**

The Borrower shall ensure that at all times:

- (a) gross revenues of the Obligors represent not less than 85% of the consolidated gross revenues of the Group taken as a whole;
- (b) total assets of the Obligors represent not less than 85% of the Total Assets; and
- (c) EBITDA of the Obligors represents not less than 85% of the consolidated EBITDA of the Group,

each as calculated based on the then latest consolidated audited accounts of the Group.

#### **6.11 Books and records**

The Borrower shall ensure that it has kept and will continue to keep proper books and records of account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Borrower, including expenditures in connection with the Project, in accordance with GAAP as in effect from time to time.

#### **6.12 Acquisitions**

The Borrower shall not, and shall ensure that no other member of the Group shall invest in or acquire any entity or a business going concern or an undertaking (whether whole or substantially the whole of the assets or business), or any division or operating unit thereof, or any shares or securities of any entity or a business or undertaking (or in each case, any interest in any of them) (or agree to any of the foregoing), unless such acquisition is a Permitted Acquisition.

### **6.13 Indebtedness**

The Borrower shall not, and shall ensure that no other member of the Group shall incur any Indebtedness, unless such Indebtedness is Permitted Indebtedness.

### **6.14 Guarantees**

The Borrower shall not, and shall procure that no other member of the Group will issue or allow to remain outstanding any guarantees in respect of any liability or obligation of any person unless such guarantees are Permitted Guarantees.

### **6.15 Permitted Payments**

The Borrower shall not, and shall procure that no other member of the Group shall, declare or distribute dividends, or make any payment in respect of any intercompany loan, or return or purchase shares unless such payments are Permitted Payments.

### **6.16 Intellectual Property Rights**

The Borrower shall, and shall procure that each other member of the Group shall, (i) safeguard and maintain its rights with respect to the Intellectual Property Rights required for the implementation of the Project in accordance with this Contract, including complying with all material contractual provisions and that the implementation of the Project in accordance with this Contract will not result in the infringement of the rights of any person with regard to the Intellectual Property Rights and (ii) ensure that any Intellectual Property Rights required for the implementation of the Project will be owned by or licensed to the Borrower, and where such Intellectual Property Rights which are owned by a member of the Group are capable of registration, are registered to that member of the Group.

### **6.17 Maintenance of Status**

The Borrower shall, and shall procure that each other member of the Group shall, remain duly incorporated and validly existing as a corporate entity with limited liability under the jurisdiction in which it is incorporated and that it and each other member of the Group will have no centre of main interests, permanent establishment or place of business outside the jurisdiction in which it is incorporated (or in the case of OpGen outside of the State of Maryland, United States of America) and that it and each other member of the Group will continue to have the power to carry on its business as it is now being conducted and continue to own its property and other assets.

### **6.18 Eligibility Prerequisites**

The Borrower shall, and shall procure that each other member of the Group shall, satisfy the eligibility prerequisites, as amended from time to time, that are required to be satisfied in order to obtain finance under the joint initiative between the Bank and the European Commission as set out in Recital (10).

### **6.19 Illicit origin**

The Borrower shall, and shall procure that each other member of the Group shall, promptly inform the Bank if at any time it becomes aware of any funds that are invested in the Project by the Borrower or by any other member of the Group that are of illicit origin, including products of money laundering or linked to the financing of terrorism.

### **6.20 Visibility**

The operation benefits from a guarantee under EFSI and the Borrower agrees to cooperate with the Bank to ensure that any press releases or publications made by the Borrower regarding the financing and the Project include an appropriate acknowledgement of the financial support provided by EIB with the backing of the European Union through EFSI.

## 6.21 Loans

The Borrower shall not, and shall ensure that no other member of the Group will, be a creditor in respect of any Indebtedness, save for any Permitted Loans.

## 6.22 General Representations and Warranties

The Borrower represents and warrants to the Bank that:

- (a) it is duly incorporated and validly existing as a company with limited liability under the laws of Germany and it has power to carry on its business as it is now being conducted and to own its property and other assets;
- (b) OpGen is duly incorporated and validly existing as a company with limited liability under the laws of the State of Delaware, United States of America and it has power to carry on its business as it is now being conducted and to own its property and other assets;
- (c) it has the power to execute, deliver and perform its obligations under this Contract and all necessary corporate, shareholder and other action has been taken to authorise the execution, delivery and performance of the same by it;
- (d) this Contract constitutes its legally valid, binding and enforceable obligations;
- (e) the execution and delivery of, the performance of its obligations under and compliance with the provisions of this Contract do not and will not:
  - (i) contravene or conflict with any applicable law, statute, rule or regulation, or any judgement, decree or permit to which it is subject;
  - (ii) contravene or conflict with any agreement or other instrument binding upon it which might reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Contract;
  - (iii) contravene or conflict with any provision of its constitutional documents;
- (f) the latest available consolidated audited accounts of the Group and the latest available unaudited accounts of the Borrower, OpGen and any Guarantor have been prepared on a basis consistent with previous years and have been approved by its auditors as representing a true and fair view of the results of its operations for that year and accurately disclose or reserve against all the liabilities (actual or contingent) of the Borrower;
- (g) there has been no Material Adverse Change since 21 October 2016;
- (h) no event or circumstance which constitutes an Event of Default has occurred and is continuing unremedied or unwaived;
- (i) no litigation, arbitration, administrative proceedings or investigation is current or to its knowledge is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined is reasonably likely to result in a Material Adverse Change, nor is there subsisting against it or any of its Subsidiaries any unsatisfied judgement or award;
- (j) it has obtained all necessary Authorisations in connection with this Contract and in order to lawfully comply with its obligations hereunder, and the Project and all such Authorisations are in full force and effect and admissible in evidence;
- (k) its payment obligations under this Contract rank not less than *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations under any of its debt instruments except for obligations mandatorily preferred by law applying to companies generally;

- (l) it is in compliance with Article 6.05(e) and to the best of its knowledge and belief (having made due and careful enquiry) no Environmental Claim has been commenced or is threatened against it not previously disclosed to the Bank;
- (m) no financial covenants have been concluded with any other creditor of the Borrower (excluding financial covenants which are contained within financing agreements permitted under paragraphs (c) or (f) of Permitted Indebtedness, the transactions under paragraph (e) of Permitted Indebtedness that are FX hedging transactions, and the Yorkville Facility) which are more restrictive than the ones contained in this Contract;
- (n) the Group structure chart is true, complete and accurate in all material respects and represents the complete corporate structure of the Group as at the date of this Contract;
- (o) the Borrower is not required to make any deduction for or on account of any Tax from any payment it may make under this Contract;
- (p) to the best of its knowledge, no funds invested in the Project by the Borrower or by its controlling entities or by another member of the Group are of illicit origin, including products of money laundering or linked to the financing of terrorism. The Borrower shall promptly inform the Bank if at any time it becomes aware of the illicit origin of any such funds;
- (q) all Tax returns required to have been filed by it or on its behalf under any applicable law have been filed when due and contain the information required by applicable law to be contained in them;
- (r) it has paid when due all Taxes payable by it under applicable law except to the extent that it is contesting payment in good faith and by appropriate means;
- (s) with respect to Taxes which have not fallen due or which it is contesting, it is maintaining reserves adequate for their payment and in accordance, where applicable, with GAAP;
- (t) the Accounting Reference Date of the Borrower is 31 December;
- (u) under the laws of Germany it is not necessary that this Contract be filed, recorded or enrolled with any court or other authority in Germany or that any stamp, registration or similar tax be paid on or in relation to this Contract, or the transactions contemplated by this Contract;
- (v) any factual information provided by the Borrower and any member of the Group for the purposes of entering into this Contract and any related documentation was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated;
- (w) the Borrower has no Indebtedness outstanding other than Permitted Indebtedness;
- (x) neither it, nor any of its assets, is entitled to immunity from suit, execution, attachment or other legal process;
- (y) it has done, or will have done by the appropriate time for the Project to be implemented in accordance with this Contract, all that is reasonably required to obtain, safeguard and maintain its rights with respect to the Intellectual Property Rights required for the implementation of the Project in accordance with this Contract including complying with all contractual provisions;

- (z) to the best of its knowledge and belief, having made reasonable enquiry, the implementation of the Project in accordance with this Contract, will not result in the infringement of the rights of any person with regard to the Intellectual Property Rights;
- (aa) the pension schemes for the time being operated by the Borrower (if any) are funded in accordance with their rules and to the extent required by law or otherwise comply with the requirements of any law applicable in the jurisdiction in which the relevant pension scheme is maintained;
- (bb) it is in compliance with all applicable European Union and German legislation, including any applicable anti-corruption legislation;
- (cc) other than as set out in the Group structure chart, the Borrower owns no other equity and/or shares in any other business entity;
- (dd) it has acquainted itself with this Contract and determined that it is in its best commercial interest and consistent with its purpose of operations to enter into this Contract;
- (ee) no member of the Group is dormant;
- (ff) it is in compliance with all undertakings under this Contract;
- (gg) it is not engaged in any Illegal Activities and to the best of its knowledge no Illegal Activities have occurred in connection with the Project;
- (hh) the Revised Group Structure Chart is true, complete and accurate in all material respects and represents the complete corporate structure of the Group as at the Effective Date; and

The Repeating Representations are deemed repeated on each Disbursement Request, Disbursement Date and on each Payment Date by reference to the facts and circumstances then existing.

## ARTICLE 7

### Security

The undertakings in this Article 7 remain in force from the date of this Contract for so long as any amount is outstanding under this Contract or the Credit is in force.

#### **7.01 Guarantee**

The obligations of the Bank under this Contract are conditional upon the prior execution and delivery to the Bank of each Guarantee Agreement in form and substance satisfactory to it and of a legal opinion, addressed to the Bank in form and substance satisfactory to the Bank, on the valid existence of the relevant Guarantor, the authority and capacity of the relevant Guarantor to enter into the relevant Guarantee Agreement and on the due execution and choice of law of the Guarantee Agreement. The Borrower hereby acknowledges and consents to the terms of each Guarantee Agreement.

#### **7.02 Negative pledge**

- (a) The Borrower shall not (and the Borrower shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.

For the purposes of this Article 7.02, the term Security shall also include any arrangement or transaction on assets or receivables or money (such as the sale, transfer or other disposal of assets on terms whereby they are or may be leased to or re-acquired by the Borrower or any other member of the Group, the sale, transfer or otherwise dispose of any receivables on recourse terms or any arrangement under which money or the benefit of a bank account or other account may be applied or set-off or any preferential arrangement having a similar effect) in circumstances where the arrangement or transaction is entered into primarily as a method of raising credit or of financing the acquisition of an asset.

- (b) Paragraph (a) above does not apply to any Security, listed below:
- (i) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
  - (ii) any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:
    - (A) hedging any risk to which any member of the Group is exposed in its ordinary course of trading; or
    - (B) its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,excluding, in each case, any Security under a credit support arrangement in relation to a hedging transaction;
  - (iii) any lien arising by operation of law and in the ordinary course of trading;
  - (iv) any Security over or affecting any asset acquired by a member of the Group after the date of this Contract if:
    - (A) the Security was not created in contemplation of the acquisition of that asset by a member of the Group;
    - (B) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
    - (C) the Security is removed or discharged within three (3) months of the date of acquisition of such asset;
  - (v) any Security over or affecting any asset of any company which becomes a member of the Group after the date of this Contract, where the Security is created prior to the date on which that company becomes a member of the Group, if:
    - (A) the Security was not created in contemplation of the acquisition of that company;
    - (B) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
    - (C) the Security is removed or discharged within three (3) months of that company becoming a member of the Group;
  - (vi) any Security entered into pursuant to this Contract;
  - (vii) any Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group; or
-

- (viii) any Security listed in Schedule E (Existing Security) except to the extent the principal amount secured by that Security exceeds the amount stated in that Schedule.

### **7.03 Pari passu ranking**

The Borrower shall ensure that its payment obligations under this Contract rank, and will rank, not less than pari passu in right of payment with all other present and future unsecured and unsubordinated obligations under any of its debt instruments except for obligations mandatorily preferred by law applying to companies generally.

### **7.04 Clauses by inclusion**

If the Borrower or any other member of the Group concludes with any other financial creditor a financing agreement (excluding any facility which is permitted under paragraphs (c) or (f) of Permitted Indebtedness and the transactions under paragraph (e) of Permitted Indebtedness that are FX hedging transactions) that includes a loss-of-rating clause or a covenant or other provision regarding its financial ratios, if applicable, that is not provided for in this Contract or is more favourable to the relevant financial creditor than any equivalent provision of this Contract is to the Bank, the Borrower shall promptly inform the Bank and shall provide a copy of the more favourable provision to the Bank. The Bank may request that the Borrower promptly executes an agreement to amend this Contract so as to provide for an equivalent provision in favour of the Bank.

## ARTICLE 8

### **Information and Visits**

#### **8.01 Information concerning the Project**

The Borrower shall:

- (a) deliver to the Bank:
- (i) the information in content and in form, and at the times, specified in Schedule **A.2** or otherwise as agreed from time to time by the parties to this Contract;
  - (ii) any such information or further document concerning the Project as the Bank may require to comply with its obligations under the EFSI Regulation;
  - (iii) any such information or further document concerning the financing, procurement, implementation, operation and environmental matters of or for the Project as the Bank may reasonably require within a reasonable time; and
  - (iv) any such other information delivered to any Accountant in relation to any valuation in accordance with IPEV Valuation Standards,

provided always that if such information or document is not delivered to the Bank on time, and the Borrower does not rectify the omission within a reasonable time set by the Bank in writing, the Bank may remedy the deficiency, to the extent feasible, by employing its own staff or a consultant or any other third party, at the Borrower's expense and the Borrower shall provide such persons with all assistance necessary for the purpose;

- (b) submit for the approval of the Bank without delay any material change to the Project, also taking into account the disclosures made to the Bank in connection with the Project prior to the signing of this Contract, in respect of, inter alia, the price, design, plans, timetable or to the expenditure programme or financing plan for the Project;
- (c) promptly inform the Bank of:
  - (i) any action or protest initiated or any objection raised by any third party or any genuine complaint received by the Borrower or any Environmental Claim that is to its knowledge commenced, pending or threatened against it with regard to environmental or other matters affecting the Project; and
  - (ii) any fact or event known to the Borrower, which may substantially prejudice or affect the conditions of execution or operation of the Project;
  - (iii) a genuine allegation, complaint or information with regard to Illegal Activities related to the Loan and/or Project;
  - (iv) any non-compliance by it with any applicable Environmental Law; and
  - (v) any suspension, revocation or modification of any Environmental Approval,and set out the action to be taken with respect to such matters;
- (d) provide to the Bank, if so requested:
  - (i) a certificate of its insurers showing fulfilment of the requirements of Article 6.05(c);
  - (ii) annually, a list of policies in force covering the insured property forming part of the Project, together with confirmation of payment of the current premiums.

