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

FORM 8-K

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

Date of Report (Date of earliest event reported): May 26, 2020

ACELRX PHARMACEUTICALS, INC.
(Exact name of registrant as specified in its charter)

Delaware	**001-35068**	**41-2193603**
(State of incorporation)	**(Commission File No.)**	**(IRS Employer Identification No.)**

351 Galveston Drive
Redwood City, CA 94063
(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: (650) 216-3500

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, $0.001 par value	**ACRX**	**The Nasdaq Global 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.

Amendment No. 2 to Merger Agreement

On May 29, 2020, AcelRx Pharmaceuticals, Inc., a Delaware corporation ("AcelRx"), Tetraphase Pharmaceuticals, Inc., a Delaware corporation ("Tetraphase"), and Consolidation Merger Sub, Inc., a Delaware corporation and an indirect wholly-owned subsidiary of AcelRx ("Merger Sub"), entered into an amendment (the "Second Amendment") to the Agreement and Plan of Merger dated March 15, 2020 (as amended by the Amendment to Agreement and Plan of Merger, dated May 27, 2020 ("Amendment No. 1"), by and among AcelRx, Tetraphase and Merger Sub, the "Merger Agreement"). Pursuant to the Merger Agreement, as amended by the Second Amendment, Merger Sub will be merged with and into Tetraphase (the "Merger"), with Tetraphase continuing as the surviving corporation and an indirect wholly-owned subsidiary of AcelRx.

Pursuant to the Second Amendment, AcelRx and Tetraphase have agreed to further amend the terms of the Merger Agreement to provide that, among other things:

- at the effective time of the Merger (the "Effective Time"), each share of common stock, par value $0.001 per share, of Tetraphase issued and outstanding immediately prior to the Effective Time (other than shares owned by AcelRx, Merger Sub or Tetraphase or any direct or indirect wholly-owned subsidiary of AcelRx or Tetraphase or by stockholders of Tetraphase who have exercised and perfected their statutory rights of appraisal under Delaware law) will be automatically converted into the right to receive (a) $0.5872 in cash (subject to adjustment as set forth below, the "Cash Consideration"), without interest and less any applicable withholding taxes, (b) 0.7409 (subject to adjustment as set forth below, the "Exchange Ratio") of a share of common stock, par value $0.001 per share, of AcelRx (the "AcelRx Common Stock"), plus (c) one contractual contingent value right (a "CVR") to receive the consideration set forth in the Revised CVR Agreement (as defined below) (the Cash Consideration, the Exchange Ratio and CVR together, the "Merger Consideration");
- the Cash Consideration will be reduced to the extent the Company Net Cash (as defined in the Merger Agreement) is less than $5,000,000 (until the Cash Consideration is $0);
- the Exchange Ratio will be adjusted to the extent the Company Net Cash (as defined in the Merger Agreement) is less than -$1,340,566; and
- the termination fee Tetraphase may be required to pay AcelRx under specified circumstances as set forth in the Merger Agreement is increased to $1,778,000.

The Tetraphase board of directors has approved the Merger and the amended terms of the Merger in the Second Amendment, has determined that, as a result of the Second Amendment, the proposal received by Tetraphase from Melinta Therapeutics, Inc. on May 27, 2020 is not superior and has recommended the adoption of the Merger Agreement, as amended by the Second Amendment, by the Tetraphase stockholders.

The foregoing description of the Second Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Second Amendment, which is filed as Exhibit 2.1 to this Current Report on Form 8-K and is incorporated herein by reference. Other than as expressly modified pursuant to the Second Amendment, the Merger Agreement remains in full force and effect.

The Second Amendment and the foregoing description of the Second Amendment have been included to provide investors and stockholders with information regarding its terms. The representations and warranties contained in the Second Amendment were made only for the purposes of the Second Amendment as of specific dates, are solely for the benefit of the parties, and may have been qualified by certain disclosures between the parties and a contractual standard of materiality different from those generally applicable to investors or stockholders, among other limitations. The representations and warranties were made for the purposes of allocating contractual risk among the parties to the Second Amendment and should not be relied upon as a disclosure of factual information relating to AcelRx or Tetraphase. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the Second Amendment, which subsequent information may or may not be fully reflected in public disclosures.

Revised Form of Contingent Value Rights Agreement

In connection with the Second Amendment, AcelRx and Tetraphase also agreed to a revised form of Contingent Value Rights Agreement (the "Revised CVR Agreement"), which will govern the terms of the CVRs and will be entered into at or prior to the Effective Time. Pursuant to the Revised CVR Agreement, the CVRs now represent an aggregate right to receive up to $16.0 million in cash, without interest and less any applicable withholding taxes, in contingent consideration, conditioned upon the achievement of specified levels of annual net sales of XERAVA as follows:

- a one-time payment of $2.5 million upon the achievement of specified annual net sales of XERAVA in 2021;
- a one-time payment of $4.5 million upon the achievement of specified annual net sales of XERAVA in any calendar year ending on or before December 31, 2024; and
- a one-time payment of $9.0 million upon the achievement of specified annual net sales of XERAVA in any calendar year ending on or before December 31, 2024.

The terms of the CVRs described above reflect the parties' agreement over the sharing of potential economic upside benefits from future net sales of XERAVA and do not necessarily reflect anticipated net sales of XERAVA. There can be no assurance that such levels of net sales will occur or that any or all of the payments in respect of the CVRs will be made.

The right to such contingent consideration as evidenced by the Revised CVR Agreement is a contractual right only and will not be transferable, except in the limited circumstances specified in the Revised CVR Agreement. The foregoing description of the Revised CVR Agreement does not purport to be complete and is qualified in its entirety by reference to the form of Revised CVR Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Amendment to Voting Agreement

In connection with the execution of the Second Amendment, AcelRx and certain stockholders of Tetraphase representing approximately 20% of the voting power of Tetraphase entered into separate amendments (each such amendment, "Amendment No. 2 to Voting Agreement") to the Voting Agreements, dated March 15, 2020, and amended by the Amendment to Voting Agreement entered into in connection with the execution of Amendment No. 1 ("Amendment No. 1 to Voting Agreement"), by and between AcelRx, Merger Sub and each such stockholder (such Voting Agreements, as amended by Amendment No. 1 to Voting Agreement and Amendment No. 2 to Voting Agreement, the "Amended Voting Agreements"). Pursuant to the Amended Voting Agreements, each such stockholder agreed to, among other things, vote the shares of Tetraphase common stock beneficially owned by such stockholder in favor of the adoption of the Merger Agreement, as amended by the Second Amendment, and against any acquisition proposal or liquidation or dissolution of Tetraphase, as well as such other matters set forth in the Amended Voting Agreement.

Pursuant to the Amended Voting Agreement, each such stockholder that is a party thereto has also agreed to (i) exchange certain outstanding Tetraphase common stock warrants for a fixed amount of cash consideration and number of shares of AcelRx common stock and (ii) exchange certain outstanding Tetraphase pre-funded common stock warrants for a specified percentage of the Merger Consideration.

The foregoing description of Amendment No. 2 to Voting Agreement does not purport to be complete and is qualified in its entirety by reference to the form of Amendment No. 2 to Voting Agreement, which is filed as Exhibit 10.2 to this Current Report on Form 8-K and is incorporated herein by reference. Other than as expressly modified pursuant to Amendment No. 1 to Voting Agreement and Amendment No. 2 to Voting Agreement, the Voting Agreements, a form of which was filed as Exhibit 10.2 to the Current Report on Form 8-K filed with the SEC by AcelRx on March 16, 2020, remain unchanged.

Amendment No. 1 to Co-Promotion Agreement

Separate and distinct from the Merger Agreement and the Second Amendment, on May 26, 2020, AcelRx and Tetraphase entered into Amendment No. 1 to Co-Promotion Agreement (the "Co-Promotion Amendment") to specify certain work level efforts to address the impact of the Covid-19 pandemic.

The foregoing description of the Co-Promotion Amendment does not purport to be complete and is qualified in its entirety by reference to the Co-Promotion Amendment, which is filed as Exhibit 10.3 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 8.01 Other Events

On May 29, 2020, AcelRx issued a press release announcing the entry into the Second Amendment. A copy of the press release is attached as Exhibit 99.1 and is incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

The following exhibits are filed herewith:

Exhibit No.	Description
2.1	Amendment No. 2 to Agreement and Plan of Merger, dated as of May 29, 2020, by and among the Registrant, Tetraphase and Merger Sub
10.1	Form of Revised CVR Agreement
10.2	Form of Amendment No. 2 to Voting Agreement
10.3	Amendment No. 1 to Co-Promotion Agreement, dated as of May 26, 2020, by and between the Registrant and Tetraphase
99.1	Press release, dated May 29, 2020

Forward-Looking Statements

This Current Report on Form 8-K may contain forward-looking statements, including, but not limited to, statements relating to AcelRx's intentions, plans, hopes, beliefs, anticipations, expectations or predictions of the future, or statements relating to the consummation of the proposed transaction and the other transactions described above and the potential benefits of such transactions. These statements may be identified by the use of forward-looking terminology such as "believes," "expects," "anticipates," "may," "will," "should," "seeks," "approximately," "intends," "plans," "estimates," or the negative of these words or other comparable terminology. These forward-looking statements involve risks and uncertainties that could cause actual results to differ materially from those projected, anticipated or implied by such statements, including the risk AcelRx may not be able to close the acquisition of Tetraphase or achieve the expected benefits and cost synergies from the transactions, that actions taken by competing bidders for Tetraphase or fluctuations in the market price of AcelRx's common stock could delay or prevent the consummation of the proposed transaction, or that the impacts AcelRx is experiencing from the ongoing COVID-19 pandemic may be prolonged or exacerbated. In addition, such risks and uncertainties may include, but are not limited to, those described in AcelRx's annual, quarterly and current reports (i.e., Form 10-K, Form 10-Q and Form 8-K) as filed or furnished with the SEC. You are cautioned not to place undue reliance on any such forward-looking statements, which speak only as of the date such statements were first made. AcelRx's SEC reports are available at www.acelrx.com under the "*Investors*" tab. Except to the extent required by law, AcelRx undertakes no obligation to publicly release the result of any revisions to these forward-looking statements to reflect events or circumstances after the date hereof, or to reflect the occurrence of unanticipated events.

Additional Information and Where to Find It

In connection with the proposed transaction between AcelRx and Tetraphase, AcelRx has filed with the SEC a registration statement on Form S-4 (No. 333-237584) (the "Registration Statement") containing a document constituting a prospectus of AcelRx and a proxy statement of Tetraphase. The Registration Statement was declared effective by the SEC on April 24, 2020, and Tetraphase mailed the definitive proxy statement/prospectus to the stockholders of Tetraphase on or about April 28, 2020. AcelRx and Tetraphase also plan to file other relevant documents with the SEC regarding the proposed transaction. INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THE DEFINITIVE PROXY STATEMENT/PROSPECTUS AND OTHER RELEVANT DOCUMENTS FILED OR THAT WILL BE FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY BECAUSE THEY CONTAIN IMPORTANT INFORMATION. Investors and security holders are or will be able to obtain free copies of the Registration Statement and the definitive proxy statement/prospectus and other relevant documents filed or that will be filed by AcelRx or Tetraphase with the SEC through the website maintained by the SEC at http://www.sec.gov. Copies of the documents filed with the SEC by AcelRx are available free of charge within the Investors section of AcelRx's website at http://ir.acelrx.com. Copies of the documents filed with the SEC by Tetraphase are available free of charge within the Investors section of Tetraphase's website at https://ir.tphase.com/investor-relations.

Participants in the Solicitation

Each of AcelRx and Tetraphase and their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from Tetraphase stockholders in connection with the proposed transaction. Information about AcelRx's directors and executive officers is included in the definitive proxy statement for its 2020 annual meeting of stockholders, which was filed with the SEC on April 24, 2020. Information about Tetraphase's directors and executive officers is included in Tetraphase's Annual Report on Form 10-K for the fiscal year ended December 31, 2019, which was filed with the SEC on March 12, 2020. Other information regarding the participants in the solicitation of proxies in connection with the proposed transaction and a description of their direct and indirect interests, by security holdings or otherwise, is contained in the definitive proxy statement/prospectus filed with the SEC on April 24, 2020, as amended. Investors may obtain free copies of these documents from AcelRx or Tetraphase as indicated above.