## **8.02 Information concerning the Borrower**

The Borrower shall:

- (a) deliver to the Bank:
  - (i) as soon as they become available but in any event within 180 days after the end of each of its financial years the Group's audited consolidated annual report, balance sheet, profit and loss account and auditors report for that financial year, and the unconsolidated annual report, balance sheet, profit and loss account of the Borrower, together with a Compliance Certificate as set out in Schedule D.2 signed by two directors;
  - (ii) as soon as they become publicly available but in any event within 120 days after the end of each of the relevant accounting periods the Group's consolidated and Borrower's unconsolidated semi-annual or quarterly reports, balance sheet and profit and loss account for the first half-year or each of the first three quarters of each of its financial years together with a Compliance Certificate as set out in Schedule D.2 signed by two directors;
  - (iii) on each Accounting Reference Date and on each date falling six months after an Accounting Reference Date updates in form and substance satisfactory to the Bank on (1) all regulatory approvals relating to the Unyvero platform and cartridges; (2) placements of the Unyvero platform; and (3) financial performance of the Group compared to the budget; and

- (iv) from time to time, such further information on its general financial situation as the Bank may reasonably require or such certificates of compliance with the undertakings of Article 6 as the Bank may reasonably deem necessary;

and

(b) inform the Bank immediately of:

- (i) any material alteration to its constitutional documents or shareholding structure and of any change of ownership of 5% or more of its shares after the date of this Contract;
- (ii) any fact which obliges it to prepay any financial indebtedness or any European Union funding;
- (iii) any event or decision that constitutes or may result in a Prepayment Event;
- (iv) any intention on its part to grant any security over any of its assets in favour of a third party except for those cases not prohibited by this Contract;
- (v) any intention on its part to relinquish ownership of any material component of the Project;
- (vi) any fact or event that is reasonably likely to prevent the substantial fulfilment of any obligation of the Borrower under this Contract;
- (vii) any event listed in Article 10.01 having occurred or being threatened or anticipated;
- (viii) any investigations concerning the integrity of the members of the Borrower's Managing Directors, other administrative body or managers;
- (ix) to the extent permitted by law, any material litigation, arbitration, administrative proceedings or investigation carried out by a court, administration or similar public authority, which, to the best of its knowledge and belief, is current, imminent or pending against the Borrower or its controlling entities or members of the Borrower's management bodies in connection with Illegal Activities related to the Loan and/or the Project;
- (x) any measure taken by the Borrower pursuant to Article 6.05(f) of this Contract;
- (xi) any litigation, arbitration or administrative proceedings or investigation which is current, threatened or pending and which if adversely determined is reasonably likely to result in a Material Adverse Change; or
- (xii) any Change in the Beneficial Ownership of the Borrower.

### **8.03 Visits by the Bank**

The Borrower shall allow the Bank and, when either required by the relevant mandatory provisions of European Union law or pursuant to the EFSI Regulation, the competent European Union institutions including the European Court of Auditors, the European Commission, the European Anti-Fraud Office, as well as persons designated by the foregoing to:

- (a) visit the sites, installations and works comprising the Project;
- (b) interview representatives of the Borrower, any other member of the Group and/or any Guarantor, and not obstruct contacts with any other person involved in or affected by the Project; and
- (c) conduct such on the spot audits and checks as they may wish and review the Borrower's, any other member of the Group and/or each Guarantor's books and records in relation to the execution of the Project and to be able to take copies of related documents to the extent permitted by the law.

The Borrower shall provide the Bank, or ensure that the Bank is provided, with all necessary assistance for the purposes described in this Article 8.03.

In the case of a genuine allegation, complaint or information with regard to Illegal Activities related to the Loan and/or the Project, the Borrower shall consult with the Bank in good faith regarding appropriate actions. In particular, if it is proven that a third party committed Illegal Activities in connection with the Loan and/or the Project with the result that the Loan or the EFSI financing were misapplied, the Bank may, without prejudice to the other provisions of this Contract, inform the Borrower if, in its view, the Borrower should take appropriate recovery measures against such third party. In any such case, the Borrower shall in good faith consider the Bank's views and keep the Bank informed.

#### **8.04 Disclosure and publication**

The Borrower acknowledges and agrees that the Bank may:

- (i) be obliged to communicate information relating to the Borrower and the Project to any competent institution or body of the European Union in accordance with the relevant mandatory provisions of European Union law or pursuant to the EFSI Regulation; and
- (ii) publish on its website or produce press releases containing information related to the financing provided pursuant to this Contract with support of the EFSI, including the name, address and country of establishment of the Borrower, the purpose of the financing and the type and amount of financial support received under this Contract.

#### **8.05 Information required by an Accountant**

The Borrower shall promptly provide any Accountant with any information and assistance it requires for the purposes of calculating the Market Capitalisation.

### ARTICLE 9

#### **Charges and expenses**

##### **9.01 Taxes, duties and fees**

The Borrower shall pay all Taxes, duties, fees and other impositions of whatsoever nature, including stamp duty and registration fees, arising out of the execution or implementation of this Contract or any related document and in the creation, perfection, registration or enforcement of any security for the Loan to the extent applicable.

The Borrower shall pay all principal, interest, indemnities and other amounts due under this Contract gross without deduction of any national or local impositions whatsoever; provided that, if the Borrower is obliged to make any such deduction, it will gross up the payment to the Bank so that after deduction, the net amount received by the Bank is equivalent to the sum due.

## **9.02 Other charges**

The Borrower shall bear all reasonable and documented charges and expenses, including professional, banking or exchange charges incurred in connection with the preparation, execution, implementation, enforcement and termination of any Finance Document or any related document, any amendment, supplement or waiver in respect of any Finance Document or any related document, and in the amendment, creation, management, enforcement and realisation of any Guarantee and/or any security for the Loan. All legal fees incurred by the Bank in connection with the preparation, execution, implementation of this Finance Contract are capped up to an amount referred in the letter dated 17 June 2016 signed by the Borrower and the Bank.

## **9.03 Increased costs, indemnity and set-off**

- (a) The Borrower shall pay to the Bank any documented sums or expenses incurred or suffered by the Bank as a consequence of the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or compliance with any law or regulation made after the date of signature of this Contract, in accordance with or as a result of which (i) the Bank is obliged to incur additional costs in order to fund or perform its obligations under this Contract, or (ii) any amount owed to the Bank under this Contract or the financial income resulting from the granting of the Credit or the Loan by the Bank to the Borrower is reduced or eliminated.
- (b) Without prejudice to any other rights of the Bank under this Contract or under any applicable law, the Borrower shall indemnify and hold the Bank harmless from and against any loss incurred as a result of any payment or partial discharge that takes place in a manner other than as expressly set out in this Contract.
- (c) The Bank may set off any matured obligation due from the Borrower under this Contract (to the extent beneficially owned by the Bank) against any obligation (whether or not matured) owed by the Bank to the Borrower regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. If either obligation is unliquidated or unascertained, the Bank may set off in an amount estimated by it in good faith to be the amount of that obligation.

## **9.04 Accountant fees**

The Borrower shall, within ten Business Days of demand, pay to any Accountant (or to the Bank for the account of such Accountant) the amount of all costs and expenses (including legal and other fees) incurred by that Accountant in connection with the valuation of the Borrower pursuant to Article 3.05.

## ARTICLE 10

### **Events of Default**

#### **10.01 Right to demand repayment**

The Borrower shall repay all or part of the Loan (as requested by the Bank) forthwith, together with accrued interest (including any Deferred Interest) and all other accrued or outstanding amounts under this Contract, upon written demand being made by the Bank in accordance with the following provisions.

#### 10.01A Immediate demand

The Bank may make such demand immediately:

- (a) if any Obligor does not pay on the due date any amount payable pursuant to any Finance Document at the place and in the currency in which it is expressed to be payable, unless (i) its failure to pay is caused by an administrative or technical error or a Disruption Event and (ii) payment is made within three (3) Business Days of its due date;
- (b) if any information or document given to the Bank by or on behalf of any Obligor or any member of the Group or any representation, warranty or statement made or deemed to be made by any Obligor or any member of the Group in or pursuant to any Finance Document is or proves to have been incorrect, incomplete or misleading in any material respect;
- (c) if, following any default of any Obligor or any other member of the Group in relation to any loan, or any obligation arising out of any financial transaction, other than the Loan,
  - (i) any Obligor or any other member of the Group is required or is capable of being required or will, following expiry of any applicable contractual grace period, be required or be capable of being required to prepay, discharge, close out or terminate ahead of maturity such other loan or obligation; or
  - (ii) any financial commitment for such other loan or obligation is cancelled or suspended;
- (d) if any Obligor or any member of the Group is unable to pay its debts as they fall due, or suspends its debts, or makes or seeks to make a composition with its creditors;
- (e) if any corporate action, legal proceedings or other procedure or step is taken in relation to the suspension of payments, a moratorium of any indebtedness, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) or an order is made or an effective resolution is passed for the winding up of any Obligor or any member of the Group, or if any Obligor or any member of the Group takes steps towards a substantial reduction in its capital, is declared insolvent or ceases or resolves to cease to carry on the whole or any substantial part of its business or activities;
- (f) if an encumbrancer takes possession of, or a receiver, liquidator, administrator, administrative receiver or similar officer is appointed, whether by a court of competent jurisdiction or by any competent administrative authority or by any person, of or over, any part of the business or assets of any Obligor or any member of the Group or any property forming part of the Project;
- (g) if any Obligor or any member of the Group defaults in the performance of any obligation in respect of any other loan granted by the Bank or financial instrument entered into with the Bank;
- (h) if any Obligor or any member of the Group defaults in the performance of any obligation in respect of any other loan made to it from the resources of the Bank or the European Union;
- (i) if any distress, execution, sequestration or other process is levied or enforced upon the property of any Obligor or any property forming part of the Project and is not discharged or stayed within 14 (fourteen) days;

- (j) if a Material Adverse Change occurs, as compared with an Obligor's condition at the date of this Contract; or
- (k) if it is or becomes unlawful for any Obligor to perform any of its obligations under any Finance Document or any Finance Document is not effective in accordance with its terms or is alleged by any Obligor to be ineffective in accordance with its terms.

**10.01B Demand after notice to remedy**

The Bank may also make such demand:

- (a) if the Borrower fails to comply with any obligation under this Contract not being an obligation mentioned in Article 10.01A or a Guarantor fails to comply with any obligation under a Guarantee; or
- (b) if any fact related to any Obligor or the Project stated in the Recitals materially alters and is not materially restored and if the alteration either materially prejudices the interests of the Bank as lender to the Borrower or adversely affects the implementation or operation of the Project,

unless the non-compliance or circumstance giving rise to the non-compliance is capable of remedy and is remedied within a reasonable period of time specified in a notice served by the Bank on any Obligor.

**10.02 Other rights at law**

Article 10.01 shall not restrict any other right of the Bank at law to require prepayment of the Loan.

**10.03 Indemnity**

**10.03A Tranches**

In case of demand under Article 10.01 in respect of any Tranche, the Borrower shall pay to the Bank the amount demanded together with a sum equal to the present value of 0.15% (fifteen basis points) per annum calculated and accruing on the amount of principal due to be prepaid in the same manner as interest would have been calculated and would have accrued, if that amount had remained outstanding according to the original amortisation schedule of that Tranche, until the Maturity Date of that Tranche.

The value shall be calculated at a discount rate equal to the Redeployment Rate applied as of each relevant Payment Date.

**10.03B General**

Amounts due by the Borrower pursuant to this Article 10.03 shall be payable on the date of prepayment specified in the Bank's demand.

**10.04 Non-Waiver**

No failure or delay or single or partial exercise by the Bank in exercising any of its rights or remedies under this Contract shall be construed as a waiver of such right or remedy. The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies provided by law.

## ARTICLE 11

### Law and jurisdiction, miscellaneous

#### **11.01 Governing Law**

This Contract and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of England and Wales.

#### **11.02 Jurisdiction**

- (a) The courts of England and Wales have exclusive jurisdiction to settle any dispute (a "**Dispute**") arising out of or in connection with this Contract (including a dispute regarding the existence, validity or termination of this Contract or the consequences of its nullity) or any non-contractual obligation arising out of or in connection with this Contract.
- (b) The parties agree that the courts of England and Wales are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.
- (c) This Article 11.02 is for the benefit of the Bank only. As a result and notwithstanding Article 11.02(a), it does not prevent the Bank from taking proceedings relating to a dispute (including a dispute relating to the existence, validity or termination hereof or any non-contractual obligation arising out of or in connection with this Contract) in any other courts with jurisdiction. To the extent allowed by law, the Bank may take concurrent proceedings in any number of jurisdictions.

#### **11.03 Agent of Service**

Without prejudice to any other mode of service allowed under any relevant law, the Borrower hereby irrevocably appoints Vistra (UK) Ltd., 3rd Floor 11-12 St James's Square London SW1Y 4LB, United Kingdom as its agent of service for the purposes of accepting service on its behalf of any writ, notice, order, judgement or other legal process. The Borrower agrees that failure by a process agent to notify it of the process will not invalidate the proceedings concerned.

The Bank hereby appoints The Securities Management Trust Limited of 8 Lothbury, London EC2 7HH, United Kingdom to be its agent for the purpose of accepting service of legal process.

#### **11.04 Place of performance**

Unless otherwise specifically agreed by the Bank in writing, the place of performance under this Contract, shall be the seat of the Bank.

#### **11.05 Evidence of sums due**

In any legal action arising out of this Contract the certificate of the Bank as to any amount or rate due to the Bank under this Contract shall, in the absence of manifest error, be prima facie evidence of such amount or rate.

#### **11.06 Third party rights**

A person who is not a party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Contract.

### **11.07 Entire Agreement**

This Contract constitutes the entire agreement between the Bank and the Borrower in relation to the provision of the Credit hereunder, and supersedes any previous agreement, whether express or implied, on the same matter.

### **11.08 Invalidity**

If at any time any term of this Contract is or becomes illegal, invalid or unenforceable in any respect, or this Contract is or becomes ineffective in any respect, under the laws of any jurisdiction, such illegality, invalidity, unenforceability or ineffectiveness shall not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of this Contract or the effectiveness in any other respect of this Contract in that jurisdiction; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of this Contract or the effectiveness of this Contract under the laws of such other jurisdictions.

### **11.09 Amendments**

Any amendment to this Contract shall be made in writing and shall be signed by the parties hereto.