No Offer or Solicitation

This communication is being made in respect of the proposed transaction involving AcelRx and Tetraphase. This communication does not constitute an offer to sell or the solicitation of an offer to buy any securities nor a solicitation of any vote or approval with respect to the proposed transaction or otherwise. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended, and otherwise in accordance with applicable law.

SIGNATURES

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

Date: May 29, 2020

ACELRX PHARMACEUTICALS, INC.

By: /s/ Raffi Asadorian
Raffi Asadorian
Chief Financial Officer

Exhibit 2.1

AMENDMENT NO. 2 TO AGREEMENT AND PLAN OF MERGER

THIS AMENDMENT NO. 2 TO AGREEMENT AND PLAN OF MERGER (this "**Amendment**") is made and entered into as of May 29, 2020 (the "**Amendment Date**"), by and among: **ACELRX PHARMACEUTICALS, INC.**, a Delaware corporation ("**Parent**"); **CONSOLIDATION MERGER SUB, INC.**, a Delaware corporation and an indirect wholly-owned subsidiary of Parent ("**Merger Sub**"); and **TETRAPHASE PHARMACEUTICALS, INC.**, a Delaware corporation (the "**Company**").

RECITALS

A. Parent, Merger Sub and the Company are parties to that certain (a) Agreement and Plan of Merger dated as of March 15, 2020 (the "**Merger Agreement**") and (b) Amendment to Agreement and Plan of Merger, dated as of May 27, 2020 ("**Amendment No. 1**").

B. Pursuant to the Merger Agreement, on April 24, 2020: (a) the Form S-4 Registration Statement previously filed by Parent was declared effective under the Securities Act and (b) the Company filed with the SEC the Proxy Statement/Prospectus (each of the foregoing capitalized terms having the meanings assigned to such terms in the Merger Agreement).

C. Section 9.1 of the Merger Agreement permits the parties to amend the Merger Agreement, with the approval of the respective boards of directors of the Company and Parent, by an instrument in writing signed on behalf of each of Parent, Merger Sub and the Company.

D. The parties desire to amend the Merger Agreement (as amended by Amendment No. 1) as provided in this Amendment.

E. The respective boards of directors of Parent, Merger Sub and the Company have approved this Amendment.

AGREEMENT

The parties to this Amendment, intending to be legally bound, agree as follows:

Section 1. DEFINITIONS

1.1 Definitions; References. Each capitalized term used but not defined in this Amendment shall have the meaning assigned to such term in the Merger Agreement. Each reference in the Merger Agreement to "hereof," "hereunder," "hereby," "this Agreement," "the Agreement" or any similar term shall, from and after the date of this Amendment, refer to the Merger Agreement (as amended by Amendment No. 1 and this Amendment). Each reference in the Merger Agreement to the "date of this Agreement", "date of the Agreement", the "date hereof" or any similar term shall refer to March 15, 2020. Except as otherwise indicated, all references in the Merger Agreement to "Sections" are intended to refer to Sections of the Merger Agreement (as amended by Amendment No. 1 and this Amendment), and not sections of this Amendment.

Section 2. AMENDMENT TO MERGER AGREEMENT

2.1 Amendment to Section 5.3(c) of the Merger Agreement. Section 5.3(c) of the Merger Agreement (as amended by Amendment No. 1) is hereby deleted and replaced in its entirety with the following:

"**(c)** Prior to the Effective Time, the Company shall satisfy all of its notification requirements under the terms of each outstanding and unexercised Company Warrant. The Company Warrants shall each be treated in accordance with their terms, or as modified in any applicable Company Stockholder Voting Agreement, as amended on the Amendment Date. All shares of Parent Common Stock issued to holders of Company Warrants pursuant to an exercise of Company Warrants shall be issued as Book Entry Shares."

2.2 Amendment to Section 8.1(e) of the Merger Agreement. Section 8.1(e) of the Merger Agreement is hereby deleted and replaced in its entirety with the following:

"(e) by either Parent or the Company if the Merger shall not have been consummated by July 31, 2020 (the "**End Date**"); *provided, however,* that a party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(e) if the failure to consummate the Merger by the End Date resulted primarily from a failure on the part of such party to perform any covenant or obligation in this Agreement required to be performed by such party at or prior to the Effective Time;"

2.3 Amendment to Section 8.3(b) of the Merger Agreement (as amended by Amendment No. 1). The reference to "$1,441,0000" in Section 8.3(b) of the Merger Agreement (as amended by Amendment No. 1) is hereby deleted and replaced with "$1,778,000".

2.4 Amendments to Exhibit A of the Merger Agreement (as amended by Amendment No. 1).

(a) The definition of "Cash Consideration" is hereby deleted and replaced in its entirety with:

"**Cash Consideration.** "Cash Consideration" shall mean $0.5872 in cash, without interest, and subject to deduction for Taxes pursuant to Section 1.9; *provided* that if the Company Net Cash is less than the Target Net Cash, Cash Consideration shall mean: (a) Residual Cash Value, *divided* by (b) the Reference Company Fully Diluted Shares."

(b) The definition of "Company Warrantholder Cash Payout" is hereby deleted and replaced in its entirety with:

"**Company Warrantholder Cash Payout**. "Company Warrantholder Cash Payout" shall mean $6,461,143."

(c) The definition of "**Company Warrantholder Stock Payout**" is hereby deleted and replaced in its entirety with:

"**Company Warrantholder Stock Payout**. "Company Warrantholder Stock Payout" shall mean $12,717,814."

(d) The reference to "a contingent value rights agreement in substantially the form attached as Exhibit D" in the definition of "CVR Agreement" shall be deemed to refer to a contingent value rights agreement in substantially the form attached as Exhibit A to this Amendment.

(e) The definition of "Exchange Ratio" is hereby deleted and replaced in its entirety with:

"**Exchange Ratio**. "Exchange Ratio" shall mean 0.7409; *provided*, that if the Company Net Cash Shortfall is more than $6,340,566, Exchange Ratio shall mean: (a) Residual Equity Value, *divided* by (b) the Reference Company Fully Diluted Shares, *divided* by (c) the Reference Company Per Share Price."

(f) The reference to "10,794,625" in the definition of Reference Company Fully Diluted Shares is hereby deleted and replaced with "10,797,446".

(g) The reference to "$1.52" in the definition of Reference Company Per Share Price in Amendment No. 1 is hereby deleted and replaced with "$1.56".

(h) The definition of "Residual Cash Value" is deleted hereby and replaced in its entirety with:

"**Residual Cash Value.** "Residual Cash Value" shall mean (a) $12,801,710, *minus* (b) the dollar amount by which the Company Net Cash is less than the Target Net Cash (the "**Company Net Cash Shortfall**") (up to $6,340,566), *minus* (c) the Company Warrantholder Cash Payout."

(i) The definition of "Residual Equity Value" is hereby deleted and replaced in its entirety with:

"**Residual Equity Value.** "Residual Equity Value" shall mean (a) $25,198,290 *minus* (b) the dollar amount by which the Company Net Cash Shortfall is more than $6,340,566, *minus* (c) the Company Warrantholder Stock Payout."

Section 3. CERTAIN COVENANTS AND REPRESENTATIONS

3.1 Parent Covenants and Representations.

(a) Parent represents and warrants to the Company that Parent, as of the date of this Amendment, has access to, and on the Closing Date it will have, all funds necessary for the payment of the aggregate Cash Consideration as contemplated in Sections 1.5 and 5.3 of the Merger Agreement (as amended by Amendment No. 1 and further amended by this Amendment).

(b) Without limiting any of the other obligations of Parent and Merger Sub under the Merger Agreement (as amended by Amendment No. 1 and further amended by

this Amendment), as soon as practicable after the date of this Amendment, Parent shall prepare and file with the SEC a Current Report on Form 8-K amending the Form S-4 Registration Statement previously filed by Parent with the SEC, reflecting and implementing the terms of this Amendment (including the amended terms of the Merger reflected in this Amendment). Parent and Merger Sub shall cause the amendment to the Form S-4 Registration Statement and the filing and dissemination thereof to comply in all material respects with applicable Legal Requirements (including the Securities Act, the Exchange Act and the rules and regulations thereunder). The Company and its counsel shall be given reasonable opportunity to review and comment on such documents prior to the filing thereof with the SEC, and Parent and Merger Sub shall consider in good faith all additions, deletions or changes thereto suggested by the Company and its legal counsel, and shall accept all such reasonable changes proposed thereto by the Company and its counsel. This Section 3.2(c) shall replace in its entirety, the obligations under Section 3.1(b) of Amendment No. 1.

(c) Parent has made available to the Company that certain Second Amended and Restated Consent Under Loan and Security Agreement (the "**Amended Consent**"), executed by the lender under the Oxford Loan Agreement as of the date of this Amendment, and, unless a consent under the Oxford Loan Agreement is no longer needed in connection with the Contemplated Transactions, Parent and its Subsidiaries shall (i) comply with their respective obligations under Section 2 of such Amended Consent and (ii) take such other actions agreed upon with the Lenders (as defined in the Amended Consent) in order to obtain the consent from the Lenders in connection with the Contemplated Transactions.

3.2 Company Covenants and Representations.

(a) The Company represents and warrants to Parent and Merger Sub that the Company Board (at a meeting duly called and held) has: (i) determined that, as of the Amendment Date, the Merger, including the amended terms of the Merger reflected in this Amendment, is advisable and fair to, and in the best interests of, the Company and its stockholders; (ii) authorized and approved the execution, delivery and performance of the Merger Agreement (as amended by Amendment No. 1 and further amended by this Amendment) by the Company and approved the Merger and the amended terms of the Merger reflected in this Amendment; and (iii) recommended, as of the Amendment Date, the adoption of the Merger Agreement (as amended by Amendment No. 1 and further amended by this Amendment) by the holders of Company Common Stock and directed that the Merger Agreement (as amended by Amendment No. 1 and further amended by this Amendment) and the Merger be submitted for consideration by the Company's stockholders at the Company Stockholders' Meeting; and (iv) assuming the accuracy of the representations by Parent and Merger Sub set forth in Section 3.9 of the Merger Agreement, to the extent necessary, adopted a resolution having the effect of ensuring that the restrictions applicable to business combinations contained in Section 203 of the DGCL are not, and will not be, applicable to the execution, delivery or performance of the Merger Agreement (as amended by Amendment No.1 and further amended by this Amendment), the Company Stockholder Voting Agreements, or to the consummation of the Merger or any of the other Contemplated Transactions.

(b) From and after the date of this Amendment, the term "**Company Board Recommendation**" as used in the Merger Agreement (as amended by Amendment No. 1 and further amended by this Amendment) shall mean the recommendation of the Company's board of directors that the Company's stockholders vote to adopt the Merger Agreement (as amended by Amendment No. 1 and further amended by this Amendment).

(c) Without limiting any of the other obligations of the Company under the Merger Agreement (as amended by Amendment No. 1 and further amended by this Amendment), contemporaneously with the filing of the Parent Current Report on Form 8-K amending the Form S-4 Registration referred to in Section 3.1 of this Amendment, the Company shall file with the SEC an amendment to the Proxy Statement/Prospectus previously filed by the Company with the SEC, reflecting and implementing the terms of this Amendment (including the amended terms of the Merger reflected in this Amendment) and that shall include the Company Board Recommendation. The Company shall cause the amendment to the Proxy Statement/Prospectus and the filing and dissemination thereof to comply in all material respects with applicable Legal Requirements (including the Exchange Act and the rules and regulations thereunder). Parent and its legal counsel shall be given reasonable opportunity to review and comment on the Proxy Statement/Prospectus (including any amendment or supplement thereto) prior to the filing thereof with the SEC, and the Company shall consider in good faith all additions, deletions or changes thereto suggested by the Parent and Merger Sub and its legal counsel, and shall accept all such reasonable changes proposed thereto by the Parent and Merger Sub and its counsel. This Section 3.2(c) shall replace in its entirety, the obligations under Section 3.2(c) of Amendment No. 1.

Section 4. MISCELLANEOUS

4.1 No Further Amendment. Except as otherwise expressly provided in this Amendment, all of the terms and conditions of the Merger Agreement (as amended by Amendment No. 1) remain unchanged and continue in full force and effect.