### **11.10 Counterparts**

This Contract may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

## ARTICLE 12

### **Final clauses**

### **12.01 Notices to either party**

The address and electronic mail address (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication to be made or document to be delivered under or in connection with this Contract is:

For the Bank

Attention: TMR  
100 boulevard Konrad Adenauer  
L-2950 Luxembourg  
Email: tmr-tm-esdassistants@eib.org  
Facsimile no: +352 43 79 67397

For Curetis GmbH

Attention: Managing Directors and cc to Corporate Legal  
  
Max-Eyth-Strasse 42  
71088 Holzgerlingen, Germany  
Email: contact@curetis.com  
  
Facsimile no.: +49 7031 49195-19

## 12.02

- (a) Any notice or other communication given under this Contract must be in writing and, unless otherwise stated, may be made by letter, electronic mail and facsimile.
- (b) Notices and other communications for which fixed periods are laid down in this Contract or which themselves fix periods binding on the addressee, may be made by hand delivery, registered letter, facsimile or by electronic mail. Such notices and communications shall be deemed to have been received by the other party:
  - (i) on the date of delivery in relation to a hand-delivered or registered letter;
  - (ii) on receipt of transmission in relation to a facsimile;
  - (iii) in the case of any electronic mail sent by the Borrower to the Bank, only when actually received in readable form and only if it is addressed in such a manner as the Bank shall specify for this purpose; or
  - (iv) in the case of any electronic mail sent by the Bank to the Borrower, when the electronic mail is sent.
- (c) Any notice provided by the Borrower or any Obligor to the Bank by electronic mail shall:
  - (i) mention the contract number ("FI nr") found on the cover page of this Contract in the subject line; and
  - (ii) be in the form of a non-editable electronic image (pdf, tif or other common non editable file format agreed between the parties) of the notice signed by an authorised signatory with individual representation right or by two or more authorised signatories with joint representation right of the Borrower or any Obligor as appropriate, attached to the electronic mail.
- (d) Notices issued by the Borrower pursuant to any provision of this Contract shall, where required by the Bank, be delivered to the Bank together with satisfactory evidence of the authority of the person or persons authorised to sign such notice on behalf of the Borrower and the authenticated specimen signature of such person or persons.
- (e) Without affecting the validity of electronic mail or facsimile notices or communication made in accordance with this Article 12.02, the following notices, communications and documents shall also be sent by registered letter to the relevant party at the latest on the immediately following Business Day:
  - (i) Disbursement Request;
  - (ii) revocation of a Disbursement Request according to Article 1.02C(b); and
  - (iii) any notices and communication in respect of the deferment, cancellation, and suspension of a disbursement of any Tranche, Market Disruption Event, Prepayment Request, Prepayment Notice, Event of Default, any demand for prepayment; and
  - (iv) any other notice, communication or document required by the Bank.
- (f) The parties agree that any above communication (including via electronic mail) is an accepted form of communication and shall constitute admissible evidence in court.

**12.03 Demand after notice to remedy**

The Bank and the Borrower shall promptly notify the other party in writing of any change in their respective communication details.

**12.04 English language**

- (a) Any notice or communication given under or in connection with this Contract must be in English.
- (b) All other documents provided under or in connection with this Contract must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Bank, accompanied by a certified English translation and, in this case, the English translation will prevail.

**12.05 Recitals and Schedules**

The Recitals and following Schedules form part of this Contract:

Schedule A	Project Specification and Reporting
Schedule B	Definition of EURIBOR
Schedule C	Forms for Borrower
Schedule D	Conditions Precedent and Certificates of the Borrower
Schedule E	Existing Security
Schedule F	PPI Examples

**IN WITNESS WHEREOF** the parties hereto have caused this Contract to be executed in four originals in the English language.

At Luxembourg, this 12 December 2016

{\*intentionally blank\*}



FI N° 86508, FI N° 87226, FI N° 92628, and FI N° 82693  
Serapis N° 2016-0480

# Curetis (EGFF)

## Guarantee and Indemnity Agreement

*between*

European Investment Bank

*and*

OpGen, Inc.

Location: Luxembourg City, Luxembourg and Gaithersburg, Maryland, United States of America

on 9 July 2020

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This Guarantee and Indemnity Agreement (this "**Guarantee**") is made as a deed on 9 July 2020 by:

The European Investment Bank having its Head Office at 100, boulevard Konrad Adenauer, L-2950 Luxembourg-Kirchberg, Grand Duchy of Luxembourg, represented by

Garth Grisbrook, Head of Division

and

Imanol Lecue Gurtubay, Legal Counsel

(the **Bank**)

of the first part, and

OpGen, Inc. a company incorporated under the laws of the State of Delaware having its principal executive office at 708 Quince Orchard Road, Gaithersburg Maryland 20878, USA by Oliver Schacht, Ph.D. its President & Chief Executive Officer and Timothy Dec its Chief Financial Officer both of whom are authorised signatories,

(the "**Guarantor**")

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**WHEREAS:**

- (A) By an agreement (hereinafter called the "**Finance Contract**") dated 12 December 2016 and made between the Bank and Curetis GmbH, a company incorporated in Germany, having its registered office at Max-Eyth-Strasse 42, 71088 Holzgerlingen, Germany (the "**Borrower**"), as amended and restated pursuant to: (1) an amendment and restatement agreement (the "**First Amendment and Restatement Agreement**") dated 20 May 2019 (the Finance Contract as amended and restated pursuant to the First Amendment and Restatement Agreement being the "**First Amended and Restated Finance Contract**"); and (2) a Second Amendment and Restatement Agreement (the "**Second Amendment and Restatement Agreement**") dated on or about the date of this agreement and made between, amongst others, the Bank, the Borrower and the Guarantor (the First Amended and Restated Finance Contract as amended by the Second Amendment and Restatement Agreement being the "**Amended and Restated Finance Contract**"), the Bank has agreed to establish in favour of the Borrower a credit in an amount of EUR 30,000,000 (thirty million euros).
- (B) The obligations of the Bank under the Amended and Restated Finance Contract are conditional upon:
- a. Ares Genetics GmbH (a limited liability company incorporated in Austria with its registered seat in Vienna, Austria and its business address at Karl-Farkas-Gasse 18, A-1030 Vienna, Austria and registered with the companies register of the Commercial Court Vienna under registration number FN 468899 h ("**Ares Genetics**") entering into a guarantee and indemnity agreement with the Bank in respect of the Borrower's obligations under the Existing Finance Contract (the "**Ares Genetics Third Guarantee**"); and
  - b. the Guarantor entering into this guarantee and indemnity agreement with the Bank in respect of the Borrower's obligations under the Amended and Restated Finance Contract.
- (C) Execution of this guarantee has been duly authorised by the Guarantor.
- (D) In this Guarantee:
- (a) references to Articles, Recitals and Annexes are, save as explicitly stipulated otherwise, references respectively to articles of, and recitals and annexes to, this Guarantee;
  - (b) unless the context otherwise requires, words denoting the singular include the plural and vice versa;
  - (c) a reference (i) to an amendment or to an agreement being amended includes a supplement, variation, assignment, novation, restatement or re-enactment, and (ii) to an agreement shall be construed as a reference to such agreement as it may be amended, supplemented or restated from time to time;
  - (d) the headings are inserted for convenience of reference only and shall not affect the interpretation of this Guarantee;
  - (e) any reference to "**law**" means any law (including, any common or customary law) and any treaty, constitution, statute, legislation, decree, normative act, rule, regulation, judgment, order, writ, injunction, determination, award or other legislative or administrative measure or judicial or arbitral decision in any jurisdiction which has the force of law or the compliance with which is in accordance with general practice in such jurisdiction;
  - (f) any reference to a provision of law is a reference to that provision as from time to time amended or re-enacted;

- (g) a reference to a "**person**" includes any person, natural or juridical entity, firm, company, corporation, government, state or agency of a state, statutory body, or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing and references to a "person" include its successors in title, permitted transferees and permitted assigns;
- (h) "**including**" and "**include**" shall be deemed to be followed by "without limitation" where not so followed; and
- (i) references to the "**Existing Finance Contract**" are, until such time as the Effective Date has occurred, to the First Amended and Restated Finance Contract and, on and from the Effective Date, to the Amended and Restated Finance Contract.

NOW THIS DEED OF GUARANTEE WITNESSETH as follows:

**ARTICLE 1**  
**Existing Finance Contract and Amended and Restated Finance Contract**

- 1.01** The Guarantor acknowledges notice of the provisions of the Second Amendment and Restatement Agreement, the First Amended and Restated Finance Contract and the Amended and Restated Finance Contract, and confirms its acceptance of the provisions thereof. Unless otherwise defined herein, capitalised terms used herein and defined in the Amended and Restated Finance Contract (whether or not the Effective Date has occurred) shall have the same meaning where used herein. In addition, "**Effective Date**" shall have the meaning given to that term in the Second Amendment and Restatement Agreement.

**ARTICLE 2**  
**Guarantee**

- 2.01** In consideration of the Bank entering into the Second Amendment and Restatement Agreement, the Guarantor hereby irrevocably and unconditionally guarantees to the Bank the due and punctual payment and performance of all present, future and contingent, express or implied debts, obligations and liabilities (including without limitation, principal, interest, interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Guarantor, Ares Genetics, the Borrower or any other guarantor or surety, expense, commission, indemnity or other sum) of the Borrower (whether solely or jointly with one or more persons and whether as principal or as surety or in some other capacity and whether originally owing to that person claiming performance or acquired by that person from someone else) to the Bank under or in connection with the Existing Finance Contract (collectively, the "**Liabilities**", and each, a "**Liability**") and the payment of all Guaranteed Sums in accordance with the Existing Finance Contract. The Guarantor undertakes that, if the Borrower should fail to pay or otherwise discharge any Guaranteed Sum or any Liability to the Bank in accordance with the Existing Finance Contract whether upon the normal due date, upon acceleration or otherwise, the Guarantor shall unconditionally pay the sum in question to the Bank on demand in full and without set-off (including against the Borrower or the Bank) as if the Guarantor were the principal obligor, in the currency specified in the Existing Finance Contract and to the account specified by the Bank (unless such payment is subject to any withholding tax or similar deductions, in which case the Guarantor will pay an additional amount so that the Bank receives the full amount it would have received if no deductions were due). Notwithstanding anything to the contrary in the foregoing, and notwithstanding anything else set forth herein, the Guarantor's liability with respect to the Guaranteed Sum shall not exceed an amount equal to the largest amount that would not render the Guarantor's obligations hereunder subject to avoidance under Section 548 of the US Bankruptcy Code or any equivalent provision of any other comparable law.

For the purposes of this Guarantee, a "**Guaranteed Sum**" means an amount equal to 100% (one hundred percent) of the outstanding principal, interest (including, without limitation, interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Guarantor, Ares Genetics, the Borrower or any other guarantor or surety), expense, commission, indemnity or other sum owed by the Borrower to the Bank then outstanding under the Existing Finance Contract (whether actual or contingent, and references to the Guaranteed Sum include references to any part of it).

The Guarantor further agrees and undertakes to pay interest to the Bank at the rate and on the terms specified in the Existing Finance Contract for payment of overdue sums on all overdue sums demanded under this Guarantee (before and after any judgment and including, without limitation, interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Guarantor, Ares Genetics, the Borrower or other guarantor or surety) from the due date thereof until the date of receipt of such sum by the Bank, provided that if and to the extent that interest is accruing on any Guaranteed Sum under the Existing Finance Contract itself at the rate specified in Article 3.03 (*Interest on overdue sums*) of the Existing Finance Contract then payment of the relevant Guaranteed Sum together with such accrued interest shall satisfy the obligation of the Guarantor hereunder in respect of the relevant Guaranteed Sum and no additional interest shall accrue under this paragraph on such amount.

**2.02** The obligations of the Guarantor hereunder are those of a primary obligor and not merely those of a surety. Neither the obligations of the Guarantor under this Guarantee nor the rights, powers or remedies conferred upon the Bank in this Guarantee or by law shall be impaired, discharged or otherwise affected by reason of:

- (a) any illegality, invalidity, ineffectiveness or unenforceability in or of the terms of any Finance Document or any other security for the Liabilities;
- (b) any disability, incapacity or lack of power, authority or legal personality or change in status or constitution of the Borrower, Ares Genetics, the Bank or any other person;
- (c) any winding-up, dissolution, administration, re-organisation, liquidation, insolvency or other similar procedure in respect of the Borrower, Ares Genetics, the Guarantor or any other person or any change in the status, function, control or ownership of the Borrower, Ares Genetics, the Guarantor or of any other person or the claiming, proving for, accepting or transferring any payment in respect of the Guaranteed Sum in any winding-up, dissolution, administration, re-organisation, liquidation, insolvency or composition of the Borrower, Ares Genetics, the Guarantor or any other person or abstaining from so claiming, proving for, accepting or transferring;
- (d) any time or other indulgence agreed or granted by the Bank or any arrangement entered into or composition accepted by the Bank, varying the rights of the Bank under any Finance Document or any other security arrangement;
- (e) any release of the Borrower, Ares Genetics or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (f) any forbearance or delay on the part of the Bank in asserting any of its rights against the Borrower under under the Existing Finance Contract or any other Finance Document, or against any party to a Guarantee Agreement under the Guarantee Agreement to which that person is a party;
- (g) any other guarantee or Security which the Bank now has or may hereafter acquire with respect to the Borrower's or any other person's obligations under the Existing Finance Contract, any Finance Document, or any related agreement including, but not limited to any Guarantee Agreement;

- (h) any amendment to, or any variation, waiver, assignment, novation, supplement, extension, restatement, replacement or release of (in each case, however fundamental and whether or not more onerous), the Existing Finance Contract, any Guarantee Agreement, any other Finance Document or any other document or security (including, without limitation, any change in the purpose, time, manner or place of payment, any extension of or any increase in any facility or the addition of any new facility under the Existing Finance Contract), the Guaranteed Sums or the Liabilities or any of them or any security (or of any person thereunder) held by the Bank in respect thereof;
- (i) the taking, acceptance, variation, compromise, exchange or renewal of any security or any total or partial failure to take or perfect any security proposed to be taken in respect of any Guaranteed Sums or Liabilities or any total or partial failure to realise the value of, or any surrender, release, discharge, exchange or substitution of, any security held by the Bank in respect of any Guaranteed Sum or Liabilities or any non-presentation or non-observance of any formality or other requirement in respect of any instrument; or
- (j) any other act, event, omission or circumstance, which, but for this Article 2.02, might otherwise discharge, impair or otherwise affect any of the obligations of the Guarantor contained in this Guarantee or any of the rights, powers or remedies conferred upon the Bank by this Guarantee or by law.

This Guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Bank including, but not limited to, each Guarantee Agreement.

The Guarantor shall comply, *mutatis mutandis*, with all covenants set out in the Existing Finance Contract which refer directly or indirectly (including by means of requiring the Borrower to procure that the other Obligors comply with such covenants) to the Guarantor as if such covenants were incorporated into this Guarantee and were expressed to be incumbent upon the Guarantor.

**2.03** As an independent, continuing and primary obligation additional to and separate from those set out in Articles 2.01 and 2.02, and without prejudice to the validity or enforceability of those obligations, the Guarantor unconditionally and irrevocably undertakes (as a primary obligor and not merely as surety) that, if any Guaranteed Sum should not be recoverable in whole or in part from the Guarantor under Article 2.01 for whatsoever reason (including as a result of the Existing Finance Contract or any of the Guaranteed Sums being or becoming void, voidable, unenforceable or ineffective as against the Borrower for any reason whatsoever) and whether or not the reason may have been known to the Bank or any other person at any material time, the Guarantor shall as if the Guarantor were a sole and independent obligor, fully indemnify, compensate and hold harmless the Bank by way of a full indemnity for all costs, losses, damages, expenses, claims or liabilities resulting from: (a) the failure of the Borrower to duly and punctually make payment of any Guaranteed Sum in the amount and currency provided for by or pursuant to the Existing Finance Contract whether upon the normal due date, upon acceleration or otherwise; or (b) any Liability being or becoming void, voidable, unenforceable or ineffective as against the Borrower for any reason whatsoever, whether or not known to the Bank, the amount of such loss being the amount which the Bank would have been entitled to recover from the Borrower but for such Liability being or becoming void, voidable, unenforceable or ineffective as against the Borrower.

- 2.04** This Guarantee is a continuing security and the obligations of the Guarantor under this Guarantee shall constitute and be continuing obligations notwithstanding any settlement of account or other matter or thing whatsoever, and shall endure until all Guaranteed Sums have been fully and finally paid or discharged and shall not be released or discharged by any intermediate payment or settlement of the Guaranteed Sums or of any of them or by any intermediate satisfaction of all or any of the obligations of the Borrower in relation to any of the Liabilities. This Guarantee shall continue in full force and effect until final payment in full of all amounts owing by the Borrower in respect of the Liabilities and total satisfaction of all the Borrower's actual and contingent obligations in relation to the Liabilities. No payment or discharge which may be avoided under any enactment relating to insolvency, bankruptcy, voluntary or involuntary dissolution or winding up of the Borrower, Ares Genetics, the Guarantor or any other person, no payment or discharge made or given which is subsequently avoided and no release, return, cancellation or discharge of this Guarantee given or made or any other agreement reached between the Bank and the Guarantor on the faith of any payment or discharge aforesaid shall constitute discharge of the Guarantor under this Guarantee or prejudice or affect the Bank's right to recover from the Guarantor to the full extent of this Guarantee, and any such discharge, release, return, cancellation or agreement shall be deemed always to have been void. This is a guarantee of payment and not a deficiency guarantee. The originals of this Guarantee which are in the possession of the Bank shall remain the property of the Bank after any release, cancellation or discharge of this Guarantee.
- 2.05** If any discharge, release or arrangement (whether in respect of the obligations of the Borrower or any security for those obligations or any Guarantee Agreement or otherwise) is made by the Bank in whole or in part on the faith of any payment security or other disposition which is avoided or must be restored in an insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this Guarantee will continue or be reinstated as if the discharge, release or arrangement had not occurred.
- 2.06** Any money received, recovered or realised in connection with this Guarantee (including the proceeds of any conversion of currency) may be placed by the Bank in its discretion to the credit of a suspense or impersonal interest bearing account, with a view to preserving the right of the Bank to prove for the whole of the claims against the Borrower or may be applied by the Bank in or towards satisfaction of such of the Guaranteed Sums as the Bank in its absolute discretion may from time to time determine; provided, however, that if any such money, being freely disposable by the Bank, is not applied towards satisfaction of the Guaranteed Sums for which payment of the money was made hereunder, the Guarantor's responsibility in respect of the Guaranteed Sums shall be discharged to the extent of such payment and the interest accrued thereon.
- 2.07** The Guarantor agrees that until all the Guaranteed Sums have been irrevocably fully paid or discharged and so long as the Borrower is under any actual or contingent obligations in respect of the Liabilities, the Guarantor shall:
- (a) not exercise any rights which it may at any time have by reason of performance by it of its obligations under this Guarantee or by reason of any amount being payable, or liability arising, under this Guarantee to:
    - (i) be indemnified by the Borrower, or Ares Genetics or to receive any collateral from the Borrower or Ares Genetics; and/or
    - (ii) claim any contribution from any other guarantor of any of the Liabilities or Guaranteed Sums, including, without limitation Ares Genetics; and/or
    - (iii) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Bank in respect of any of the Liabilities or Guaranteed Sums or of any other security, or any Guarantee Agreement, taken by the Bank pursuant to, or in connection with, any of the Liabilities or Guaranteed Sums; and/or

- (iv) bring any legal or other proceedings for an order requiring the Borrower or Ares Genetics to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity pursuant to this Guarantee; and/or
- (v) exercise any right of set-off against the Borrower or Ares Genetics; and/or
- (vi) claim or prove as a creditor of the Borrower or Ares Genetics in competition with the Bank;
- (b) not seek to enforce any obligation owed to it by the Borrower or Ares Genetics (including rights of set-off) which arises by virtue of the discharge by the Guarantor of its obligations hereunder and if the Guarantor receives any benefit, payment or distribution in relation to or as a result of discharging its obligations hereunder it will promptly pay an equal amount to the Bank;
- (c) pay to the Bank all dividends or distributions in liquidation or otherwise received by it from or for the account of the Borrower or Ares Genetics in respect of any obligation referred to in paragraph (b) above; the Bank shall apply such sums to reduce the outstanding Guaranteed Sums in such sequence as it may decide;
- (d) have no right of subrogation to the rights of the Bank under the Existing Finance Contract, any Guarantee Agreement, any other Finance Document or any related security arrangement;
- (e) comply with the terms of and do all that is necessary to maintain in full force and effect all authorisations, approvals, licences and consents required in or by the laws and regulations of England and Wales and the jurisdiction of incorporation of the Guarantor to enable the Guarantor lawfully to enter into and perform its obligations under this Guarantee and to ensure the legality, validity, enforceability and admissibility in evidence in England and Wales of this Guarantee;
- (f) not take any action which would cause any of the representations made in Article 5 below to be untrue at any time during the continuation of this Guarantee; and
- (g) notify the Bank of the occurrence of any event which results in or may reasonably be expected to result in any of the representations made in Article 5 below being untrue when made or when deemed to be repeated.

**2.08** If the Guarantor receives any benefit, payment or distribution in relation to any of the rights set out in Article 2.07(a)(i) to (vi), the Guarantor shall hold on trust for the Bank that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Bank by the Borrower, Ares Genetics and/or the Guarantor under or in connection with the Existing Finance Contract, this Guarantee and/or any other Finance Document to be repaid in full and shall promptly pay or transfer the same to the Bank as the Bank may direct.

**2.09** The Guarantor acknowledges: (i) that it has entered into this Guarantee on the basis of its own assessment of the Borrower and any security provided, and (ii) that it has not been induced to enter into this Guarantee by any representation made by the Bank. The Bank is not obliged to report to the Guarantor on the financial position of the Borrower, Ares Genetics or of any other guarantor or on any security provided. The Bank shall have no liability to the Guarantor for granting or disbursing the Loan, for cancelling or suspending, or not cancelling or suspending the Credit or for demanding or not demanding prepayment under the Existing Finance Contract (or any other Finance Document) or for performing its obligations, or exercising or not exercising its rights, under the Existing Finance Contract (or any other Finance Document).

- 2.10** The obligations of the Guarantor contained in this Guarantee shall be in addition to, independent of and in no way prejudiced by any other security or any other guarantee, including, without limitation, each Guarantee Agreement, that the Bank holds or may at any time hold in relation to any of the Liabilities or the Guaranteed Sums.
- 2.11** The Bank may set off any matured obligation due from the Guarantor under this Guarantee (to the extent beneficially owned by the Bank) against any obligation (whether or not matured) owed by the Bank to the Guarantor regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. If either obligation is unliquidated or unascertained, the Bank may set off in an amount estimated by it in good faith to be the amount of that obligation.
- 2.12** The Guarantor shall not either in a single transaction or in a series of transactions, whether related or not and whether voluntarily, or involuntarily, dispose of all or any part of the Guarantor's business, undertaking or assets, unless:
- (a) with the prior written consent of the Bank; or
  - (b) such disposal is a Permitted Disposal.
- 2.13** The Guarantor shall comply in all respects with all laws and regulations to which it or the Project is subject.
- 2.14** The Guarantor shall procure that no substantial change is made to the core business of the Guarantor as a whole from that carried on at the date of this Guarantee.
- 2.15** The Guarantor shall not enter into any amalgamation, demerger, merger or corporate reconstruction, unless:
- (a) with the prior written consent of the Bank; or
  - (b) such amalgamation, demerger, merger or corporate reconstruction is a Permitted Merger.
- 2.16** The Guarantor shall not invest in or acquire any entity or a business going concern or an undertaking (whether whole or substantially the whole of the assets or business), or any division or operating unit thereof, or any shares or securities of any entity or a business or undertaking (or in each case, any interest in any of them) (or agree to any of the foregoing), unless:
- (a) with the prior written consent of the Bank; or
  - (b) such acquisition is a Permitted Acquisition.
- 2.17** The Guarantor shall not incur any Indebtedness, unless:
- (a) with the prior written consent of the Bank; or
  - (b) such Indebtedness is Permitted Indebtedness.
- 2.18** The Guarantor shall not issue or allow to remain outstanding any guarantees in respect of any liability or obligation of any person unless:
- (a) with the prior written consent of the Bank; or
  - (b) such guarantees are Permitted Guarantees.

- 2.19** The Guarantor shall not declare or distribute dividends, or return or purchase shares unless:
- (a) with the prior written consent of the Bank; or
  - (b) such payments are Permitted Payments.
- 2.20** The Guarantor shall ensure that it has kept and will continue to keep proper books and records of account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Guarantor, including expenditures in connection with the Project, in accordance with GAAP as in effect from time to time.
- 2.21** The Guarantor shall not (and the Guarantor shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets other than Permitted Security.
- 2.22** For the purposes of Article 2.21, the term Security shall also include any arrangement or transaction on assets or receivables or money (such as the sale, transfer or other disposal of assets on terms whereby they are or may be leased to or re-acquired by the Guarantor or any other member of the Group, the sale, transfer or otherwise dispose of any receivables on recourse terms or any arrangement under which money or the benefit of a bank account or other account may be applied or setoff or any preferential arrangement having a similar effect) in circumstances where the arrangement or transaction is entered into primarily as a method of raising credit or of financing the acquisition of an asset.
- 2.23** The Guarantor shall notify the Bank of any Event of Default under the Existing Finance Contract promptly upon becoming aware of its occurrence.

**ARTICLE 3**  
**Enforcement of Guarantee**

- 3.01** A notice from the Bank as to any default by the Borrower in the payment of any Guaranteed Sum which sets out the basis of the calculation in reasonable detail shall be conclusive against the Guarantor save in the event of a manifest or proven error.
- 3.02** The Guarantor undertakes to pay all sums due hereunder in full, free of set-off or counterclaim.
- 3.03** The Bank shall not be obliged before exercising any of the rights, powers or remedies conferred upon it in respect of the Guarantor by this Guarantee or by law to:
- (a) take any action or obtain judgment in any court against the Borrower or Ares Genetics;
  - (b) make demand of the Borrower or Ares Genetics;
  - (c) make or file any claim or proof in a winding-up or dissolution of the Borrower or Ares Genetics;
  - (d) enforce or seek to enforce any security taken in respect of any of the obligations of the Borrower in respect of the Guaranteed Sums or Liabilities; or
  - (e) have recourse to any other guarantee, including, without limitation, any Guarantee Agreement,

and the Guarantor waives any right it may have of first requiring the Bank (or any trustee or agent on its behalf) to proceed against or enforce or exhaust any other rights or security or claim payment from any person, including, without limitation, Ares Genetics, before claiming from the Guarantor under this Guarantee. This waiver applies irrespective of any law or any provision of the Existing Finance Contract or Finance Document to the contrary.

- 3.04** Where any Guaranteed Sums are due hereunder, the Guarantor may pay to the Bank all outstanding Guaranteed Sums, including sums arising under Article 3.03 (*Interest on overdue sums*) of the Existing Finance Contract in settlement of its obligations hereunder. If the Guarantor makes such payment, the Bank shall, upon the request and at the expense of the Guarantor, use reasonable endeavours to promptly assign to the Guarantor the Bank's rights under the Existing Finance Contract and under any security therefor.

**ARTICLE 4**  
**Information and Site Visits**

**4.01 Information concerning the Guarantor**

**4.01A Financial Statements**

The Guarantor shall deliver to the Bank:

- (a) as soon as they become publically available but in any event within 180 days after the end of each of its financial years, the Group's audited consolidated and unconsolidated annual report, balance sheet, profit and loss account and auditors' report for that financial year;
- (b) as soon as they become publicly available but in any event within 120 days after the end of the Group's relevant accounting periods, the Group's interim consolidated semi-annual or quarterly reports, balance sheet and profit and loss account for the first half-year or each of the first three quarters of each of its financial years; and
- (c) from time to time, such further information on its general financial situation as the Bank may reasonably require or such certificates of compliance with the representations of Article 2 as the Bank may deem necessary.

**4.01B Requirements as to Financial Statements**

- (a) Each set of financial statements delivered by the Guarantor pursuant to Article 4.01A shall be certified by an officer of the Guarantor as giving a true and fair view of its financial condition as at the date as at which those financial statements were drawn up.
- (b) The Guarantor shall procure that each set of financial statements delivered pursuant to Article 4.01A is prepared using US-GAAP.

**4.01C Immediate Information**

The Guarantor shall inform the Bank immediately of any:

- (a) material alteration to its constitutional documents;
- (b) fact which obliges it to prepay any financial indebtedness or any European Union funding;
- (c) intention on its part to grant any security over any of its assets in favour of a third party, other than Permitted Security;
- (d) intention on its part to relinquish ownership of any material component of the Project;

- (e) fact or event that is reasonably likely to prevent the substantial fulfilment of any obligation of the Guarantor under this Guarantee;
- (f) event listed in Article 10.01 (*Right to demand repayment*) of the Existing Finance Contract having occurred or being threatened or anticipated;
- (g) investigation concerning the integrity of the members of the Guarantor's board of directors, or other administrative body or managers;
- (h) litigation, arbitration or administrative proceedings or investigation which is current, threatened or pending and which if adversely determined result in a Material Adverse Change; and
- (i) change in the total cost of the Project as set out in Recitals (2) and (4) of the Amended and Restated Finance Contract (whether or not the Effective Date shall have occurred) and/or any event or decision in relation to Article 6.03 (*Increased cost of Project*) of the Existing Finance Contract having occurred or being threatened or anticipated.