4.2 Effect of Amendment. This Amendment shall form a part of the Merger Agreement (as amended by Amendment No. 1) for all purposes, and each party hereto and thereto shall be bound hereby. This Amendment shall be deemed to be in full force and effect from and after the execution of this Amendment by the parties hereto.

4.3 Applicable Law; Jurisdiction; Specific Performance; Remedies. This Amendment shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any laws, rules or provisions that would cause the application of the laws of any jurisdiction other than the State of Delaware. In any action between any of the parties arising out of or relating to this Amendment or any of the Contemplated Transactions: (a) each of the parties irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Chancery Court of the State of Delaware; and (b) each of the parties irrevocably waives the right to trial by jury. The parties agree that irreparable damage would occur and that the parties would not have any adequate remedy at law in the event that any of the provisions of this Amendment were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Amendment and to enforce specifically the terms and provisions of this Amendment, this being in addition to any other remedy to which they are entitled at law or in equity. All rights and remedies existing under this Amendment are cumulative to, and not exclusive of, any rights or remedies otherwise available. The parties hereto further agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to Legal Requirements or inequitable for any reason, and agree not to assert that a remedy of monetary damages would provide an adequate remedy.

4.4 Entire Agreement; Counterparts. Without limiting Section 9.4 of the Merger Agreement, the Merger Agreement (as amended by Amendment No. 1 and further amended by this Amendment) and the other agreements referred to in the Merger Agreement constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the parties with respect to the subject matter hereof and thereof; *provided, however*, that, except as otherwise set forth in the Merger Agreement, the provisions of the Confidentiality Agreement shall not be superseded and shall remain in full force and effect in accordance with its terms (it being understood that no provision in the Merger Agreement (as amended by Amendment No. 1 and further amended by this Amendment) or in the Confidentiality Agreement shall limit any party's rights or remedies in the case of intentional common law fraud). This Amendment may be executed in separate counterparts (including by facsimile or by an electronic scan, including portable document format (.pdf) delivered by electronic mail), each of which shall be deemed an original and all of which shall constitute one and the same instrument.

[Remainder of page left blank intentionally]

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

ACELRX PHARMACEUTICALS, INC.

By: /s/ Vincent J. Angotti
Name: Vincent J. Angotti
Title: Chief Executive Officer

CONSOLIDATION MERGER SUB, INC.

By: /s/ Vincent J. Angotti
Name: Vincent J. Angotti
Title: President

TETRAPHASE PHARMACEUTICALS, INC.

By: /s/ Larry G. Edwards
Name: Larry Edwards
Title: President and Chief Executive Officer

Exhibit A

Form of Contingent Value Rights Agreement

FORM OF CONTINGENT VALUE RIGHTS AGREEMENT

THIS CONTINGENT VALUE RIGHTS AGREEMENT, dated as of [_____], 2020 (this "**Agreement**"), is entered into by and between AcelRx Pharmaceuticals, Inc., a Delaware corporation ("**Parent**"), and Computershare Inc., a Delaware corporation, as Rights Agent (the "**Rights Agent**").

RECITALS

WHEREAS, Parent, Consolidation Merger Sub, Inc., a Delaware corporation and a wholly-owned indirect subsidiary of Parent ("**Merger Sub**"), and Tetraphase Pharmaceuticals, Inc., a Delaware corporation (including in its capacity as the surviving corporation in the Merger, the "**Company**"), have entered into an Agreement and Plan of Merger dated as of March 15, 2020 (as amended or supplemented from time to time pursuant to the terms thereof, the "**Merger Agreement**"), pursuant to which, at the Effective Time (as defined in the Merger Agreement, the "**Effective Time**"), Merger Sub will merge with and into Company (the "**Merger**"), with the Company continuing as the surviving corporation and as a wholly owned indirect subsidiary of Parent;

WHEREAS, pursuant to the Merger Agreement, Parent has agreed to provide to the Company's stockholders the right to receive contingent value rights as hereinafter described; and

WHEREAS, the Rights Agent is willing to act in connection with the issuance, transfer, exchange and payment of such contingent value rights as provided herein.

NOW, THEREFORE, in consideration of the premises and mutual agreements herein, Parent and the Rights Agent hereby agree as follows:

1. DEFINITIONS

1.1. Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Merger Agreement. As used in this Agreement, the following terms shall have the following meanings:

"**Acting Holders**" means, at the time of determination, Holders of at least 40% of the outstanding CVRs as set forth on the CVR Register.

"**Affiliate**" means, with respect to any specified Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified Person; "control" means the ownership, directly or indirectly, of more than 50% of the voting securities entitled to vote for the directors (or similar officials) of a Person or the possession, by contract or otherwise, of the authority to direct the management and policies of a Person.

"**Calendar Quarter**" means each period of three consecutive months commencing on January 1, April 1, July 1 and October 1 of each calendar year.

"**Calendar Year**" means the period of four consecutive Calendar Quarters beginning on January 1 and ending on December 31 of each calendar year.

"**Change of Control**" means (i) a sale or other disposition of all or substantially all of the assets of either Parent or the Company on a consolidated basis (other than to any direct or indirect wholly owned subsidiary of Parent), (ii) a merger or consolidation involving either Parent or the Company in which Parent or the Company, respectively, is not the surviving entity, and (iii) any other transaction involving either

Parent or the Company in which Parent or the Company, respectively, is the surviving entity but in which the stockholders of Parent or the Company, respectively, immediately prior to such transaction own less than fifty percent (50%) of the surviving entity's voting power immediately after the transaction, other than any *bona fide* equity financing transaction solely related to the continued financing of the operations of Parent and its subsidiaries.

"**Commercially Reasonable Efforts**" means, with respect to a task related to a product, the efforts required to carry out such task in a diligent and sustained manner without undue interruption, pause or delay, which level is at least commensurate with the level of efforts that a pharmaceutical company of comparable size and resources as those of Parent and its Affiliates would devote to a product of similar potential (including commercial potential), taking into account its proprietary position and profitability (including pricing and reimbursement status, but excluding the obligation to pay the Milestone Amounts under this Agreement), anticipated or actual market conditions and economic return potential, the regulatory environment, and other relevant technical, commercial, legal, scientific and/or medical factors.

"**CVRs**" means the rights of Holders to receive contingent payments of cash pursuant to the Merger Agreement and this Agreement.

"**CVR Register**" has the meaning set forth in Section 2.3(b).

"**DTC**" means The Depository Trust Company or any successor entity thereto.

"Event of Default" has the meaning set forth in Section 6.1(a).

"**Holder**" means a Person in whose name a CVR is registered in the CVR Register at the applicable time.

"Independent Accountant" has the meaning set forth in Section 4.5(a).

"**Licensee**" means any non-Affiliate third party granted a license by Parent or its Affiliates under the Company IP to make, have made, use, sell, offer for sale, or import XERAVA in the U.S., but shall exclude any (i) third party distributor of XERAVA that has no royalty or other payment obligations to any Parent or any of its Affiliates that are calculated based on amounts invoiced or received by such third party for sales of XERAVA or (ii) a third party distributor of XERAVA that (x) does not take title to XERAVA, (y) does not invoice XERAVA sales to third party customers and (z) is responsible only for inventory management and distribution with respect XERAVA on behalf of Parent or its Affiliates.

"**Milestone**" means each of Milestone 1, Milestone 2 and Milestone 3.

"**Milestone 1**" means achievement of annual Net Sales of at least $20,000,000 during the Calendar Year ending on December 31, 2021.

"**Milestone 2**" means achievement of annual Net Sales of at least $35,000,000 during any Calendar Year ending on or before December 31, 2024.

"**Milestone 3**" means achievement of annual Net Sales of at least $55,000,000 during any calendar year ending on or before December 31, 2024.

"**Milestone Amount**" means each of Milestone 1 Amount, Milestone 2 Amount and Milestone 3 Amount.

"**Milestone 1 Amount**" means, with respect to the achievement of Milestone 1, an amount per CVR equal to the quotient of $2,500,000 divided by the aggregate number of CVRs issued pursuant to the Merger Agreement and this Agreement, without interest (it being understood and agreed that all Milestones or a combination of any two Milestones can be earned in the same year, in which case all such applicable Milestone Amounts shall be payable).

"**Milestone 2 Amount**" means, with respect to the achievement of Milestone 2, an amount per CVR equal to the quotient of $4,500,000 divided by the aggregate number of CVRs issued pursuant to the Merger Agreement and this Agreement, without interest (it being understood and agreed that all Milestones or a combination of any two Milestones can be earned in the same year, in which case all such applicable Milestone Amounts shall be payable).

"**Milestone 3 Amount**" means, with respect to the achievement of Milestone 3, an amount per CVR equal to the quotient of $9,000,000 divided by the aggregate number of CVRs issued pursuant to the Merger Agreement and this Agreement, without interest (it being understood and agreed that all Milestones or a combination of any two Milestones can be earned in the same year, in which case all such applicable Milestone Amounts shall be payable).

"**Milestone Non-Achievement Certificate**" has the meaning set forth in Section 2.4(e).

"**Milestone Notice**" has the meaning set forth in Section 2.4(a)(i)

"**Milestone Payment Date**" has the meaning set forth in Section 2.4(a).

"**Net Sales**" means the gross amount invoiced by Parent, any of its Affiliates (including the Surviving Corporation) or any of its Licensees (each, a "**Selling Party**") to a third party for sales or distribution of XERAVA in the U.S., less the following deductions as calculated in accordance with GAAP consistently applied:

(i) customary trade, cash and quantity discounts given to customers;

(ii) rebates, credits and allowances given by reason of rejections returns, damaged or defective product or recalls;

(iii) government-mandated rebates, credits and adjustments paid or deducted;

(iv) customary price adjustments, allowances, credits, chargeback payments, discounts, rebates, free of charge concessions, fees and reimbursements granted or made to managed care organizations, group purchasing organizations or other buying groups, pharmacy benefit management companies, health maintenance organizations and any other providers of health insurance coverage, health care organizations or other health care institutions (including hospitals), health care administrators, patient assistance or other similar programs, or to federal state/provincial, local and other governments, including their agencies;

(v) reasonable and customary freight, shipping, insurance and other transportation expenses, if borne by the applicable Selling Party without reimbursement from any third party;

(vi) amounts written off as uncollectable debt; provided that the amount of any uncollectable debt deducted pursuant to this exception and actually collected in a subsequent Calendar Quarter shall be included in Net Sales for such subsequent Calendar Quarter; and

(vii) sales, value-added, excise taxes, tariffs and duties, and other taxes and government charges directly related to the sale, delivery or use of XERAVA (but not including taxes assessed against the net income derived from such sale).

Furthermore, Net Sales shall not include use of or sale at or below the direct manufacturing cost of XERAVA by Parent, its Affiliates (including the Surviving Corporation) and/or its sublicensees of XERAVA for non-clinical or clinical studies, patient-assistance programs or charitable donations.

Resales or sales of XERAVA made in good faith between or among any Selling Party shall not be included in the calculation of Net Sales but the subsequent resale or sale to a non-Affiliate third party (other than a Selling Party) shall be included in the computation of Net Sales.

All Net Sales shall be computed in Dollars, and where any Net Sales are calculated in a currency other than Dollars, they shall be translated into Dollars in accordance with GAAP.

"**Officer's Certificate**" means a certificate signed by the chief executive officer, president, chief financial officer, any vice president, the controller, the treasurer or the secretary, in each case of Parent, in his or her capacity as such an officer, and delivered to the Rights Agent.

"**Permitted Transfer**" means a transfer of CVRs (a) upon death of a Holder by will or intestacy; (b) by instrument to an inter vivos or testamentary trust in which the CVRs are to be passed to beneficiaries upon the death of the trustee; (c) pursuant to a court order; (d) by operation of law (including by consolidation or merger) or without consideration in connection with the dissolution, liquidation or termination of any corporation, limited liability company, partnership or other entity; (e) in the case of CVRs held in book-entry or other similar nominee form, from a nominee to a beneficial owner and, if applicable, through an intermediary, as allowable by DTC; or (f) as provided in Section 2.10.

"**Rights Agent**" means the Rights Agent named in the first paragraph of this Agreement, until a successor Rights Agent becomes such pursuant to the applicable provisions of this Agreement, and thereafter "Rights Agent" shall mean such successor Rights Agent.

"**Share**" means each share of Company Common Stock outstanding immediately prior to the Effective Time, except any (i) shares of Company Common Stock held by the Company or any wholly-owned Subsidiary of the Company as of immediately prior to the Effective Time (or held in the Company's treasury), (ii) shares of Company Common Stock held by Parent, Merger Sub or any other wholly-owned Subsidiary of Parent as of immediately prior to the Effective Time or (iii) Dissenting Company Shares.

"**U.S.**" means the United States of America and its territories, districts and possessions.

1.2. Rules of Construction. For purposes of this Agreement, the parties hereto agree that: (a) whenever the context requires, the singular number shall include the plural, and vice versa; (b) the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include masculine and feminine genders; (c) the word "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and does not simply mean "if"; (d) the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation;" (e) the meaning assigned to each capitalized term defined and used in this Agreement is equally applicable to both the singular and the plural forms of such term, and words denoting any gender include all genders; (f) where a word or phrase is defined in this Agreement, each of its other grammatical forms has a corresponding meaning unless the context otherwise requires; (g) a reference to any specific Legal Requirement or to any provision of any Legal Requirement includes any amendment to, and any

modification, re-enactment or successor thereof, any legislative provision substituted therefor and all rules, regulations and statutory instruments issued thereunder or pursuant thereto; (h) references to any agreement or Contract are to that agreement or Contract as amended, modified or supplemented; (i) they have been represented by legal counsel during the negotiation and execution and delivery of this Agreement and therefore waive the application of any Legal Requirement, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document; and (j) the word "or" shall not be exclusive (i.e., "or" shall be deemed to mean "and/or") unless the subjects of the conjunction are mutually exclusive. The headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement. All references to "Dollars" or "$" are to United States Dollars, unless expressly stated otherwise.

2. CONTINGENT VALUE RIGHTS

2.1. CVRs. As provided in the Merger Agreement, effective as of the Effective Time, (i) each Share shall be converted into the right to receive the Merger Consideration, which includes one CVR, and (ii) each Company Warrant that is assumed and converted pursuant to Section 5.3(c) of the Merger Agreement shall be treated in accordance with its terms. The initial Holders shall be determined pursuant to the terms of the Merger Agreement and this Agreement, and a list of the initial Holders shall be furnished to the Rights Agent by or on behalf of Parent in accordance with Section 4.1 hereof.

2.2. Non-transferable. The CVRs may not be sold, assigned, transferred, pledged, encumbered or in any other manner transferred or disposed of, in whole or in part, other than through a Permitted Transfer, and, in the case of a Permitted Transfer, only in accordance with Section 2.3(c) hereof and in compliance with applicable United States federal and state securities laws and the terms and conditions hereto. Any such sale, assignment, transfer, pledge, encumbrance or disposal of CVRs, in whole or in part, in violation of this Section 2.2, shall be null and void and of no effect.

2.3. No Certificate; Registration; Registration of Transfer; Change of Address.

(a) The CVRs shall not be evidenced by a certificate or other instrument.

(b) The Rights Agent shall keep a register (the "**CVR Register**") for the purpose of identifying the Holders and registering CVRs and transfers of CVRs as herein provided. The CVR Register will initially show one position for Cede & Co. representing all of the CVRs that are issued to the holders of Shares held by DTC on behalf of the street holders of the Shares. The Rights Agent will have no responsibility whatsoever directly to the street name holders or DTC participants with respect to transfers of CVRs. With respect to any payments to be made under Section 2.4 below, the Rights Agent will accomplish such payment to any former street name holders of the Shares by sending such payments to DTC. The Rights Agent will have no responsibilities whatsoever with regard to the distribution of payments by DTC to such street name holders.

(c) Subject to the restrictions on transferability set forth in Section 2.2, every request made to transfer a CVR must be in writing and accompanied by a written instrument of transfer in form reasonably satisfactory to the Rights Agent pursuant to its written guidelines, duly executed by the Holder thereof, the Holder's attorney duly authorized in writing, the Holder's personal representative or the Holder's survivor, as applicable, and setting forth in reasonable detail the circumstances relating to the transfer. Upon receipt of such written notice, the Rights Agent shall, subject to its reasonable determination that the transfer instrument is in proper form and the transfer otherwise complies with the other terms and conditions of this Agreement (including the provisions of Section 2.2), register the transfer of the CVRs in the CVR Register and notify Parent of the same. Any registration, transfer or assignment of the CVRs shall

be without charge to the Holder (other than payment of a sum to the extent necessary to cover any stamp or other Tax or other governmental charge that is imposed in connection with any such registration, transfer or assignment). All duly transferred CVRs registered in the CVR Register shall be the valid obligations of Parent and shall entitle the transferee to the same benefits and rights under this Agreement as those held immediately prior to the transfer by the transferor. No transfer of a CVR shall be valid unless and until registered in the CVR Register.

(d) A Holder may make a written request to the Rights Agent to change such Holder's address of record in the CVR Register. The written request must be duly executed by the Holder. Upon receipt of such written request, the Rights Agent is hereby authorized to, and shall promptly, record the change of address in the CVR Register.

2.4. Payment Procedures.

(a) If any Milestone is achieved, then, in each case, on a date (a "**Milestone Payment Date**") that is within 60 days following the last day of such Calendar Quarter in which such Milestone is achieved:

(i) Parent will deliver to the Rights Agent (A) a notice (a "**Milestone Notice**") indicating the achievement of such Milestone and that the Holders are entitled to receive the applicable Milestone Amount and (B) cash in the aggregate amount of the Milestone Amount.

(ii) Subject to the terms of this Agreement each CVR shall entitle the Holder thereof to receive from the Rights Agent (on behalf of Parent), for each CVR, the Milestone Amount, in each case subject to any applicable withholding Tax.

(b) The Rights Agent shall promptly, and in any event within 10 Business Days of receipt of a Milestone Notice, as well as any letter of instruction reasonably required by the Rights Agent, send each Holder at its registered address a copy of such Milestone Notice. At the time the Rights Agent sends a copy of such Milestone Notice to the Holders, the Rights Agent shall also pay to each Holder, subject to any applicable withholding Tax, the applicable Milestone Amount (the amount of which each Holder is entitled to receive shall be based on the applicable Milestone Amount multiplied by the number of CVRs held by such Holder as reflected in the CVR Register), in accordance with the corresponding letter of instruction (i) by check mailed to the address of such Holder reflected in the CVR Register as of 5:00 p.m. New York City time on the date of the applicable Milestone Notice or (ii) with respect to any such Holder that is due an amount in excess of $100,000 in the aggregate who has provided the Rights Agent wiring instructions in writing as of the close of business on the date of the Milestone Notice, by wire transfer of immediately available funds to the account specified on such instruction.

(c) Notwithstanding any other provisions of this Agreement, any portion of the amounts payable pursuant to Section 2.4(b) that remains unclaimed as of the first anniversary of the applicable Milestone Payment Date (including by means of uncashed checks or invalid addresses on the CVR Register) shall be delivered to Parent or its designee and not disbursed to the Holders, and, thereafter, such Holders shall be entitled to look to Parent (subject to abandoned property, escheat and other similar Laws) only as general creditors thereof with respect to such cash that may be payable.

(d) Neither Parent, the Rights Agent nor any of their Affiliates shall be liable to any Holder for any payments delivered to a public official pursuant to any abandoned property, escheat law or other similar Legal Requirements.

(e) If a Milestone is not achieved during any one of the 2021, 2022, 2023 or 2024 Calendar Years, then on or before the date that is 60 days after the expiration of each such applicable Calendar Year period, Parent shall deliver to the Rights Agent a certificate certifying that such Milestone has not occurred, accompanied by a statement setting forth, in reasonable detail, a calculation of Net Sales for the applicable period (each, a "**Milestone Non-Achievement Certificate**"). The Rights Agent shall promptly, and in any event within 10 Business Days of receipt of a Milestone Non-Achievement Certificate, send each Holder at its registered address a copy of such Milestone Non-Achievement Certificate, including detail regarding the ability of a Holder or Holders to dispute or contest such determination of non-achievement of a Milestone pursuant to this Agreement. If the Rights Agent does not receive from the Acting Holders a written objection to (i) a Milestone Non-Achievement Certificate with respect to Milestone 1, if any, within 180 days of the delivery by the Rights Agent of such Milestone Non-Achievement Certificate to the Holders in accordance with this Section 2.4(e), the Holders shall be deemed to have accepted such Milestone Non-Achievement Certificate and Parent and its Affiliates shall have no further obligation with respect to Milestone 1 and the Milestone 1 Amount, and/or (ii) a Milestone Non-Achievement Certificate with respect to Milestone 2 and/or Milestone 3, if any, within 180 days of the delivery by the Rights Agent of such Milestone Non-Achievement Certificate with respect the 2024 Calendar Year to the Holders in accordance with this Section 2.4(e), the Holders shall be deemed to have accepted such Milestone Non-Achievement Certificate and Parent and its Affiliates shall have no further obligation with respect to each such Milestone and the applicable Milestone Amount.

2.5. Withholding. Each of Parent, the Rights Agent, the Exchange Agent, the Surviving Corporation, their respective Affiliates, and any other Person who has any obligation to deduct or withhold from any consideration payable pursuant to this Agreement shall be entitled to deduct and withhold from the amounts otherwise payable pursuant to this Agreement such amounts as are required by any law to be deducted and withheld, as may be reasonably determined by such Person. To the extent that amounts are so withheld and remitted to the appropriate Governmental Body in accordance with applicable Legal Requirements, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

2.6. Adjustment of CVRs.

(a) In case of any Change of Control, appropriate adjustment shall be made in the application of the provisions herein set forth with respect to the rights and interests of Holders so that the provisions set forth herein shall thereafter be applicable, as nearly as possible, in relation to any cash thereafter deliverable upon payment of CVRs.

(b) Whenever an adjustment is made to the terms of the CVRs pursuant to this Section 2.6, Parent will deliver to the Rights Agent a notice of such Change of Control within 3 Business Days of the closing of such Change of Control, setting forth in reasonable detail the terms of such Change of Control and any adjustments made pursuant to this Section 2.6. The Rights Agent shall promptly, and in any event within 10 Business Days of receipt of such a notice, send each Holder a copy of such notice in accordance with Section 7.2.

(c) The Rights Agent has no duty to determine when an adjustment under this Section 2.6 should be made, how it should be made or what it should be. The Rights Agent shall not be responsible for Parent's failure to comply with this Section 2.6.

2.7. Notices to CVR Holders. Upon any adjustment pursuant to Section 2.6, Parent shall give prompt written notice of such adjustment to the Rights Agent and shall cause the Rights Agent, on behalf of and at the expense of Parent, within 10 days after notification is received by the Rights Agent of such adjustment, to mail by first class mail, postage prepaid, to each Holder a notice of such adjustment(s)

and shall deliver to the Rights Agent a certificate of the Chief Financial Officer of Parent, setting forth in reasonable detail (i) the terms of such adjustment(s), (ii) a brief statement of the facts requiring such adjustment(s) and (iii) the computation by which such adjustment(s) was made. Where appropriate, such notice by Parent may be given in advance and included as a part of the notice to the Holders required under the other provisions of this Section 2.7.

2.8. Holding of Funds. All funds received by the Rights Agent under this Agreement that are to be distributed or applied by the Rights Agent in the performance of services hereunder (the "**Funds**") shall be held by the Rights Agent as agent for Parent and deposited in one or more bank accounts to be maintained by the Rights Agent in its name as agent for Parent. Until paid pursuant to the terms of this Agreement, the Rights Agent will hold the Funds through such accounts in: deposit accounts of commercial banks with Tier 1 capital exceeding $1 billion or with an average rating above investment grade by S&P (LT Local Issuer Credit Rating), Moody's (Long Term Rating) and Fitch Ratings, Inc. (LT Issuer Default Rating) (each as reported by Bloomberg Finance L.P.). The Rights Agent shall have no responsibility or liability for any diminution of the Funds that may result from any deposit made by the Rights Agent in accordance with this paragraph, including any losses resulting from a default by any bank, financial institution or other third party; *provided* that in the event the Funds are diminished below the level required for the Rights Agent to make cash payments as required under this Agreement, including any such diminishment as a result of investment losses, Parent shall promptly pay additional cash to the Rights Agent in an amount equal to the deficiency in the amount required to make such payments. The Rights Agent may from time to time receive interest, dividends or other earnings in connection with such deposits. The Rights Agent shall not be obligated to pay such interest, dividends or earnings to Parent, any Holder or any other Person, unless there is a diminution of the Funds due to a deposit or investment made by the Rights Agent, in which case, the Rights Agent agrees that such interest, dividends or earnings shall accrue to the benefit of Parent to the extent of such diminution of the Funds.