#### **4.02 Visits by the Bank**

The Guarantor shall allow the Bank, and, when either required by the relevant mandatory provisions of European Union law or pursuant to the EFSI Regulation, the competent European Union institutions including the European Court of Auditors, the European Commission, the European Anti-Fraud Office, as well as persons designated by the foregoing to:

- (a) to visit the sites, installations and works comprising the Project and to conduct such checks relating to the Project as the Bank considers necessary;
- (b) to interview representatives of the Guarantor, and not obstruct contacts with any other person involved in or affected by the Project; and
- (c) conduct such on the spot audits and checks as they may wish and to review the Guarantor's books and records in relation to the execution of the Project and to be able to take copies of related documents to the extent permitted by the law.

The Guarantor shall provide the Bank, or ensure that the Bank is provided, with all necessary assistance and information for the purposes described in this Article.

In the case of a genuine allegation, complaint or information with regard to Illegal Activities related to the Loan and/or the Project, the Guarantor shall consult with the Bank in good faith regarding appropriate actions. In particular, if it is proven that a third party committed Illegal Activities in connection with the Loan and/or the Project with the result that the Loan or the EFSI financing were misapplied, the Bank may, without prejudice to the other provisions of this Guarantee, inform the Guarantor if, in its view, the Guarantor should take appropriate recovery measures against such third party. In any such case, the Guarantor shall in good faith consider the Bank's views and keep the Bank informed.

#### **4.03 Disclosure and publication**

The Guarantor acknowledges and agrees that the Bank may:

- (a) be obliged to communicate information relating to the Guarantor and the Project to any competent institution or body of the European Union in accordance with the relevant mandatory provisions of European Union law or pursuant to the EFSI Regulation; and

- (b) publish on its website or produce press releases containing information related to the financing provided pursuant to the Finance Contract with support of the EFSI, including the name, address and country of establishment of the Guarantor, the purpose of the financing and the type and amount of financial support received under the Existing Finance Contract.

**ARTICLE 5**  
**Representations and Warranties**

**5.01** The Guarantor represents and warrants to the Bank that:

- (a) it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation and it has the power to carry on its business as it is now being conducted and to own its property and other assets;
- (b) it has the power to execute, deliver and perform its obligations under this Guarantee and all necessary corporate, shareholder and other action has been taken to authorise the execution, delivery and performance of the same by it;
- (c) this Guarantee constitutes its legally valid, binding and enforceable obligations;
- (d) the execution and delivery of, the performance of its obligations under and compliance with the provisions of this Guarantee do not and will not:
- (i) contravene or conflict with any applicable law, statute, rule or regulation, or any judgment, decree or permit to which it is subject;
  - (ii) contravene or conflict with any agreement or other instrument binding upon it which might reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Guarantee; or
  - (iii) contravene or conflict with any provision of its constitutional documents;
- (e) the choice of the laws of England and Wales as the governing law of this Guarantee will be recognised and enforced in its jurisdiction of incorporation and any judgment obtained in England and Wales in relation to this Guarantee will be recognised and enforced in its jurisdiction of incorporation;
- (f) under the law of its jurisdiction of incorporation as at the date of this Guarantee it is not necessary that any stamp duty, registration or other tax be paid on or in relation to this Guarantee or that this Guarantee be filed, recorded, registered or enrolled with any court or other authority in that jurisdiction;
- (g) it is not unable to pay its debts as they fall due, including within the meaning of the Insolvency Act 1986, and the entering into of this Guarantee and the performance of its obligations hereunder do not and will not cause it to be or to be deemed to be unable to pay its debts as they fall due;

- (h) it has not taken any corporate action nor have any other steps been taken in relation to the suspension of payments, a moratorium of any indebtedness, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) or legal proceedings been started or threatened against it for its winding-up, dissolution, administration or reorganisation or any analogous procedure or step or for the appointment of a liquidator, receiver, administrator, administrative receiver, trustee, compulsory manager or similar officer of it or of any or all of its assets or revenues;
- (i) its most recent consolidated audited accounts have been prepared on a basis consistent with previous years and in accordance with US-GAAP consistently applied and have been approved by its auditors as representing a true and fair view of the consolidated financial position and results of its operations for that financial year and accurately disclose or reserve against all liabilities (actual or contingent) at the time when such financial statements were produced and no material adverse change in the business or the consolidated financial condition of the Guarantor has occurred since the date of such accounts;
- (j) its payment obligations under this Guarantee rank not less than *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations under any of its debt instruments except for obligations mandatorily preferred by law applying to companies generally;
- (k) any information provided to the Bank by it or on its behalf for the purposes of and prior to the date of this Guarantee was, as at its date or the date at which it speaks, accurate in all material respects and not misleading in any material respect;
- (l) there has been no Material Adverse Change since the date of this Guarantee;
- (m) no event or circumstance which constitutes or would with the passage of time or giving of notice under the Finance Contract an Event of Default has occurred and is continuing unremedied or unwaived;
- (n) no litigation, arbitration, administrative proceedings or investigation is current or to its knowledge (having made due and careful inquiries) is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined is reasonably likely to result in a Material Adverse Change, nor is there subsisting against it or any of its Subsidiaries any unsatisfied judgment or award;
- (o) it has obtained all necessary Authorisations in connection with the Existing Finance Contract in order to lawfully comply with its obligations hereunder, and the Project and all such Authorisations are in full force and effect and admissible in evidence;
- (p) the Group is the sole legal and beneficial owner and has good title to the assets in respect of the Project, and at the date of this Guarantee, no Security exists over its assets or over those of any other Obligor other than the Permitted Security;
- (q) it is in compliance with Article 6.05(e) of the Existing Finance Contract and to the best of its knowledge and belief (having made due and careful enquiry) no Environmental Claim has been commenced or is threatened against it not previously disclosed to the Bank;
- (r) the Group structure chart is true, complete and accurate in all material respects and represents the complete corporate structure of the Group as at the date of this Guarantee;
- (s) the Guarantor is not required to make any deduction for or on account of any Tax from any payment it may make under this Guarantee;
- (t) to the best of its knowledge, no funds invested in the Project by the Guarantor or by its controlling entities or by another member of the Group are of illicit origin, including products of money laundering or linked to the financing of terrorism. The Guarantor shall promptly inform the Bank if at any time it becomes aware of the illicit origin of any such funds;
- (u) all Tax returns required to have been filed by it or on its behalf under any applicable law have been filed when due and contain the information required by applicable law to be contained in them;
- (v) it has paid when due all Taxes payable by it under applicable law except to the extent that it is contesting payment in good faith and by appropriate means;

- (w) with respect to Taxes which have not fallen due or which it is contesting, it is maintaining reserves adequate for their payment and in accordance, where applicable, with US-GAAP;
  - (x) it is in compliance with all applicable United States of America (and each State thereof) and European Union legislation, including any applicable anti-corruption legislation;
  - (y) it is in compliance with all undertakings under Article 2; and
  - (z) it has acquainted itself with this Guarantee and determined that it is in its best commercial interest and consistent with its purpose of operations to enter into this Guarantee.
- 5.02** The representations and warranties set out in Article 5.01 above shall survive the execution of this Guarantee and are, with the exception of the representations set out in paragraph (f), (l) and (r) above, deemed repeated on each Scheduled Disbursement Date, on the date on which any Disbursement Request is submitted under the Existing Finance Contract on each Payment Date, by reference to the facts and circumstances then prevailing.
- 5.03** The Guarantor acknowledges that it has made the representations and warranties contained in this Article 5 with the intention of inducing the Bank to enter into the Second Amendment and Restatement Agreement and that the Bank has entered into the Second Amendment and Restatement Agreement and has accepted this Guarantee as security for the Existing Finance Contract on the basis of, and in full reliance on, each of such representations and warranties. The Guarantor warrants that it has no knowledge of any additional facts or matters the omission of which makes any of such representations and warranties misleading or which would or might reasonably be expected to affect the judgment of a prospective lender regarding lending to the Borrower or accepting this Guarantee as security for the Existing Finance Contract.
- 5.04** The Guarantor or a Subsidiary of the Guarantor shall in aggregate maintain not less than 100% (one hundred per cent) of the share capital, directly or indirectly, of the Borrower, unless prior written consent of the Bank is received by the Guarantor.

**ARTICLE 6**  
**Taxes, Charges and Expenses**

- 6.01** The Guarantor shall bear its own costs of execution and implementation of this Guarantee and, without prejudice to the terms of Article 2, the Guarantor shall hold harmless and indemnify the Bank against all:
- (a) taxes and fiscal charges, legal costs and other expenses incurred by the Bank in the negotiation, execution, amendment, implementation or enforcement of this Guarantee; and
  - (b) documented losses, charges and expenses to which the Bank may be subject or which it may properly incur under or in connection with the recovery from any person of sums expressed to be due under or pursuant to the Amended and Restated Finance Contract (whether or not the Effective Date has occurred),
- in each case together with interest from the date such losses, charges, costs and/or expenses were incurred to the date of payment at such rates as the Bank may reasonably determine.
- 6.02** Furthermore the Guarantor shall make payments hereunder without withholding or deduction on account of tax or fiscal charges, provided that, if the Guarantor is obliged by law to make any such withholding or deduction, the Guarantor shall gross up the payment to the Bank so that the net sum received by the Bank is equal to the sum the Bank would have received had such withholding or deduction not been applicable.

**ARTICLE 7**  
**Law and Jurisdiction**

**7.01 Law**

This Guarantee, its formation, its construction, its termination and its validity and any non-contractual obligations arising out of or in connection with this Guarantee shall be governed by and construed in all respects in accordance with the laws of England and Wales.

**7.02 Jurisdiction**

- (a) The courts of England and Wales have exclusive jurisdiction to settle any dispute (a "**Dispute**") arising out of or in connection with this Guarantee (including a dispute regarding the existence, validity or termination of this Guarantee or the consequences of its nullity) or any non-contractual obligation arising out of or in connection with this Guarantee.
- (b) The parties agree that the courts of England and Wales are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.
- (c) This Article 7.02 is for the benefit of the Bank only. As a result and notwithstanding Article 7.02(a), it does not prevent the Bank from taking proceedings relating to a Dispute (including a dispute relating to the existence, validity or termination hereof or any non-contractual obligation arising out of or in connection with this Guarantee) in any other courts with jurisdiction. To the extent allowed by law, the Bank may take concurrent proceedings in any number of jurisdictions.

**7.03 Service of Process**

Without prejudice to any other mode of service allowed under any relevant law, the Guarantor hereby irrevocably appoints Vistra (UK) Ltd., 3<sup>rd</sup> Floor 11-12 St James's Square London, London, SW1Y 4LB, United Kingdom as its agent of service for the purposes of accepting service on its behalf of any writ, notice, order, judgment or other legal process. The Guarantor agrees that failure by a process agent to notify it of the process will not invalidate the proceedings concerned.

**7.04 Invalidity**

If any provision hereof is invalid, such invalidity shall not prejudice any other provision hereof.

**7.05 No assignment**

The Guarantor shall not assign all or any part of its rights or benefits under this Guarantee.

**ARTICLE 8**  
**Final Clauses**

**8.01 Currency Conversion**

The Bank may convert any money received or realised by it under or pursuant to this Guarantee which is not in the currency in which such sums are due and payable from that currency into the currency in which such sum is due at the rate published by the European Central Bank in Frankfurt, Germany, for the relevant conversion, available on or shortly before conversion at any time and from time to time as the Bank shall decide, or, if such rate is not available, at the then prevailing commercial rate of exchange, as determined by the Bank.



**8.07 Third Party Rights**

A person who is not a party to this Guarantee has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Guarantee.

**8.08 Counterparts**

This Guarantee may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Guarantee by e-mail attachment or telecopy shall be an effective mode of delivery.

**8.09 Recitals and Annex**

The Recitals form part of this Guarantee.

IN WITNESS WHEREOF this Guarantee has been signed on behalf of the Bank and executed as a deed by the Guarantor and is intended to be and is hereby delivered as a deed on the date first specified above. The parties hereto have caused this Guarantee to be executed in 2 (two) originals in the English language.

SIGNED by

**EUROPEAN INVESTMENT BANK**

By: /s/ Garth Grisbrook

Name: Garth Grisbrook

Title: Head of Division

By: /s/ Imanol Lecue Gurtubay

Name: Imanol Lecue Gurtubay

Title: Legal Counsel

**THE GUARANTOR**

EXECUTED as a DEED by

By: /s/ Oliver Schacht, Ph.D.

Name: Oliver Schacht, Ph.D.

Title: President & CEO

By: /s/ Timothy C. Dec

Name: Timothy C. Dec

Title: CFO



FI N° 86508, FI N° 87226, FI N° 92628, and FI N° 82693  
Serapis N° 2016-0480

# Curetis (EGFF)

## Guarantee and Indemnity Agreement

*between*

European Investment Bank

*and*

Ares Genetics GmbH

Location: Luxembourg City, Luxembourg and Vienna, Austria

Date: 9 July 2020

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This Guarantee and Indemnity Agreement (this "**Guarantee**") is made as a deed on 9 July 2020 by:

The European Investment Bank having its Head Office at 100, boulevard Konrad Adenauer, L-2950 Luxembourg-Kirchberg, Grand Duchy of Luxembourg, represented by Garth Grisbook, and

Imanol Lecue Gurtubay,

(the "**Bank**")

of the first part, and

Ares Genetics GmbH, a limited liability company incorporated in Austria with its registered seat in Vienna, Austria and its business address at Karl-Farkas-Gasse 18, A-1030 Vienna, Austria and registered with the companies register of the Commercial Court Vienna under registration number FN 468899 h, represented by Dr. Achim Plum and Dr. Andreas Posch,

(the "**Guarantor**")

of the second part.