2.9. No Voting, Dividends or Interest; No Equity or Ownership Interest.

(a) Nothing contained in this Agreement shall be construed as conferring upon any Holder, by virtue of being a Holder of a CVR, the right to receive dividends, or the right to vote or to consent or to receive notice as stockholders in respect of the meetings of stockholders or the election of directors of Parent or any or any other matter, or any other rights of any kind or nature whatsoever as a stockholder of Parent, either at law or in equity.

(b) The CVRs shall not represent any equity or ownership interest in Parent or in any constituent company to the Merger or any of their respective Subsidiaries or Affiliates. The rights of a Holder in respect of the CVRs are limited to those expressed in this Agreement and the Merger Agreement.

2.10. Ability to Abandon CVR. A Holder may at any time, at such Holder's option, abandon all of such Holder's remaining rights in a CVR by transferring such CVR to Parent or any of its Affiliates without consideration therefor. Nothing in this Agreement shall prohibit Parent or any of its Affiliates from offering to acquire or acquiring any CVRs for consideration from the Holders, in private transactions or otherwise, in its sole discretion. Any CVRs acquired by Parent or any of its Affiliates shall be automatically deemed extinguished and no longer outstanding for purposes of the definition of Acting Holders and Section 5 and Section 6.

3. **THE RIGHTS AGENT**

3.1. Certain Duties and Responsibilities. Parent hereby appoints the Rights Agent to act as rights agent for Parent in accordance with the express terms and conditions set forth in this Agreement (and no implied terms and conditions), and the Rights Agent hereby accepts such appointment. The Rights Agent shall not have any liability for any actions taken, suffered or omitted to be taken in connection with this Agreement, except to the extent of its gross negligence, bad faith or willful or intentional misconduct.

3.2. Certain Rights of the Rights Agent. The Rights Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Rights Agent. In addition:

(a) the Rights Agent may rely and shall be protected and held harmless by Parent in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) whenever the Rights Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Rights Agent may rely upon an Officer's Certificate, which certificate shall be full authorization and protection to the Rights Agent, and the Rights Agent shall, in the absence of gross negligence, bad faith or willful or intentional misconduct on its part, incur no liability and be held harmless by Parent for or in respect of any action taken, suffered or omitted to be taken by it under the provisions of this Agreement in reliance upon such certificate;

(c) the Rights Agent may engage and consult with counsel of its selection and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection and shall be held harmless by Parent in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(d) the permissive rights of the Rights Agent to do things enumerated in this Agreement shall not be construed as a duty;

(e) the Rights Agent shall not be required to give any note or surety in respect of the execution of such powers or otherwise in respect of the premises;

(f) the Rights Agent shall not be liable for or by reason of, and shall be held harmless by Parent with respect to any of the statements of fact or recitals contained in this Agreement or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by Parent only;

(g) the Rights Agent shall have no liability and shall be held harmless by Parent in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution and delivery hereof by the Rights Agent and the enforceability of this Agreement against the Rights Agent assuming the due execution and delivery hereof by Parent); nor shall it be responsible for any breach by Parent of any covenant or condition contained in this Agreement;

(h) Parent agrees to indemnify the Rights Agent for, and hold the Rights Agent harmless against, any loss, liability, damage, judgement, fine, penalty, claim, demands, suits or expense arising out of or in connection with Rights Agent's duties under this Agreement, including the reasonable out-of-pocket costs and expenses of counsel in defending Rights Agent against any loss, liability, damage, judgement, fine, penalty, claim, demands, suits or expense, unless such loss has been determined by a court of competent jurisdiction to be a result of Rights Agent's gross negligence, bad faith or willful or intentional misconduct;

(i) Anything to the contrary notwithstanding, in the absence of fraud or willful or intentional misconduct on the part of the Rights Agent, (i) the Rights Agent shall not be liable for any

special, punitive, indirect, consequential or incidental loss or damage of any kind whatsoever (including but not limited to lost profits) arising out of any act or failure to act hereunder, even if the Rights Agent has been advised of the likelihood of such loss or damage or has foreseen the possibility or likelihood of such damages and (ii) the aggregate liability of the Rights Agent arising in connection with this Agreement, whether in contract, or in tort, or otherwise, is limited to, and shall not exceed, the amounts paid or payable hereunder by Parent to the Rights Agent as fees and charges;

(j) Parent agrees (i) to pay the fees and expenses of the Rights Agent in connection with this Agreement agreed upon in writing by the Rights Agent and Parent prior to the date hereof, and (ii) to reimburse the Rights Agent for all taxes and governmental charges, reasonable out-of-pocket expenses and other charges of any kind and nature incurred by the Rights Agent in the execution of this Agreement (other than Taxes imposed on or measured by the Rights Agent's net income and franchise or similar Taxes imposed on it (in lieu of net income Taxes)); and

(k) No provision of this Agreement shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of its rights if there shall be reasonable grounds for believing that repayment of such funds or adequate indemnification against such risk or liability is not reasonably assured to it.

3.3. Resignation and Removal; Appointment of Successor.

(a) The Rights Agent may resign at any time by giving written notice thereof to Parent specifying a date when such resignation shall take effect, which notice shall be sent at least 60 days prior to the date so specified but in no event shall such resignation become effective until a successor Rights Agent has been appointed and accepted such appointment in accordance with Section 3.4. Parent has the right to remove the Rights Agent at any time by specifying a date when such removal shall take effect but no such removal shall become effective until a successor Rights Agent has been appointed and accepted such appointment in accordance with Section 3.4. Notice of such removal shall be given by Parent to the Rights Agent, which notice shall be sent at least 60 days prior to the date so specified.

(b) If the Rights Agent provides notice of its intent to resign, is removed or becomes incapable of acting, Parent shall, as soon as is reasonably practicable, appoint a qualified successor Rights Agent who shall be a stock transfer agent of national reputation or the corporate trust department of a commercial bank. Notwithstanding the foregoing, if Parent shall fail to make such appointment within a period of sixty (60) days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent, then the incumbent Rights Agent may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. The successor Rights Agent so appointed shall, forthwith upon its acceptance of such appointment in accordance with Section 3.4, become the successor Rights Agent.

(c) Parent shall give notice of each resignation and each removal of a Rights Agent and each appointment of a successor Rights Agent through the facilities of DTC in accordance with DTC's procedures and/or by mailing written notice of such event by first-class mail to the Holders as their names and addresses appear in the CVR Register. Each notice shall include the name and address of the successor Rights Agent. If Parent fails to send such notice within 10 Business Days after acceptance of appointment by a successor Rights Agent, the successor Rights Agent shall cause the notice to be transmitted at the expense of Parent. Failure to give any notice provided for in this Section 3.3, however, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

(d) Notwithstanding anything else in this Section 3.3, unless consented to in writing by the Acting Holders, Parent shall not appoint as a successor Rights Agent any Person that is not a stock transfer agent of national reputation or the corporate trust department of an international commercial bank.

3.4. Acceptance of Appointment by Successor. Every successor Rights Agent appointed hereunder shall, at or prior to such appointment, execute, acknowledge and deliver to Parent and to the retiring Rights Agent an instrument accepting such appointment and a counterpart of this Agreement, and thereupon such successor Rights Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Rights Agent. On request of Parent or the successor Rights Agent, the retiring Rights Agent shall execute and deliver an instrument transferring to the successor Rights Agent all the rights, powers, trusts and duties of the retiring Rights Agent.

4. **COVENANTS**

4.1. List of Holders. Parent shall furnish or cause to be furnished to the Rights Agent the names and addresses of the Holders within 10 days of the Effective Time.

4.2. Books and Records. Parent shall, and shall cause its subsidiaries to, keep true, complete and accurate records in sufficient detail to enable the Holders and their consultants or professional advisors to determine the amounts payable hereunder.

4.3. Payment of Milestone Amounts. Parent shall duly and promptly deposit with the Rights Agent for payment to the Holders the Milestone Amounts in the manner provided for in Section 2.4 and in accordance with the terms of this Agreement.

4.4. Further Assurances. Parent agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered, all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement.

4.5. Audit Rights.

(a) Until December 31, 2025, upon reasonable advance written notice from the Acting Holders, Parent shall permit an independent certified public accounting firm of nationally recognized standing selected by such Acting Holders and reasonably acceptable to Parent (the "**Independent Accountant**") to have access at reasonable times during normal business hours to the books and records of Parent and its Affiliates as may be reasonably necessary to evaluate and verify Parent's calculation of Net Sales hereunder; provided that (x) such Acting Holders (and the Independent Accountant) enter into customary confidentiality agreements reasonably satisfactory to Parent with respect to the confidential information of Parent or its Affiliates to be furnished pursuant to this Section 4.5 and (y) such access does not unreasonably interfere with the conduct of the business of Parent or any of its Affiliates. The fees charged by such accounting firm shall be borne by Parent. The Independent Accountant shall provide Parent with a copy of all disclosures made to the Acting Holders. The decision of such accounting firm shall be final, conclusive and binding on Parent and the Holders, shall be nonappealable and shall not be subject to further review, absent manifest error. Parent shall not enter into any transaction constituting a Change of Control unless such agreement contains provisions that would permit such accounting firm with such access to the records of the other party in such Change of Control if and to the extent as are reasonably necessary to ensure compliance with this Section 4.5. The audit rights set forth in this Section 4.5(a) may not be exercised by the Acting Holders more than once in any given twelve (12) month period.

(b) If, in accordance with the procedures set forth in Section 4.5(a), the Independent Accountant concludes that any Milestone Amount should have been paid but was not paid when due, Parent shall promptly, and in any event within thirty (30) days of the date the Independent Accountant delivers to Parent the Independent Accountant's written report, pay each Holder such Milestone Amount (to the extent not paid on a subsequent date), plus interest at the thirty (30) day U.S. dollar "prime rate" effective for the date such payment was due, as reported by Bloomberg, from when such Milestone Amount should have been paid, as applicable, to the date of actual payment, pursuant to Section 2.4(a)(i) and Section 2.4(b).

4.6. Commercially Reasonable Efforts. Commencing upon the Closing and continuing until the earlier of December 31, 2024 or the achievement of all Milestones, Parent shall, and shall cause its Affiliates and Licensees to, use Commercially Reasonable Efforts to achieve the Milestones. Without limiting the foregoing, neither Parent nor any of its Affiliates shall act in bad faith for the purpose of avoiding achievement of any Milestone or the payment of any Milestone Amount.

5. **AMENDMENTS**

5.1. Amendments without Consent of Holders.

(a) Without the consent of any Holders, Parent, at any time and from time to time, may enter into one or more amendments hereto, for any of the following purposes:

(i) to evidence the succession of another person to Parent and the assumption by any such successor of the covenants of Parent herein; provided that such succession and assumption is in accordance with the terms of this Agreement;

(ii) to evidence the succession of another Person as a successor Rights Agent and the assumption by any such successor of the covenants and obligations of the Rights Agent herein; provided that such succession and assumption is in accordance with the terms of this Agreement;

(iii) to add to the covenants of Parent such further covenants, restrictions, conditions or provisions as Parent shall consider to be for the protection of the Holders; provided that, in each case, such provisions do not adversely affect the interests of the Holders;

(iv) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein or in the Merger Agreement, or to make any other provisions with respect to matters or questions arising under this Agreement; provided that, in each case, such provisions do not adversely affect the interests of the Holders;

(v) as may be necessary or appropriate to ensure that the CVRs are not subject to registration under the Securities Act, the Exchange Act or any applicable state securities or "blue sky" laws; provided that, such provisions shall not adversely affect the interests of the Holders;

(vi) to evidence the assignment of this Agreement by Parent as provided in Section 7.3; or

(vii) as may be necessary or appropriate to ensure that the Company complies with applicable law.

In addition to the foregoing, upon the request of Parent, the Rights Agent hereby agrees to enter into one or more amendments hereto to evidence the succession of another person as a successor Rights Agent in accordance with the terms of this Agreement and the assumption by any successor of the covenants and obligations of such Rights Agent herein, without modification of such covenants or obligations other than as permitted by this Section 5.1.

(b) Without the consent of any Holders, Parent and the Rights Agent, at any time and from time to time, may enter into one or more amendments hereto to reduce the number of CVRs, in the event any Holder agrees to renounce such Holder's rights under this Agreement in accordance with Section 7.4 or to transfer CVRs to Parent pursuant to Section 2.10.

(c) Promptly after the execution by Parent and the Rights Agent of any amendment pursuant to the provisions of this Section 5.1, Parent shall mail (or cause the Rights Agent to mail) a notice thereof through the facilities of DTC in accordance with DTC's procedures and/or by first class mail to the Holders at their addresses as they appear on the CVR Register, setting forth such amendment.

5.2. Amendments with Consent of Holders.

(a) Subject to Section 5.1 (which amendments pursuant to Section 5.1 may be made without the consent of any Holder), with the written consent of the Holders of not less than a majority of the outstanding CVRs as set forth in the CVR Register, whether evidenced in writing or taken at a meeting of the Holders, Parent and the Rights Agent may enter into one or more amendments hereto for the purpose of adding, eliminating or changing any provisions of this Agreement, even if such addition, elimination or change is materially adverse to the interest of the Holders.

(b) Promptly after the execution by Parent and the Rights Agent of any amendment pursuant to the provisions of this Section 5.2, Parent shall mail (or cause the Rights Agent to mail) a notice thereof through the facilities of DTC in accordance with DTC's procedures and/or by first class mail to the Holders at their addresses as they appear on the CVR Register, setting forth such amendment.

5.3. Execution of Amendments. Prior to executing any amendment permitted by this Section 5, the Rights Agent shall be entitled to receive, and shall be fully protected in relying upon, an opinion of counsel selected by Parent and reasonably acceptable to Rights Agent stating that the execution of such amendment is authorized or permitted by this Agreement.

5.4. Effect of Amendments. Upon the execution of any amendment under this Section 5, this Agreement shall be modified in accordance therewith, such amendment shall form a part of this Agreement for all purposes and every Holder shall be bound thereby.

6. REMEDIES OF THE HOLDERS

6.1. Event of Default.

(a) "**Event of Default**" with respect to the CVRs, means each one of the following events which shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of Legal Requirements, pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Body or otherwise): (i) default in the payment by Parent pursuant to the terms of this Agreement of all or any part of a Milestone Amount after a period of ten (10) Business Days after the Milestone Amount shall become due and payable and (ii) material default in the performance, or breach in any material respect, of any other covenant or warranty of Parent hereunder, and continuance of such default or breach for a period of sixty (60) days after a written notice specifying such default or breach and requiring it to be remedied is given, which written notice states that it is a "Notice of Default" hereunder and is sent by registered or certified mail to Parent and the Rights Agent by the Acting Holders.

(b) If an Event of Default described above occurs and is continuing (and has not been cured or waived), then, and in each and every such case, the Acting Holders by notice in writing to Parent and the Rights Agent, may, in their discretion, commence a suit to protect the rights of the Holders, including to obtain payment for any amounts then due and payable.

6.2. Suits by Holders. Except for the rights of the Rights Agent set forth herein, the Acting Holders will have the sole right, on behalf of all Holders, by virtue of or under any provision of this Agreement, to institute any action or proceeding with respect to this Agreement, and no individual Holder or other group of Holders will be entitled to exercise such rights. Notwithstanding the foregoing, (a) the right of any Holder of any CVR to receive payment of the amounts that a Milestone Notice indicates are payable in respect of such CVR on or after the applicable due date, or to institute any action or proceeding for the enforcement of any such payment on or after such due date, shall not be impaired or affected without the consent of such Holder and (b) in the event of an insolvency proceeding of Parent, individual Holders shall be entitled to assert claims in such insolvency proceeding and take related actions in pursuit of such claims with respect to any payment that may be claimed by or on behalf of Parent or by any creditor of Parent.

7. OTHER PROVISIONS OF GENERAL APPLICATION

7.1. Notices to the Rights Agent and Parent. Any notice or other communication required or permitted to be delivered to Parent or the Rights Agent under this Agreement shall be in writing and shall be deemed properly delivered, given and received (a) upon receipt when delivered by hand, (b) two Business Days after being sent by registered mail or by courier or express delivery service, (c) if sent by email transmission prior to 6:00 p.m. recipient's local time, upon transmission when receipt is confirmed or (d) if sent by email transmission after 6:00 p.m. recipient's local time and receipt is confirmed, the Business Day following the date of transmission; *provided* that in each case the notice or other communication is sent to the physical address or email address, as applicable, set forth beneath the name of such party below (or to such other physical address or email address as such party shall have specified in a written notice given to the other party):

If to the Rights Agent, to it at:

Computershare Inc.
[Address]
Attention: [ ]
Facsimile: [ ]
Email: [ ]

If to Parent, to it at:

AcelRx Pharmaceuticals, Inc.
351 Galveston Drive
Redwood City, California 94063
Attention: Chief Financial Officer
Phone: 650-216-3500

with a copy to:

AcelRx Pharmaceuticals, Inc.
351 Galveston Drive
Redwood City, California 94063
Attention: Legal Department
Phone: 650-216-3500
Email: legal@acelrx.com

with a copy to:

Cooley LLP
101 California Street, 5th Floor
San Francisco, CA 94111
Attention: Robert Phillips; Rama Padmanabhan
E-mail: rphillips@cooley.com; rama@cooley.com
Facsimile: (415) 693-2222

The Rights Agent or Parent may specify a different address, facsimile number or email address by giving notice in accordance with this Section 7.1.

7.2. Notice to Holders. Where this Agreement provides for notice to Holders, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and transmitted through the facilities of DTC in accordance with DTC's procedures or mailed, first-class postage prepaid, to each Holder affected by such event, at the Holder's address as it appears in the CVR Register, not later than the latest date, and not earlier than the earliest date, if any, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders.

7.3. Successors and Assigns. Parent may assign, in its sole discretion and without the consent of any other Person, any or all of its rights, interests and obligations hereunder to one or more direct or indirect wholly owned subsidiaries of Parent for so long as they remain wholly owned subsidiaries of Parent and any such subsidiary may assign any or all of its rights, interests and obligations hereunder to one or more other direct or indirect wholly owned subsidiaries of Parent for so long as they remain wholly owned subsidiaries of Parent; *provided* that each such assignee agrees to assume and be bound by all of the terms and conditions of this Agreement; *provided*, *further*, that Parent shall remain liable for the performance by each such assignee of all covenants, agreements and obligations of Parent hereunder. This Agreement will be binding upon, inure to the benefit of and be enforceable by Parent's successors and each assignee. Each of Parent's successors and each assignee shall, by a supplemental contingent consideration payment agreement or other acknowledgement executed and delivered to the Rights Agent, expressly agree to assume and be bound by all of the terms and conditions of this Agreement. This Agreement shall not

restrict Parent's or any successor's ability to merge or consolidate or enter into or consummate any Change of Control; *provided*, that in the event of a Change of Control, Parent or the Company, as applicable, shall cause the acquirer to assume Parent's obligations, duties and covenants under this Agreement. Except as otherwise permitted herein, Parent may not assign this Agreement without the prior written consent of the Acting Holders. Any attempted assignment of this Agreement or any such rights in violation of this Section 7.3 shall be void and of no effect.

7.4. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, shall give to any Person (other than the Rights Agent and its permitted successors and assigns, Parent, Parent's permitted successors and assignees, and the Holders and the Holders' successors and assigns pursuant to Permitted Transfers, each of whom is intended to be, and is, a third party beneficiary hereunder) any benefit or any legal or equitable right, remedy or claim under this Agreement or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the Rights Agent and its permitted successors and assigns, Parent, Parent's permitted successors and assignees, and the Holders and the Holders' successors and assigns pursuant to Permitted Transfers. The rights hereunder of Holders and their successors and assigns pursuant to Permitted Transfers are limited to those expressly provided in this Agreement. Notwithstanding anything to the contrary contained herein, any Holder or Holder's successor or assign pursuant to a Permitted Transfer may at any time agree to renounce, in whole or in part, whether or not for consideration, its rights under this Agreement by written notice to the Rights Agent and Parent, which notice, if given, shall be irrevocable, and Parent may, in its sole discretion, at any time offer consideration to Holders in exchange for their agreement to irrevocably renounce their rights, in whole or in part, hereunder.

7.5. Governing Law; Jurisdiction. This Agreement, the CVRs and all actions arising under or in connection herewith and therewith (whether sounding in contract, tort or otherwise) shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any laws, rules or provisions that would cause the application of the laws of any jurisdiction other than the State of Delaware. In any action between any of the parties arising out of or relating to this Agreement or the CVRs: (a) each of the parties irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Chancery Court of the State of Delaware; and (b) each of the parties irrevocably waives the right to trial by jury. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

7.6. Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and the application of such provision to other Persons or circumstances shall be interpreted so as reasonably to effect the intent of the parties. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

7.7. Termination. This Agreement shall be terminated and of no force or effect, the parties hereto shall have no liability hereunder (other than with respect to monies due and owing by Parent to Rights Agent), and no payments shall be required to be made upon the earlier to occur of (a) the payment in full of the Milestone 1 Amount, the Milestone 2 Amount and the Milestone 3 Amount, by the mailing by the Rights Agent to the address of each Holder as reflected in the CVR Register the full amount of each Milestone Amount, in each case, as required to be paid under the terms of this Agreement, (b) December 31, 2024, if Milestone 2 and/or Milestone 3 has not been achieved on or prior to such date, and (c) the termination of the Merger Agreement in accordance with its terms. Notwithstanding the foregoing, no such termination shall affect any rights or obligations accrued prior to the effective date of such termination or Sections 2.4(c), 2.4(d), 2.4(e), 3.2, 4.5, 7.4, 7.5, 7.6, 7.8, 7.9, 7.10 or this Section 7.7, which shall survive the termination of this Agreement, or the resignation, replacement or removal of the Rights Agent.

7.8. Entire Agreement; Counterparts. As it relates to the Rights Agent, this Agreement constitutes the entire agreement of the parties hereto and supersedes all contemporaneous and prior agreements and understandings, both written and oral, among or between any of the parties hereto, with respect to the subject matter hereof. As between Parent and the Company this Agreement and the Merger Agreement constitute the entire agreement and supersede all contemporaneous and prior agreements and understandings, both written and oral, among or between any of the parties, with respect to the subject matter hereof. If and to the extent that any provision of this Agreement is inconsistent or conflicts with the Merger Agreement, this Agreement shall govern and be controlling. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by PDF shall be sufficient to bind the parties hereto to the terms and conditions of this Agreement.

7.9. No Fiduciary Obligations. Each of Parent and the Rights Agent acknowledges and agrees that the other party, its Affiliates and their respective officers, directors and controlling Persons do not owe any fiduciary duties to the first party or any of its respective Affiliates, officers, directors or controlling Persons. The only obligations of Parent and the Rights Agent to each other and their Affiliates and their respective officers, directors and controlling Persons arising out of this Agreement are the contractual obligations expressly set forth in this Agreement.

7.10. Confidentiality. The Rights Agent and Parent agree that all books, records, information and data pertaining to the business of the other party, including inter alia, personal, non-public Holder information, which are exchanged or received pursuant to the negotiation or the carrying out of this Agreement including the fees for services set forth in the attached schedule shall remain confidential, and shall not be voluntarily disclosed to any other person, except as may be required by a valid order of an arbitration panel, court or governmental body of competent jurisdiction or is otherwise required by law or regulation, including SEC or Nasdaq rules and regulations, or pursuant to subpoenas from state or federal government authorities (e.g., in divorce and criminal actions).

[*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK*]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf by its duly authorized officers as of the day and year first above written.

ACELRX PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____

COMPUTERSHARE INC.

By: _____
Name: _____
Title: _____

[Signature Page to Contingent Value Rights Agreement]

Exhibit 10.1

FORM OF CONTINGENT VALUE RIGHTS AGREEMENT

THIS CONTINGENT VALUE RIGHTS AGREEMENT, dated as of [_____], 2020 (this "**Agreement**"), is entered into by and between AcelRx Pharmaceuticals, Inc., a Delaware corporation ("**Parent**"), and Computershare Inc., a Delaware corporation, as Rights Agent (the "**Rights Agent**").