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**WHEREAS:**

- (A) By an agreement (hereinafter called the "**Finance Contract**") dated 12 December 2016 and made between the Bank and Curetis GmbH, a company incorporated in Germany, having its registered office at Max-Eyth-Strasse 42, 71088 Holzgerlingen, Germany (the "**Borrower**"), as amended and restated pursuant to: (1) an amendment and restatement agreement (the "**First Amendment and Restatement Agreement**") dated 20 May 2019 (the Finance Contract as amended and restated pursuant to the First Amendment and Restatement Agreement being the "**First Amended and Restated Finance Contract**"); and (2) a Second Amendment and Restatement Agreement (the "**Second Amendment and Restatement Agreement**") dated on or about the date of this agreement and made between, amongst others, the Bank, the Borrower and the Guarantor (the First Amended and Restated Finance Contract as amended by the Second Amendment and Restatement Agreement being the "**Amended and Restated Finance Contract**"), the Bank has agreed to establish in favour of the Borrower a credit in an amount of EUR 30,000,000 (thirty million euros).
- (B) The obligations of the Bank under the Amended and Restated Finance Contract are conditional upon:
- a. OpGen Inc (a company incorporated under the laws of the State of Delaware having its principal executive office at 708 Quince Orchard Road, Gaithersburg Maryland 20878, USA ("**OpGen**") entering into a guarantee and indemnity agreement with the Bank in respect of the Borrower's obligations under the Amended and Restated Finance Contract (the "**OpGen Guarantee**"); and
- b. the Guarantor entering into this guarantee and indemnity agreement with the Bank in respect of the Borrower's obligations under the Existing Finance Contract.
- (C) Execution of this guarantee has been duly authorised by the Guarantor.
- (D) In this Guarantee:
- (a) references to Articles, Recitals and Annexes are, save as explicitly stipulated otherwise, references respectively to articles of, and recitals and annexes to, this Guarantee;
- (b) unless the context otherwise requires, words denoting the singular include the plural and vice versa;
- (c) a reference (i) to an amendment or to an agreement being amended includes a supplement, variation, assignment, novation, restatement or re-enactment, and (ii) to an agreement shall be construed as a reference to such agreement as it may be amended, supplemented or restated from time to time;
- (d) the headings are inserted for convenience of reference only and shall not affect the interpretation of this Guarantee;
- (e) any reference to "law" means any law (including, any common or customary law) and any treaty, constitution, statute, legislation, decree, normative act, rule, regulation, judgment, order, writ, injunction, determination, award or other legislative or administrative measure or judicial or arbitral decision in any jurisdiction which has the force of law or the compliance with which is in accordance with general practice in such jurisdiction;
- (f) any reference to a provision of law is a reference to that provision as from time to time amended or re-enacted;

- (g) a reference to a "person" includes any person, natural or juridical entity, firm, company, corporation, government, state or agency of a state, statutory body, or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing and references to a "person" include its successors in title, permitted transferees and permitted assigns;
- (h) "including" and "include" shall be deemed to be followed by "without limitation" where not so followed; and
- (g) references to the "Existing Finance Contract" are, until such time as the Effective Date has occurred, to the First Amended and Restated Finance Contract and, on and from the Effective Date, to the Amended and Restated Finance Contract.

NOW THIS DEED OF GUARANTEE WITNESSETH as follows:

#### **ARTICLE 1**

##### **Existing Finance Contract and Amended and Restated Finance Contract**

- 1.01** The Guarantor acknowledges notice of the provisions of the Second Amendment and Restatement Agreement, the First Amended and Restated Finance Contract and the Amended and Restated Finance Contract, and confirms its acceptance of the provisions thereof. Unless otherwise defined herein, capitalised terms used herein and defined in the Amended and Restated Finance Contract (whether or not the Effective Date has occurred) shall have the same meaning where used herein. In addition, "**Effective Date**" shall have the meaning given to that term in the Second Amendment and Restatement Agreement.

#### **ARTICLE 2**

##### **Guarantee**

- 2.01** In consideration of the Bank entering into the Second Amendment and Restatement Agreement the Guarantor hereby irrevocably and unconditionally (*unbedingt, unwiderruflich*) guarantees to the Bank the due and punctual payment and performance of all present, future and contingent, express or implied debts, obligations and liabilities (including, without limitation, principal, interests, interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Guarantor, OpGen, the Borrower or any other guarantor or surety), expense, commission, indemnity or other sum) of the Borrower (whether solely or jointly with one or more persons and whether as principal or as surety or in some other capacity and whether originally owing to that person claiming performance or acquired by that person from someone else) to the Bank under or in connection with the Existing Finance Contract (collectively, the "**Liabilities**", and each, a "**Liability**") and the payment of all Guaranteed Sums in accordance with the Existing Finance Contract upon first demand and without raising any defenses or objections, set-off or counterclaim and without verification of the legal ground (*auf erste Aufforderung und unter Verzicht auf alle Einwendungen oder Einreden, ohne Aufrechnung oder die Geltendmachung von Gegenforderungen und ohne Prüfung des Rechtsgrunds*). The Guarantor undertakes that, if the Borrower should fail to pay or otherwise discharge any Guaranteed Sum or any Liability to the Bank in accordance with the Existing Finance Contract whether upon the normal due date, upon acceleration or otherwise, the Guarantor shall unconditionally pay the sum in question to the Bank on demand in full and without set-off (including against the Borrower or the Bank) as if the Guarantor were the principal obligor, in the currency specified in the Existing Finance Contract and to the account specified in the demand (unless such payment is subject to any withholding tax or similar deductions, in which case the Guarantor will pay an additional amount so that the Bank receives the full amount it would have received if no deductions were due).

For the purposes of this Guarantee, a "**Guaranteed Sum**" means an amount equal to 100% (one hundred per cent) of the outstanding principal, interest (including, without limitation, interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Guarantor, OpGen, the Borrower or any other guarantor or surety), expense, commission, indemnity, claim for damages or other sum owed by the Borrower to the Bank then outstanding under the Existing Finance Contract (whether actual or contingent, and references to the Guaranteed Sum include references to any part of it).

The Guarantor further agrees and undertakes to pay interest to the Bank at the rate and on the terms specified in the Existing Finance Contract for payment of overdue sums on all sums demanded under this Guarantee (before and after any judgment and including, without limitation, interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Guarantor, OpGen, the Borrower or other guarantor or surety) from the due date thereof until the date of receipt of such sum by the Bank, provided that if and to the extent that interest is accruing on any Guaranteed Sum under the Existing Finance Contract itself at the rate specified in Article 3.03 (*Interest on overdue sums*) of the Existing Finance Contract then payment of the relevant Guaranteed Sum together with such accrued interest shall satisfy the obligation of the Guarantor hereunder in respect of the relevant Guaranteed Sum and no additional interest shall accrue under this paragraph on such amount.

**2.02** The obligations of the Guarantor hereunder are those of a primary obligor and not merely those of a surety. Neither the obligations of the Guarantor under this Guarantee nor the rights, powers or remedies conferred upon the Bank in this Guarantee or by law shall be impaired, discharged or otherwise affected by reason of:

- a. any illegality, invalidity, ineffectiveness or unenforceability in or of the terms of any Finance Document or any other security for the Liabilities;
- b. any disability, incapacity or lack of power, authority or legal personality or change in status or constitution of the Borrower, OpGen, the Bank or any other person;
- c. any winding-up, dissolution, administration, re-organisation, liquidation, insolvency or other similar procedure in respect of the Borrower, OpGen, the Guarantor or any other person or any change in the status, function, control or ownership of the Borrower, OpGen, the Guarantor or of any other person or the claiming, proving for, accepting or transferring any payment in respect of the Guaranteed Sum in any winding-up, dissolution, administration, re-organisation, liquidation, insolvency or composition of the Borrower, OpGen, the Guarantor or any other person or abstaining from so claiming, proving for, accepting or transferring;
- d. any time or other indulgence agreed or granted by the Bank or any arrangement entered into or composition accepted by the Bank, varying the rights of the Bank under any Finance Document or any other security arrangement;
- e. any release of the Borrower, OpGen or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- f. any forbearance or delay on the part of the Bank in asserting any of its rights against the Borrower under under the Existing Finance Contract or any other Finance Document, or against any party to a Guarantee Agreement under the Guarantee Agreement to which that person is a party;
- g. any other guarantee or Security which the Bank now has or may hereafter acquire with respect to the Borrower's or any other person's obligations under the Existing Finance Contract, any Finance Document, or any related agreement including, but not limited to any Guarantee Agreement;
- h. any amendment to, or any variation, waiver, assignment, novation, supplement, extension, restatement, replacement or release of (in each case, however fundamental and whether or not more onerous), the Existing Finance Contract, any Guarantee Agreement, any other Finance Document or any other document or security (including, without limitation, any change in the purpose, time, manner or place of payment, any extension of or any increase in any facility or the addition of any new facility under the Existing Finance Contract), the Guaranteed Sums or the Liabilities or any of them or any security (or of any person thereunder) held by the Bank in respect thereof;

- i. the taking, acceptance, variation, compromise, exchange or renewal of any security or any total or partial failure to take or perfect any security proposed to be taken in respect of any Guaranteed Sums or Liabilities or any total or partial failure to realise the value of, or any surrender, release, discharge, exchange or substitution of, any security held by the Bank in respect of any Guaranteed Sum or Liabilities or any non-presentation or non-observance of any formality or other requirement in respect of any instrument; or
- j. any other act, event, omission or circumstance, which, but for this Article 2.02, might otherwise discharge, impair or otherwise affect any of the obligations of the Guarantor contained in this Guarantee or any of the rights, powers or remedies conferred upon the Bank by this Guarantee or by law.

This Guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Bank including, but not limited to, each Guarantee Agreement.

The Guarantor shall comply, *mutatis mutandis*, with all covenants set out in the Existing Finance Contract which refer directly or indirectly (including by means of requiring the Borrower to procure that the other Obligors comply with such covenants) to the Guarantor as if such covenants were incorporated into this Guarantee and were expressed to be incumbent upon the Guarantor.

**2.03** As an independent, continuing and primary obligation additional to and separate from those set out in Articles 2.01 and 2.02, and without prejudice to the validity or enforceability of those obligations, the Guarantor unconditionally and irrevocably undertakes (as a primary obligor and not merely as surety) that, if any Guaranteed Sum should not be recoverable in whole or in part from the Guarantor under Article 2.01 for whatsoever reason (including as a result of the Existing Finance Contract or any of the Guaranteed Sums being or becoming void, voidable, unenforceable or ineffective as against the Borrower for any reason whatsoever) and whether or not the reason may have been known to the Bank or any other person at any material time, the Guarantor shall as if the Guarantor were a sole and independent obligor, fully indemnify, compensate and hold harmless the Bank by way of a full indemnity for all costs, losses, damages, expenses, claims or liabilities resulting from: (a) the failure of the Borrower to duly and punctually make payment of any Guaranteed Sum in the amount and currency provided for by or pursuant to the Existing Finance Contract whether upon the normal due date, upon acceleration or otherwise; or (b) any Liability being or becoming void, voidable, unenforceable or ineffective as against the Borrower for any reason whatsoever, whether or not known to the Bank, the amount of such loss being the amount which the Bank would have been entitled to recover from the Borrower but for such Liability being or becoming void, voidable, unenforceable or ineffective as against the Borrower.

**2.04** This Guarantee is a continuing security and the obligations of the Guarantor under this Guarantee shall constitute and be continuing obligations notwithstanding any settlement of account or other matter or thing whatsoever, and shall endure until all Guaranteed Sums have been fully and finally paid or discharged and shall not be released or discharged by any intermediate payment or settlement of the Guaranteed Sums or of any of them or by any intermediate satisfaction of all or any of the obligations of the Borrower in relation to any of the Liabilities. This Guarantee shall continue in full force and effect until final payment in full of all amounts owing by the Borrower in respect of the Liabilities and total satisfaction of all the Borrower's actual and contingent obligations in relation to the Liabilities. No payment or discharge which may be avoided under any enactment relating to insolvency, bankruptcy, voluntary or involuntary dissolution or winding up of the Borrower, OpGen, the Guarantor or any other person, no payment or discharge made or given which is subsequently avoided and no release, return, cancellation or discharge of this Guarantee given or made or any other agreement reached between the Bank and the Guarantor on the faith of any payment or discharge aforesaid shall constitute discharge of the Guarantor under this Guarantee or prejudice or affect the Bank's right to recover from the Guarantor to the full extent of this Guarantee, and any such discharge, release, return, cancellation or agreement shall be deemed always to have been void. This is a guarantee of payment and not a deficiency guarantee. The originals of this Guarantee which are in the possession of the Bank shall remain the property of the Bank after any release, cancellation or discharge of this Guarantee.

- 2.05** If any discharge, release or arrangement (whether in respect of the obligations of the Borrower or any security for those obligations or any Guarantee Agreement or otherwise) is made by the Bank in whole or in part on the faith of any payment security or other disposition which is avoided or must be restored in an insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this Guarantee will continue or be reinstated as if the discharge, release or arrangement had not occurred.
- 2.06** Any money received, recovered or realised in connection with this Guarantee (including the proceeds of any conversion of currency) may be placed by the Bank in its discretion to the credit of a suspense or impersonal interest bearing account, with a view to preserving the right of the Bank to prove for the whole of the claims against the Borrower or may be applied by the Bank in or towards satisfaction of such of the Guaranteed Sums as the Bank in its absolute discretion may from time to time determine; provided, however, that if any such money, being freely disposable by the Bank, is not applied towards satisfaction of the Guaranteed Sums for which payment of the money was made hereunder, the Guarantor's responsibility in respect of the Guaranteed Sums shall be discharged to the extent of such payment and the interest accrued thereon.
- 2.07** The Guarantor agrees that until all the Guaranteed Sums have been irrevocably fully paid or discharged and so long as the Borrower is under any actual or contingent obligations in respect of the Liabilities, the Guarantor shall:
- (a) not exercise any rights which it may at any time have by reason of performance by it of its obligations under this Guarantee or by reason of any amount being payable, or liability arising, under this Guarantee to:
- (i) be indemnified by the Borrower or OpGen or to receive any collateral from the Borrower or OpGen; and/or
  - (ii) claim any contribution from any other guarantor of any of the Liabilities or Guaranteed Sums including without limitations OpGen; and/or
  - (iii) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Bank in respect of any of the Liabilities or Guaranteed Sums or of any other security or any Guarantee Agreement, taken by the Bank pursuant to, or in connection with, any of the Liabilities or Guaranteed Sums; and/or
  - (iv) bring any legal or other proceedings for an order requiring the Borrower or OpGen to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity pursuant to this Guarantee; and/or
  - (v) exercise any right of set-off against the Borrower or OpGen; and/or
  - (vi) claim or prove as a creditor of the Borrower or OpGen in competition with the Bank;
- (b) not seek to enforce any obligation owed to it by the Borrower or OpGen (including rights of set-off) which arises by virtue of the discharge by the Guarantor of its obligations hereunder and if the Guarantor receives any benefit, payment or distribution in relation to or as a result of discharging its obligations hereunder it will promptly pay an equal amount to the Bank;
- (c) pay to the Bank all dividends or distributions in liquidation or otherwise received by it from or for the account of the Borrower or OpGen in respect of any obligation referred to in paragraph (b) above; the Bank shall apply such sums to reduce the outstanding Guaranteed Sums in such sequence as it may decide;

(d) have no right of subrogation to the rights of the Bank under the Existing Finance Contract, any Guarantee Agreement, any other Finance Document or any related security arrangement;

(e) comply with the terms of and do all that is necessary to maintain in full force and effect all authorisations, approvals, licences and consents required in or by the laws and regulations of England and Wales and the jurisdiction of incorporation of the Guarantor to enable the Guarantor lawfully to enter into and perform its obligations under this Guarantee and to ensure the legality, validity, enforceability and admissibility in evidence in England and Wales of this Guarantee;

(f) not take any action which would cause any of the representations made in Article 6 below to be untrue at any time during the continuation of this Guarantee; and

(g) notify the Bank of the occurrence of any event which results in or may reasonably be expected to result in any of the representations made in Article 6 below being untrue when made or when deemed to be repeated.