RECITALS

WHEREAS, Parent, Consolidation Merger Sub, Inc., a Delaware corporation and a wholly-owned indirect subsidiary of Parent ("**Merger Sub**"), and Tetraphase Pharmaceuticals, Inc., a Delaware corporation (including in its capacity as the surviving corporation in the Merger, the "**Company**"), have entered into an Agreement and Plan of Merger dated as of March 15, 2020 (as amended or supplemented from time to time pursuant to the terms thereof, the "**Merger Agreement**"), pursuant to which, at the Effective Time (as defined in the Merger Agreement, the "**Effective Time**"), Merger Sub will merge with and into Company (the "**Merger**"), with the Company continuing as the surviving corporation and as a wholly owned indirect subsidiary of Parent;

WHEREAS, pursuant to the Merger Agreement, Parent has agreed to provide to the Company's stockholders the right to receive contingent value rights as hereinafter described; and

WHEREAS, the Rights Agent is willing to act in connection with the issuance, transfer, exchange and payment of such contingent value rights as provided herein.

NOW, THEREFORE, in consideration of the premises and mutual agreements herein, Parent and the Rights Agent hereby agree as follows:

1. DEFINITIONS

1.1. Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Merger Agreement. As used in this Agreement, the following terms shall have the following meanings:

"**Acting Holders**" means, at the time of determination, Holders of at least 40% of the outstanding CVRs as set forth on the CVR Register.

"**Affiliate**" means, with respect to any specified Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified Person; "control" means the ownership, directly or indirectly, of more than 50% of the voting securities entitled to vote for the directors (or similar officials) of a Person or the possession, by contract or otherwise, of the authority to direct the management and policies of a Person.

"**Calendar Quarter**" means each period of three consecutive months commencing on January 1, April 1, July 1 and October 1 of each calendar year.

"**Calendar Year**" means the period of four consecutive Calendar Quarters beginning on January 1 and ending on December 31 of each calendar year.

"**Change of Control**" means (i) a sale or other disposition of all or substantially all of the assets of either Parent or the Company on a consolidated basis (other than to any direct or indirect wholly owned subsidiary of Parent), (ii) a merger or consolidation involving either Parent or the Company in which Parent or the Company, respectively, is not the surviving entity, and (iii) any other transaction involving either

Parent or the Company in which Parent or the Company, respectively, is the surviving entity but in which the stockholders of Parent or the Company, respectively, immediately prior to such transaction own less than fifty percent (50%) of the surviving entity's voting power immediately after the transaction, other than any *bona fide* equity financing transaction solely related to the continued financing of the operations of Parent and its subsidiaries.

"**Commercially Reasonable Efforts**" means, with respect to a task related to a product, the efforts required to carry out such task in a diligent and sustained manner without undue interruption, pause or delay, which level is at least commensurate with the level of efforts that a pharmaceutical company of comparable size and resources as those of Parent and its Affiliates would devote to a product of similar potential (including commercial potential), taking into account its proprietary position and profitability (including pricing and reimbursement status, but excluding the obligation to pay the Milestone Amounts under this Agreement), anticipated or actual market conditions and economic return potential, the regulatory environment, and other relevant technical, commercial, legal, scientific and/or medical factors.

"**CVRs**" means the rights of Holders to receive contingent payments of cash pursuant to the Merger Agreement and this Agreement.

"**CVR Register**" has the meaning set forth in Section 2.3(b).

"**DTC**" means The Depository Trust Company or any successor entity thereto.

"Event of Default" has the meaning set forth in Section 6.1(a).

"**Holder**" means a Person in whose name a CVR is registered in the CVR Register at the applicable time.

"Independent Accountant" has the meaning set forth in Section 4.5(a).

"**Licensee**" means any non-Affiliate third party granted a license by Parent or its Affiliates under the Company IP to make, have made, use, sell, offer for sale, or import XERAVA in the U.S., but shall exclude any (i) third party distributor of XERAVA that has no royalty or other payment obligations to any Parent or any of its Affiliates that are calculated based on amounts invoiced or received by such third party for sales of XERAVA or (ii) a third party distributor of XERAVA that (x) does not take title to XERAVA, (y) does not invoice XERAVA sales to third party customers and (z) is responsible only for inventory management and distribution with respect XERAVA on behalf of Parent or its Affiliates.

"**Milestone**" means each of Milestone 1, Milestone 2 and Milestone 3.

"**Milestone 1**" means achievement of annual Net Sales of at least $20,000,000 during the Calendar Year ending on December 31, 2021.

"**Milestone 2**" means achievement of annual Net Sales of at least $35,000,000 during any Calendar Year ending on or before December 31, 2024.

"**Milestone 3**" means achievement of annual Net Sales of at least $55,000,000 during any calendar year ending on or before December 31, 2024.

"**Milestone Amount**" means each of Milestone 1 Amount, Milestone 2 Amount and Milestone 3 Amount.

"**Milestone 1 Amount**" means, with respect to the achievement of Milestone 1, an amount per CVR equal to the quotient of $2,500,000 divided by the aggregate number of CVRs issued pursuant to the Merger Agreement and this Agreement, without interest (it being understood and agreed that all Milestones or a combination of any two Milestones can be earned in the same year, in which case all such applicable Milestone Amounts shall be payable).

"**Milestone 2 Amount**" means, with respect to the achievement of Milestone 2, an amount per CVR equal to the quotient of $4,500,000 divided by the aggregate number of CVRs issued pursuant to the Merger Agreement and this Agreement, without interest (it being understood and agreed that all Milestones or a combination of any two Milestones can be earned in the same year, in which case all such applicable Milestone Amounts shall be payable).

"**Milestone 3 Amount**" means, with respect to the achievement of Milestone 3, an amount per CVR equal to the quotient of $9,000,000 divided by the aggregate number of CVRs issued pursuant to the Merger Agreement and this Agreement, without interest (it being understood and agreed that all Milestones or a combination of any two Milestones can be earned in the same year, in which case all such applicable Milestone Amounts shall be payable).

"**Milestone Non-Achievement Certificate**" has the meaning set forth in Section 2.4(e).

"**Milestone Notice**" has the meaning set forth in Section 2.4(a)(i)

"**Milestone Payment Date**" has the meaning set forth in Section 2.4(a).

"**Net Sales**" means the gross amount invoiced by Parent, any of its Affiliates (including the Surviving Corporation) or any of its Licensees (each, a "**Selling Party**") to a third party for sales or distribution of XERAVA in the U.S., less the following deductions as calculated in accordance with GAAP consistently applied:

(i) customary trade, cash and quantity discounts given to customers;

(ii) rebates, credits and allowances given by reason of rejections returns, damaged or defective product or recalls;

(iii) government-mandated rebates, credits and adjustments paid or deducted;

(iv) customary price adjustments, allowances, credits, chargeback payments, discounts, rebates, free of charge concessions, fees and reimbursements granted or made to managed care organizations, group purchasing organizations or other buying groups, pharmacy benefit management companies, health maintenance organizations and any other providers of health insurance coverage, health care organizations or other health care institutions (including hospitals), health care administrators, patient assistance or other similar programs, or to federal state/provincial, local and other governments, including their agencies;

(v) reasonable and customary freight, shipping, insurance and other transportation expenses, if borne by the applicable Selling Party without reimbursement from any third party;

(vi) amounts written off as uncollectable debt; provided that the amount of any uncollectable debt deducted pursuant to this exception and actually collected in a subsequent Calendar Quarter shall be included in Net Sales for such subsequent Calendar Quarter; and

(vii) sales, value-added, excise taxes, tariffs and duties, and other taxes and government charges directly related to the sale, delivery or use of XERAVA (but not including taxes assessed against the net income derived from such sale).

Furthermore, Net Sales shall not include use of or sale at or below the direct manufacturing cost of XERAVA by Parent, its Affiliates (including the Surviving Corporation) and/or its sublicensees of XERAVA for non-clinical or clinical studies, patient-assistance programs or charitable donations.

Resales or sales of XERAVA made in good faith between or among any Selling Party shall not be included in the calculation of Net Sales but the subsequent resale or sale to a non-Affiliate third party (other than a Selling Party) shall be included in the computation of Net Sales.

All Net Sales shall be computed in Dollars, and where any Net Sales are calculated in a currency other than Dollars, they shall be translated into Dollars in accordance with GAAP.

"**Officer's Certificate**" means a certificate signed by the chief executive officer, president, chief financial officer, any vice president, the controller, the treasurer or the secretary, in each case of Parent, in his or her capacity as such an officer, and delivered to the Rights Agent.

"**Permitted Transfer**" means a transfer of CVRs (a) upon death of a Holder by will or intestacy; (b) by instrument to an inter vivos or testamentary trust in which the CVRs are to be passed to beneficiaries upon the death of the trustee; (c) pursuant to a court order; (d) by operation of law (including by consolidation or merger) or without consideration in connection with the dissolution, liquidation or termination of any corporation, limited liability company, partnership or other entity; (e) in the case of CVRs held in book-entry or other similar nominee form, from a nominee to a beneficial owner and, if applicable, through an intermediary, as allowable by DTC; or (f) as provided in Section 2.10.

"**Rights Agent**" means the Rights Agent named in the first paragraph of this Agreement, until a successor Rights Agent becomes such pursuant to the applicable provisions of this Agreement, and thereafter "Rights Agent" shall mean such successor Rights Agent.

"**Share**" means each share of Company Common Stock outstanding immediately prior to the Effective Time, except any (i) shares of Company Common Stock held by the Company or any wholly-owned Subsidiary of the Company as of immediately prior to the Effective Time (or held in the Company's treasury), (ii) shares of Company Common Stock held by Parent, Merger Sub or any other wholly-owned Subsidiary of Parent as of immediately prior to the Effective Time or (iii) Dissenting Company Shares.

"**U.S.**" means the United States of America and its territories, districts and possessions.

1.2. Rules of Construction. For purposes of this Agreement, the parties hereto agree that: (a) whenever the context requires, the singular number shall include the plural, and vice versa; (b) the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include masculine and feminine genders; (c) the word "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and does not simply mean "if"; (d) the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation;" (e) the meaning assigned to each capitalized term defined and used in this Agreement is equally applicable to both the singular and the plural forms of such term, and words denoting any gender include all genders; (f) where a word or phrase is defined in this Agreement, each of its other grammatical forms has a corresponding meaning unless the context otherwise requires; (g) a reference to any specific Legal Requirement or to any provision of any Legal Requirement includes any amendment to, and any

modification, re-enactment or successor thereof, any legislative provision substituted therefor and all rules, regulations and statutory instruments issued thereunder or pursuant thereto; (h) references to any agreement or Contract are to that agreement or Contract as amended, modified or supplemented; (i) they have been represented by legal counsel during the negotiation and execution and delivery of this Agreement and therefore waive the application of any Legal Requirement, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document; and (j) the word "or" shall not be exclusive (i.e., "or" shall be deemed to mean "and/or") unless the subjects of the conjunction are mutually exclusive. The headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement. All references to "Dollars" or "$" are to United States Dollars, unless expressly stated otherwise.

2. CONTINGENT VALUE RIGHTS

2.1. CVRs. As provided in the Merger Agreement, effective as of the Effective Time, (i) each Share shall be converted into the right to receive the Merger Consideration, which includes one CVR, and (ii) each Company Warrant that is assumed and converted pursuant to Section 5.3(c) of the Merger Agreement shall be treated in accordance with its terms. The initial Holders shall be determined pursuant to the terms of the Merger Agreement and this Agreement, and a list of the initial Holders shall be furnished to the Rights Agent by or on behalf of Parent in accordance with Section 4.1 hereof.

2.2. Non-transferable. The CVRs may not be sold, assigned, transferred, pledged, encumbered or in any other manner transferred or disposed of, in whole or in part, other than through a Permitted Transfer, and, in the case of a Permitted Transfer, only in accordance with Section 2.3(c) hereof and in compliance with applicable United States federal and state securities laws and the terms and conditions hereto. Any such sale, assignment, transfer, pledge, encumbrance or disposal of CVRs, in whole or in part, in violation of this Section 2.2, shall be null and void and of no effect.

2.3. No Certificate; Registration; Registration of Transfer; Change of Address.

(a) The CVRs shall not be evidenced by a certificate or other instrument.