**2.08** If the Guarantor receives any benefit, payment or distribution in relation to any of the rights set out in Article 2.07(a)(i) to (vi), the Guarantor shall hold on trust for the Bank that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Bank by the Borrower, OpGen and/or the Guarantor under or in connection with the Existing Finance Contract, any Guarantee Agreement, this Guarantee, and/or any other Finance Document to be repaid in full and shall promptly pay or transfer the same to the Bank as the Bank may direct.

**2.09** The Guarantor acknowledges: (i) that it has entered into this Guarantee on the basis of its own assessment of the Borrower and any security provided, and (ii) that it has not been induced to enter into this Guarantee by any representation made by the Bank. The Bank is not obliged to report to the Guarantor on the financial position of the Borrower, OpGen or of any other guarantor or on any security provided. The Bank shall have no liability to the Guarantor for granting or disbursing the Loan, for cancelling or suspending, or not cancelling or suspending the Credit or for demanding or not demanding prepayment under the Existing Finance Contract (or any other Finance Document) or for performing its obligations, or exercising or not exercising its rights, under the Existing Finance Contract (or any other Finance Document).

**2.10** The obligations of the Guarantor contained in this Guarantee shall be in addition to, independent of and in no way prejudiced by any other security or any other guarantee including, without limitation, each Guarantee Agreement, that the Bank holds or may at any time hold in relation to any of the Liabilities or the Guaranteed Sums.

**2.11** The Bank may set off any matured obligation due from the Guarantor under this Guarantee (to the extent beneficially owned by the Bank) against any obligation (whether or not matured) owed by the Bank to the Guarantor regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. If either obligation is unliquidated or unascertained, the Bank may set off in an amount estimated by it in good faith to be the amount of that obligation.

**2.12** For the avoidance of any doubt, this Guarantee is meant to be and shall be interpreted as an "abstract guarantee" (*abstrakter Garantievertrag*) and the obligations of the Guarantor hereunder shall be obligations of such Guarantor as principal debtors and not as sureties (*Bürgschaft*) and not as co-debtors as a borrower (*Mitschuldner*).

- 2.13** Notwithstanding any provision in this Guarantee or any other Finance Document, the obligations (*Verpflichtungen*) and liabilities (*Haftungen*) of the Guarantor under this Guarantee or any other Finance Document shall be at all times limited so that at no time the Guarantor shall assume any liability (*Haftung*) or obligation (*Verpflichtung*) to pay or settle any amount under this Guarantee or any other Finance Document to the extent that such liability (*Haftung*) or obligation (*Verpflichtung*) would violate mandatory Austrian capital maintenance rules (*Kapitalerhaltungsvorschriften*) pursuant to Austrian corporate law, in particular section 82 et seq. of the Austrian Act on Limited Liability Companies (*Gesetz über Gesellschaften mit beschränkter Haftung - GmbHG*) and/or sections 52 and 65 et seq. of the Austrian Stock Corporation Act (*Aktiengesetz - AktG*) (for the purpose of this clause 2, the "**Austrian Capital Maintenance Rules**"). Should any obligation (*Verpflichtung*) or liability (*Haftung*) of the Guarantor under this Guarantee or any other Finance Document violate or contradict Austrian Capital Maintenance Rules and therefore be held invalid or unenforceable, or in case the assumption or enforcement of such obligation (*Verpflichtung*) or liability (*Haftung*) exposes the managing directors of the Guarantor to personal liability or criminal responsibility, such obligation (*Verpflichtung*) or liability (*Haftung*) shall be reduced to an obligation (*Verpflichtung*) or liability (*Haftung*) of a similar nature which is in compliance with Austrian Capital Maintenance Rules. By way of example, should it be held that the guarantee and indemnity pursuant to this Guarantee or any other Finance Document contradicts Austrian Capital Maintenance Rules in relation to any amount of the guaranteed claims (*garantierte Forderungen*), the obligations (*Verpflichtungen*) and liabilities (*Haftungen*) under the guarantee and indemnity shall be reduced to a maximum amount which is permitted pursuant to Austrian Capital Maintenance Rules without breaching Austrian Capital Maintenance Rules. The Parties acknowledge that the limitations set out in this Article 2.13 may reduce any payment permissible at a given time by the Guarantor under this Guarantee or any other Finance Document to a small amount or even zero.
- 2.14** The Guarantor shall not either in a single transaction or in a series of transactions, whether related or not and whether voluntarily, or involuntarily, dispose of all or any part of the Guarantor's business, undertaking or assets, unless:
- (a) with the prior written consent of the Bank; or
  - (b) such disposal is a Permitted Disposal.
- 2.15** The Guarantor shall comply in all respects with all laws and regulations to which it or the Project is subject.
- 2.16** The Guarantor shall procure that no substantial change is made to the core business of the Guarantor as a whole from that carried on at the date of this Guarantee.
- 2.15** The Guarantor shall not enter into any amalgamation, demerger, merger or corporate reconstruction, unless:
- (a) with the prior written consent of the Bank; or
  - (b) such amalgamation, demerger, merger or corporate reconstruction is a Permitted Merger.
- 2.16** The Guarantor shall not invest in or acquire any entity or a business going concern or an undertaking (whether whole or substantially the whole of the assets or business), or any division or operating unit thereof, or any shares or securities of any entity or a business or undertaking (or in each case, any interest in any of them) (or agree to any of the foregoing), unless:
- (a) with the prior written consent of the Bank; or
  - (b) such acquisition is a Permitted Acquisition.
- 2.17** The Guarantor shall not incur any Indebtedness, unless:

- (a) with the prior written consent of the Bank; or
  - (b) such Indebtedness is Permitted Indebtedness.
- 2.18** The Guarantor shall not issue or allow to remain outstanding any guarantees in respect of any liability or obligation of any person unless:
- (a) with the prior written consent of the Bank; or
  - (b) such guarantees are Permitted Guarantees.
- 2.19** The Guarantor shall not declare or distribute dividends, or return or purchase shares unless:
- (a) with the prior written consent of the Bank; or
  - (b) such payments are Permitted Payments.
- 2.20** The Guarantor shall ensure that it has kept and will continue to keep proper books and records of account, in which full and correct entries shall be made of all financial transactions and the **assets and** business of the Guarantor, including expenditures in connection with the Project, in accordance with GAAP as in effect from time to time.
- 2.21** The Guarantor shall not (and the Guarantor shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets other than Permitted Security.
- 2.22** For the purposes of Article 2.21, the term Security shall also include any arrangement or transaction on assets or receivables or money (such as the sale, transfer or other disposal of assets on terms whereby they are or may be leased to or re-acquired by the Guarantor or any other member of the Group, the sale, transfer or otherwise dispose of any receivables on recourse terms or any arrangement under which money or the benefit of a bank account or other account may be applied or setoff or any preferential arrangement having a similar effect) in circumstances where the arrangement or transaction is entered into primarily as a method of raising credit or of financing the acquisition of an asset.
- 2.23** The Guarantor shall notify the Bank of any Event of Default under the Existing Finance Contract promptly upon becoming aware of its occurrence.

**ARTICLE 3**  
**Enforcement of Guarantee**

- 3.01** A notice from the Bank as to any default by the Borrower in the payment of any Guaranteed Sum which sets out the basis of the calculation in reasonable detail shall be conclusive against the Guarantor save in the event of a manifest or proven error.
- 3.02** The Guarantor undertakes to pay all sums due hereunder in full, free of set-off or counterclaim.

**3.03** The Bank shall not be obliged before exercising any of the rights, powers or remedies conferred upon it in respect of the Guarantor by this Guarantee or by law to:

- (a) take any action or obtain judgment in any court against the Borrower or OpGen;
- (b) make demand of the Borrower or OpGen;
- (c) make or file any claim or proof in a winding-up or dissolution of the Borrower or OpGen;
- (d) enforce or seek to enforce any security taken in respect of any of the obligations of the Borrower in respect of the Guaranteed Sums or Liabilities; or
- (e) have recourse to any other guarantee, including, without limitation, any Guarantee Agreement,

and the Guarantor waives any right it may have of first requiring the Bank (or any trustee or agent on its behalf) to proceed against or enforce or exhaust any other rights or security or claim payment from any person including, without limitation, OpGen, before claiming from the Guarantor under this Guarantee. This waiver applies irrespective of any law or any provision of the Existing Finance Contract or any other Finance Document to the contrary.

**3.04** Where any Guaranteed Sums are due hereunder, the Guarantor may pay to the Bank all outstanding Guaranteed Sums, including sums arising under Article 3.03 (*Interest on overdue sums*) of the Existing Finance Contract in settlement of its obligations hereunder. If the Guarantor makes such payment, the Bank shall, upon the request and at the expense of the Guarantor, use reasonable endeavours to promptly assign to the Guarantor the Bank's rights under the Existing Finance Contract and under any security therefor.

#### **ARTICLE 4** **Information and Site Visits**

#### **4.01 Information concerning the Guarantor**

##### **4.01A Financial Statements**

The Guarantor shall deliver to the Bank:

- (a) as soon as they become available but in any event within 180 days after the end of each of its financial years its audited consolidated and unconsolidated annual report, balance sheet, profit and loss account and auditors report for that financial year; and
- (b) from time to time, such further information on its general financial situation as the Bank may reasonably require or such certificates of compliance with the undertakings of Article 6 as the Bank may deem necessary.

##### **4.01B Requirements as to Financial Statements**

- (a) Each set of financial statements delivered by the Guarantor pursuant to Article 4.01A shall be certified by a director of the Guarantor as giving a true and fair view of its financial condition as at the date as at which those financial statements were drawn up.
- (b) The Guarantor shall procure that each set of financial statements delivered pursuant to Article 4.01A is prepared using IFRS.

##### **4.01C Immediate Information**

The Guarantor shall inform the Bank immediately of:

- (a) any fact or event that is reasonably likely to prevent the substantial fulfilment of any obligation of the Guarantor under this Guarantee; and
- (b) any investigation concerning the integrity of the members of the Guarantor's board of directors, or other administrative body or managers.

- (c) The Guarantor shall deliver to the Bank any such information or further document concerning customer due diligence matters of or for the Guarantor as the Bank may reasonable require within a reasonable time.

#### **4.02 Visits by the Bank**

The Guarantor shall allow the Bank and, when either required by the relevant mandatory provisions of EU law or pursuant to the EFSI Regulation, the competent European Union institutions including the European Court of Auditors, the Commission, the European Anti-Fraud Office, as well as persons designated by the foregoing:

- (a) to visit the sites, installations and works comprising the Project;
- (b) to interview representatives of the Guarantor, and not obstruct contacts with any other person involved in or affected by the Project; and
- (c) to conduct on the spot audits and checks as they may wish and to review the Guarantor's books and records in relation to the execution of the Project and to be able to take copies of related documents to the extent permitted by the law.

The Guarantor shall provide the Bank, or ensure that the Bank is provided, with all necessary assistance and information for the purposes described in this Article.

In the case of a genuine allegation, complaint or information with regard to Illegal Activities related to the Loan and/or the Project, the Guarantor shall consult with the Bank in good faith regarding appropriate actions. In particular, if it is proven that a third party committed Illegal Activities in connection with the Loan and/or the Project with the result that the Loan or the EFSI financing were misapplied, the Bank may, without prejudice to the other provisions of this Guarantee, inform the Guarantor if, in its view, the Guarantor should take appropriate recovery measures against such third party. In any such case, the Guarantor shall in good faith consider the Bank's views and keep the Bank informed.

#### **4.03 Disclosure and publication**

The Guarantor acknowledges and agrees that the Bank may:

- (a) be obliged to communicate information relating to the Guarantor and the Project to any competent institution or body of the European Union in accordance with the relevant mandatory provisions of European Union law.
- (b) publish on its website or produce press releases containing information related to the financing provided pursuant to the Existing Finance Contract with support of the EFSI, including the name, address and country of establishment of the Guarantor, the purpose of the financing and the type and amount of financial support received under the Existing Finance Contract.

### **ARTICLE 5**

#### **Amendment to the Finance Documents**

- 5.01** The Bank may amend or vary the terms of the Finance Document as agreed with the Borrower. The Guarantor agrees that any amendments to the Existing Finance Contract are transposed into this Guarantee and that this Guarantee is deemed amended accordingly in order to give effect to the provisions of the Existing Finance Contract (as amended, extended, novated, replaced, restated or supplemented from time to time).

**ARTICLE 6**  
**Representations and Warranties**

**6.01** The Guarantor represents and warrants to the Bank that:

- (a) it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation and it has the power to carry on its business as it is now being conducted and to own its property and other assets;
- (b) it has the power to execute, deliver and perform its obligations under this Guarantee and all necessary corporate, shareholder and other action has been taken to authorise the execution, delivery and performance of the same by it;
- (c) this Guarantee constitutes its legally valid, binding and enforceable obligations;
- (d) the execution and delivery of, the performance of its obligations under and compliance with the provisions of this Guarantee do not and will not:
  - (i) contravene or conflict with any applicable law, statute, rule or regulation, or any judgment, decree or permit to which it is subject;
  - (ii) contravene or conflict with any agreement or other instrument binding upon it which might reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Guarantee; or
  - (iii) contravene or conflict with any provision of its constitutional documents;
- (e) the choice of the laws of England and Wales as the governing law of this Guarantee will be recognised and enforced in its jurisdiction of incorporation and any judgment obtained in England and Wales in relation to this Guarantee will be recognised and enforced in its jurisdiction of incorporation;
- (f) under the law of its jurisdiction of incorporation as at the date of this Guarantee it is not necessary that any stamp duty, registration or other tax be paid on or in relation to this Guarantee or that this Guarantee be filed, recorded, registered or enrolled with any court or other authority in that jurisdiction;
- (g) it is not unable to pay its debts as they fall due (including that it is not illiquid (*zahlungsunfähig*) within the meaning of section 66 of the Austrian Insolvency Code (*Insolvenzordnung*) or presumably unable to pay its debt when due (*drohende Zahlungsunfähigkeit*) within the meaning of section 167 paragraph 2 of the Austrian Insolvency Code (*Insolvenzordnung*) or otherwise insolvent, including being over-indebted (*überschuldet*) within the meaning of section 67 of the Austrian Insolvency Code (*Insolvenzordnung*)) and the entering into of this Guarantee and the performance of its obligations hereunder do not and will not cause it to be or to be deemed to be unable to pay its debts as they fall due;
- (h) it has not taken any corporate action nor have any other steps been taken in relation to the suspension of payments, a moratorium of any indebtedness, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) or legal proceedings (including an *Insolvenzverfahren* within the meaning of the Austrian Insolvency Code (*Insolvenzordnung*) or a company reorganisation proceeding within the meaning of the Austrian Companies' Reorganisation Act (*Unternehmensreorganisationsgesetz*)) been started or threatened against it for its winding-up, dissolution, administration or reorganisation or any analogous procedure or step or for the appointment of a liquidator, receiver, administrator, administrative receiver, trustee, compulsory manager or similar officer of it or of any or all of its assets or revenues;

- (i) its payment obligations under this Guarantee rank not less than *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations under any of its debt instruments except for obligations mandatorily preferred by law applying to companies generally;
- (j) it has obtained all necessary Authorisations in connection with each Finance Document to which it is a party and in order to lawfully comply with its obligations hereunder, and the Project and all such Authorisations are in full force and effect and admissible in evidence;
- (k) it is in compliance with Article 6.05(e) (*Environment*) of the Existing Finance Contract and to the best of its knowledge and belief (having made due and careful enquiry) no Environmental Claim has been commenced or is threatened against it;
- (l) it is not required to make any deduction for or on account of any Tax from any payment it may make under this Guarantee;
- (m) it is in compliance with all undertakings under Article 2; and
- (n) it has acquainted itself with this Guarantee and determined that it is in its best commercial interest and consistent with its purpose of operations to enter into this Guarantee.

**6.02** The representations and warranties set out in Article 6.01 above shall survive the execution of this Guarantee and, with the exception of the representations set out in paragraphs (f), (l) and (m), are deemed repeated on each Scheduled Disbursement Date, on the date on which any Disbursement Request is submitted under the Existing Finance Contract and on each Payment Date, by reference to the facts and circumstances then prevailing.

**6.03** The Guarantor acknowledges that it has made the representations and warranties contained in this Article 6 with the intention of inducing the Bank to accept this Guarantee as security for the Existing Finance Contract and that the Bank has accepted this Guarantee as security for the Existing Finance Contract on the basis of, and in full reliance on, each of such representations and warranties. The Guarantor warrants that it has no knowledge of any additional facts or matters the omission of which makes any of such representations and warranties misleading or which would or might reasonably be expected to affect the judgment of a prospective lender regarding lending to the Borrower or accepting this Guarantee as security for the Existing Finance Contract.

**ARTICLE 7**  
**Taxes, Charges and Expenses**

**7.01** The Guarantor shall bear its own costs of execution and implementation of this Guarantee and, without prejudice to the terms of Article 2, the Guarantor shall hold harmless and indemnify the Bank against all:

- (a) taxes and fiscal charges, legal costs and other expenses incurred by the Bank in the negotiation, execution, amendment, implementation or enforcement of this Guarantee; and
- (b) documented losses, charges and expenses to which the Bank may be subject or which it may properly incur under or in connection with the recovery from any person of sums expressed to be due under or pursuant to the Amended and Restated Finance Contract (whether or not the Effective Date has occurred),

in each case together with interest from the date such losses, charges, costs and/or expenses were incurred to the date of payment at such rates as the Bank may reasonably determine.

**7.02** Furthermore the Guarantor shall make payments hereunder without withholding or deduction on account of tax or fiscal charges, provided that, if the Guarantor is obliged by law to make any such withholding or deduction, the Guarantor shall gross up the payment to the Bank so that the net sum received by the Bank is equal to the sum the Bank would have received had such withholding or deduction not been applicable.

**ARTICLE 8**  
**Law and Jurisdiction**

**8.01 Law**

This Guarantee, its formation, its construction, its termination and its validity and any non-contractual obligations arising out of or in connection with this Guarantee shall be governed by and construed in all respects in accordance with the laws of England and Wales.

**8.02 Jurisdiction**

(a) The courts of England and Wales have exclusive jurisdiction to settle any dispute (a "**Dispute**") arising out of or in connection with this Guarantee (including a dispute regarding the existence, validity or termination of this Guarantee or the consequences of its nullity) or any non-contractual obligation arising out of or in connection with this Guarantee.

(b) The parties agree that the courts of England and Wales are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.

(c) This Article 8.02 is for the benefit of the Bank only. As a result and notwithstanding Article 8.02(a), it does not prevent the Bank from taking proceedings relating to a Dispute (including a dispute relating to the existence, validity or termination hereof or any non-contractual obligation arising out of or in connection with this Guarantee) in any other courts with jurisdiction. To the extent allowed by law, the Bank may take concurrent proceedings in any number of jurisdictions.

**8.03 Service of Process**

Without prejudice to any other mode of service allowed under any relevant law, the Guarantor hereby irrevocably appoints Vistra (UK) Ltd., 3rd Floor 11-12 St James's Square London SW1Y 4LB, United Kingdom, as its agent of service for the purposes of accepting service on its behalf of any writ, notice, order, judgment or other legal process. The Guarantor agrees that failure by a process agent to notify it of the process will not invalidate the proceedings concerned.

**8.04 Invalidity**

If any provision hereof is invalid, such invalidity shall not prejudice any other provision hereof.

**8.05 No assignment**

The Guarantor shall not assign all or any part of its rights or benefits under this Guarantee.

**ARTICLE 9**  
**Final Clauses**

**9.01 Currency Conversion**

The Bank may convert any money received or realised by it under or pursuant to this Guarantee which is not in the currency in which such sums are due and payable from that currency into the currency in which such sum is due at the rate published by the European Central Bank in Frankfurt, Germany, for the relevant conversion, available on or shortly before conversion at any time and from time to time as the Bank shall decide, or, if such rate is not available, at the then prevailing commercial rate of exchange, as determined by the Bank.

## **9.02 Invalidity**

If at any time any term of this Guarantee is or becomes illegal, invalid or unenforceable in any respect, or this Guarantee is or becomes ineffective in any respect, under the laws of any jurisdiction, such illegality, invalidity, unenforceability or ineffectiveness shall not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of this Guarantee or the effectiveness in any other respect of this Guarantee in that jurisdiction; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of this Guarantee or the effectiveness of this Guarantee under the laws of such other jurisdictions.

## **9.03 Remedies and Waivers**

No failure by the Bank to exercise, or any delay by the Bank in exercising, any right or remedy under this Guarantee shall operate as a waiver thereof nor shall any single or partial exercise of any such right or remedy prevent any further or other exercise thereof or the exercise of any other such right or remedy.

## **9.04 Rights Cumulative**

The rights and remedies provided by this Guarantee in favour of the Bank are cumulative and not exclusive of any rights or remedies provided by law.

## **9.05 Notices**

Notices and other communications given hereunder to the Guarantor or to the Bank shall be sent by fax (which shall be deemed to have been received on receipt of transmission), registered letter or hand-delivered (which shall be deemed to have been received by the other party on the date of delivery), in each case addressed to the relevant party at its address set out below or at such other address as the relevant party shall have previously notified to the other parties in writing as its new address for such purpose, provided that any notice to be served on the Bank shall be effective only when actually received by the Bank, marked for the attention of the department or officer specified by the Bank for such purpose:

For the Bank:

Attention: TMR  
100 boulevard Konrad Adenauer  
L-2950 Luxembourg  
Email: tmr-tm-esdassistants@eib.org  
Facsimile no: +352 43 79 67397

For the Guarantor:

Karl-Farkas-Gasse 18  
Attn: Managing Director  
A-1030 Vienna  
Austria

**9.06 Assignments and Successors**

The Bank may at any time assign all or any of its rights and benefits under this Guarantee to any person to whom the Bank novates or assigns its rights under the Existing Finance Contract and this Guarantee shall remain in effect despite any amalgamation or merger (however effected) relating to the Bank. References to the Bank shall be deemed to include any assignee or successor in title of the Bank and any person who, under the laws of its jurisdiction of incorporation or domicile, has assumed the rights and obligations of the Bank under this Guarantee or to which under such laws the same have been transferred.

**9.07 Third Party Rights**

A person who is not a party to this Guarantee has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Guarantee.

**9.08 Counterparts**

This Guarantee may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Guarantee by e-mail attachment or telecopy shall be an effective mode of delivery.

**9.09 Recitals**

The Recitals form part of this Guarantee.

IN WITNESS WHEREOF this Guarantee has been signed on behalf of the Bank and executed as a deed by the Guarantor and is intended to be and is hereby delivered as a deed on the date first specified above. The parties hereto have caused this Guarantee to be executed in 2 (two) originals in the English language.

SIGNED by

**EUROPEAN INVESTMENT BANK**

By: /s/ Garth Grisbrook  
Name: Garth Grisbrook  
Title: Head of Division

By: /s/ Imanol Lecue Gurtubay  
Name: Imanol Lecue Gurtubay  
Title: Head of Division

EXECUTED as a DEED by

**ARES GENETICS GMBH**

By: /s/ Dr. Achim Plum  
Name: Dr. Achim Plum  
Title: Managing Director

By: /s/ Dr. Andreas Posch  
Name: Dr. Andreas Posch  
Title: Managing Director





**OpGen Subsidiary Curetis GmbH Secures Access to Additional EUR 5.0 Million  
Non-Dilutive Debt Financing Tranche from EIB**

- *European Investment Bank (EIB) and OpGen, Curetis GmbH and Ares Genetics GmbH enter into Amendment to the EIB Financing Agreement*
- *Additional EUR 5 Million Tranche With 5-Year Interest Only Period Related to COVID-19 R&D Programs Across Multiple Platforms*
  - *EIB Financing Tranche Available for Draw-Down at Curetis' Sole Discretion for a 9-Month Period and Subject to 0.7% Participating Interest in OpGen Equity Value at Maturity*

GAITHERSBURG, MD., and Holzgerlingen, Germany, July 9, 2020 -- OpGen, Inc. (Nasdaq: OPGN, "OpGen"), a precision medicine company harnessing the power of molecular diagnostics and bioinformatics to help combat infectious disease, announced today that its wholly owned subsidiary Curetis GmbH will have access to another EUR 5.0 million debt financing tranche under the amended EIB financing facility.

Under the EIB debt financing facility originally put in place in December 2016, Curetis now stands to receive another EUR 5.0 million tranche of non-dilutive debt financing. This additional tranche is earmarked to co-fund R&D programs across several of the platforms and the entire product portfolio of OpGen group companies Curetis and Ares Genetics as it relates to COVID-19.

This additional tranche, which can be drawn down at the sole discretion of Curetis within nine months from the Effective Date of this amendment, will also have a five-year term to maturity from such draw-down date. All interest payments during that five-year term are compounded and become payable only upon maturity of the principal amount of this tranche. The EIB tranche disbursement will become available subject to typical conditions precedent including a pledge of certain Curetis IP rights as security to EIB. The parties have furthermore agreed on a 0.7% participation percentage interest (PPI). Upon maturity of the tranche, i.e. not before H2-2025 (and no later than early 2027 depending on draw-down date), EIB will be entitled to an additional payment that is equity-linked and equivalent to 0.7% of the then total equity valuation of OpGen. The parties have also adjusted the PPI percentage applicable to the previous EIB tranche of EUR 5.0 million which was funded in June 2019 from its original 2.1% PPI in Curetis N.V.'s equity value upon maturity to a new 0.3% PPI in OpGen's equity value upon maturity between mid-2024 and mid-2025. This adjustment follows the respective stockholder ownership interest in OpGen following the business combination with Curetis as of April 1, 2020. All other terms and conditions of the EIB financing contract with Curetis remain unchanged.

"We are very pleased to see continued strong support and funding commitment from the EIB," said Oliver Schacht, PhD, CEO of OpGen and Managing Director of Curetis GmbH. "The additional funding will allow us to continue executing on our R&D programs such as the Unyvero A50 and A30 RQ platforms with a focus on COVID-19 related applications, as well as the Ares Genetics and combined OpGen R&D programs in AI-powered bioinformatics."

## **About OpGen, Inc.**

OpGen, Inc. (Gaithersburg, MD, USA) is a precision medicine company harnessing the power of molecular diagnostics and bioinformatics to help combat infectious disease. Along with our subsidiaries, Curetis GmbH and Ares Genetics GmbH, we are developing and commercializing molecular microbiology solutions helping to guide clinicians with more rapid and actionable information about life threatening infections to improve patient outcomes, and decrease the spread of infections caused by multidrug-resistant microorganisms, or MDROs. OpGen's product portfolio includes Unyvero, Acuitas AMR Gene Panel and Acuitas® Lighthouse, and the ARES Technology Platform including ARESdb, using NGS technology and AI-powered bioinformatics solutions for antibiotic response prediction.

For more information, please visit [www.opgen.com](http://www.opgen.com).

## **Forward-Looking Statements**

This press release includes statements regarding the amendment of the EIB financing agreement for purposes of R&D programs related to COVID-19 diagnostic tests by OpGen and its subsidiaries, Curetis and Ares Genetics. These statements and other statements regarding OpGen's future plans and goals constitute "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 and are intended to qualify for the safe harbor from liability established by the Private Securities Litigation Reform Act of 1995. Such statements are subject to risks and uncertainties that are often difficult to predict, are beyond our control, and which may cause results to differ materially from expectations. Factors that could cause our results to differ materially from those described include, but are not limited to, our ability to successfully, timely and cost-effectively develop, seek and obtain regulatory clearance for and commercialize our product and services offerings, the rate of adoption of our products and services by hospitals and other healthcare providers, the realization of expected benefits of our business combination transaction with Curetis GmbH, the success of our commercialization efforts, the impact of COVID-19 on the Company's operations, financial results, and commercialization efforts as well as on capital markets and general economic conditions, the effect on our business of existing and new regulatory requirements, and other economic and competitive factors. For a discussion of the most significant risks and uncertainties associated with OpGen's business, please review our filings with the Securities and Exchange Commission. You are cautioned not to place undue reliance on these forward-looking statements, which are based on our expectations as of the date of this press release and speak only as of the date of this press release. We undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise.

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