(b) The Rights Agent shall keep a register (the "**CVR Register**") for the purpose of identifying the Holders and registering CVRs and transfers of CVRs as herein provided. The CVR Register will initially show one position for Cede & Co. representing all of the CVRs that are issued to the holders of Shares held by DTC on behalf of the street holders of the Shares. The Rights Agent will have no responsibility whatsoever directly to the street name holders or DTC participants with respect to transfers of CVRs. With respect to any payments to be made under Section 2.4 below, the Rights Agent will accomplish such payment to any former street name holders of the Shares by sending such payments to DTC. The Rights Agent will have no responsibilities whatsoever with regard to the distribution of payments by DTC to such street name holders.

(c) Subject to the restrictions on transferability set forth in Section 2.2, every request made to transfer a CVR must be in writing and accompanied by a written instrument of transfer in form reasonably satisfactory to the Rights Agent pursuant to its written guidelines, duly executed by the Holder thereof, the Holder's attorney duly authorized in writing, the Holder's personal representative or the Holder's survivor, as applicable, and setting forth in reasonable detail the circumstances relating to the transfer. Upon receipt of such written notice, the Rights Agent shall, subject to its reasonable determination that the transfer instrument is in proper form and the transfer otherwise complies with the other terms and conditions of this Agreement (including the provisions of Section 2.2), register the transfer of the CVRs in the CVR Register and notify Parent of the same. Any registration, transfer or assignment of the CVRs shall

be without charge to the Holder (other than payment of a sum to the extent necessary to cover any stamp or other Tax or other governmental charge that is imposed in connection with any such registration, transfer or assignment). All duly transferred CVRs registered in the CVR Register shall be the valid obligations of Parent and shall entitle the transferee to the same benefits and rights under this Agreement as those held immediately prior to the transfer by the transferor. No transfer of a CVR shall be valid unless and until registered in the CVR Register.

(d) A Holder may make a written request to the Rights Agent to change such Holder's address of record in the CVR Register. The written request must be duly executed by the Holder. Upon receipt of such written request, the Rights Agent is hereby authorized to, and shall promptly, record the change of address in the CVR Register.

2.4. Payment Procedures.

(a) If any Milestone is achieved, then, in each case, on a date (a "**Milestone Payment Date**") that is within 60 days following the last day of such Calendar Quarter in which such Milestone is achieved:

(i) Parent will deliver to the Rights Agent (A) a notice (a "**Milestone Notice**") indicating the achievement of such Milestone and that the Holders are entitled to receive the applicable Milestone Amount and (B) cash in the aggregate amount of the Milestone Amount.

(ii) Subject to the terms of this Agreement each CVR shall entitle the Holder thereof to receive from the Rights Agent (on behalf of Parent), for each CVR, the Milestone Amount, in each case subject to any applicable withholding Tax.

(b) The Rights Agent shall promptly, and in any event within 10 Business Days of receipt of a Milestone Notice, as well as any letter of instruction reasonably required by the Rights Agent, send each Holder at its registered address a copy of such Milestone Notice. At the time the Rights Agent sends a copy of such Milestone Notice to the Holders, the Rights Agent shall also pay to each Holder, subject to any applicable withholding Tax, the applicable Milestone Amount (the amount of which each Holder is entitled to receive shall be based on the applicable Milestone Amount multiplied by the number of CVRs held by such Holder as reflected in the CVR Register), in accordance with the corresponding letter of instruction (i) by check mailed to the address of such Holder reflected in the CVR Register as of 5:00 p.m. New York City time on the date of the applicable Milestone Notice or (ii) with respect to any such Holder that is due an amount in excess of $100,000 in the aggregate who has provided the Rights Agent wiring instructions in writing as of the close of business on the date of the Milestone Notice, by wire transfer of immediately available funds to the account specified on such instruction.

(c) Notwithstanding any other provisions of this Agreement, any portion of the amounts payable pursuant to Section 2.4(b) that remains unclaimed as of the first anniversary of the applicable Milestone Payment Date (including by means of uncashed checks or invalid addresses on the CVR Register) shall be delivered to Parent or its designee and not disbursed to the Holders, and, thereafter, such Holders shall be entitled to look to Parent (subject to abandoned property, escheat and other similar Laws) only as general creditors thereof with respect to such cash that may be payable.

(d) Neither Parent, the Rights Agent nor any of their Affiliates shall be liable to any Holder for any payments delivered to a public official pursuant to any abandoned property, escheat law or other similar Legal Requirements.

(e) If a Milestone is not achieved during any one of the 2021, 2022, 2023 or 2024 Calendar Years, then on or before the date that is 60 days after the expiration of each such applicable Calendar Year period, Parent shall deliver to the Rights Agent a certificate certifying that such Milestone has not occurred, accompanied by a statement setting forth, in reasonable detail, a calculation of Net Sales for the applicable period (each, a "**Milestone Non-Achievement Certificate**"). The Rights Agent shall promptly, and in any event within 10 Business Days of receipt of a Milestone Non-Achievement Certificate, send each Holder at its registered address a copy of such Milestone Non-Achievement Certificate, including detail regarding the ability of a Holder or Holders to dispute or contest such determination of non-achievement of a Milestone pursuant to this Agreement. If the Rights Agent does not receive from the Acting Holders a written objection to (i) a Milestone Non-Achievement Certificate with respect to Milestone 1, if any, within 180 days of the delivery by the Rights Agent of such Milestone Non-Achievement Certificate to the Holders in accordance with this Section 2.4(e), the Holders shall be deemed to have accepted such Milestone Non-Achievement Certificate and Parent and its Affiliates shall have no further obligation with respect to Milestone 1 and the Milestone 1 Amount, and/or (ii) a Milestone Non-Achievement Certificate with respect to Milestone 2 and/or Milestone 3, if any, within 180 days of the delivery by the Rights Agent of such Milestone Non-Achievement Certificate with respect the 2024 Calendar Year to the Holders in accordance with this Section 2.4(e), the Holders shall be deemed to have accepted such Milestone Non-Achievement Certificate and Parent and its Affiliates shall have no further obligation with respect to each such Milestone and the applicable Milestone Amount.

2.5. Withholding. Each of Parent, the Rights Agent, the Exchange Agent, the Surviving Corporation, their respective Affiliates, and any other Person who has any obligation to deduct or withhold from any consideration payable pursuant to this Agreement shall be entitled to deduct and withhold from the amounts otherwise payable pursuant to this Agreement such amounts as are required by any law to be deducted and withheld, as may be reasonably determined by such Person. To the extent that amounts are so withheld and remitted to the appropriate Governmental Body in accordance with applicable Legal Requirements, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

2.6. Adjustment of CVRs.

(a) In case of any Change of Control, appropriate adjustment shall be made in the application of the provisions herein set forth with respect to the rights and interests of Holders so that the provisions set forth herein shall thereafter be applicable, as nearly as possible, in relation to any cash thereafter deliverable upon payment of CVRs.

(b) Whenever an adjustment is made to the terms of the CVRs pursuant to this Section 2.6, Parent will deliver to the Rights Agent a notice of such Change of Control within 3 Business Days of the closing of such Change of Control, setting forth in reasonable detail the terms of such Change of Control and any adjustments made pursuant to this Section 2.6. The Rights Agent shall promptly, and in any event within 10 Business Days of receipt of such a notice, send each Holder a copy of such notice in accordance with Section 7.2.

(c) The Rights Agent has no duty to determine when an adjustment under this Section 2.6 should be made, how it should be made or what it should be. The Rights Agent shall not be responsible for Parent's failure to comply with this Section 2.6.

2.7. Notices to CVR Holders. Upon any adjustment pursuant to Section 2.6, Parent shall give prompt written notice of such adjustment to the Rights Agent and shall cause the Rights Agent, on behalf of and at the expense of Parent, within 10 days after notification is received by the Rights Agent of such adjustment, to mail by first class mail, postage prepaid, to each Holder a notice of such adjustment(s)

and shall deliver to the Rights Agent a certificate of the Chief Financial Officer of Parent, setting forth in reasonable detail (i) the terms of such adjustment(s), (ii) a brief statement of the facts requiring such adjustment(s) and (iii) the computation by which such adjustment(s) was made. Where appropriate, such notice by Parent may be given in advance and included as a part of the notice to the Holders required under the other provisions of this Section 2.7.

2.8. Holding of Funds. All funds received by the Rights Agent under this Agreement that are to be distributed or applied by the Rights Agent in the performance of services hereunder (the "**Funds**") shall be held by the Rights Agent as agent for Parent and deposited in one or more bank accounts to be maintained by the Rights Agent in its name as agent for Parent. Until paid pursuant to the terms of this Agreement, the Rights Agent will hold the Funds through such accounts in: deposit accounts of commercial banks with Tier 1 capital exceeding $1 billion or with an average rating above investment grade by S&P (LT Local Issuer Credit Rating), Moody's (Long Term Rating) and Fitch Ratings, Inc. (LT Issuer Default Rating) (each as reported by Bloomberg Finance L.P.). The Rights Agent shall have no responsibility or liability for any diminution of the Funds that may result from any deposit made by the Rights Agent in accordance with this paragraph, including any losses resulting from a default by any bank, financial institution or other third party; *provided* that in the event the Funds are diminished below the level required for the Rights Agent to make cash payments as required under this Agreement, including any such diminishment as a result of investment losses, Parent shall promptly pay additional cash to the Rights Agent in an amount equal to the deficiency in the amount required to make such payments. The Rights Agent may from time to time receive interest, dividends or other earnings in connection with such deposits. The Rights Agent shall not be obligated to pay such interest, dividends or earnings to Parent, any Holder or any other Person, unless there is a diminution of the Funds due to a deposit or investment made by the Rights Agent, in which case, the Rights Agent agrees that such interest, dividends or earnings shall accrue to the benefit of Parent to the extent of such diminution of the Funds.

2.9. No Voting, Dividends or Interest; No Equity or Ownership Interest.

(a) Nothing contained in this Agreement shall be construed as conferring upon any Holder, by virtue of being a Holder of a CVR, the right to receive dividends, or the right to vote or to consent or to receive notice as stockholders in respect of the meetings of stockholders or the election of directors of Parent or any or any other matter, or any other rights of any kind or nature whatsoever as a stockholder of Parent, either at law or in equity.

(b) The CVRs shall not represent any equity or ownership interest in Parent or in any constituent company to the Merger or any of their respective Subsidiaries or Affiliates. The rights of a Holder in respect of the CVRs are limited to those expressed in this Agreement and the Merger Agreement.

2.10. Ability to Abandon CVR. A Holder may at any time, at such Holder's option, abandon all of such Holder's remaining rights in a CVR by transferring such CVR to Parent or any of its Affiliates without consideration therefor. Nothing in this Agreement shall prohibit Parent or any of its Affiliates from offering to acquire or acquiring any CVRs for consideration from the Holders, in private transactions or otherwise, in its sole discretion. Any CVRs acquired by Parent or any of its Affiliates shall be automatically deemed extinguished and no longer outstanding for purposes of the definition of Acting Holders and Section 5 and Section 6.

3. **THE RIGHTS AGENT**

3.1. Certain Duties and Responsibilities. Parent hereby appoints the Rights Agent to act as rights agent for Parent in accordance with the express terms and conditions set forth in this Agreement (and no implied terms and conditions), and the Rights Agent hereby accepts such appointment. The Rights Agent shall not have any liability for any actions taken, suffered or omitted to be taken in connection with this Agreement, except to the extent of its gross negligence, bad faith or willful or intentional misconduct.

3.2. Certain Rights of the Rights Agent. The Rights Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Rights Agent. In addition:

(a) the Rights Agent may rely and shall be protected and held harmless by Parent in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) whenever the Rights Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Rights Agent may rely upon an Officer's Certificate, which certificate shall be full authorization and protection to the Rights Agent, and the Rights Agent shall, in the absence of gross negligence, bad faith or willful or intentional misconduct on its part, incur no liability and be held harmless by Parent for or in respect of any action taken, suffered or omitted to be taken by it under the provisions of this Agreement in reliance upon such certificate;

(c) the Rights Agent may engage and consult with counsel of its selection and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection and shall be held harmless by Parent in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(d) the permissive rights of the Rights Agent to do things enumerated in this Agreement shall not be construed as a duty;

(e) the Rights Agent shall not be required to give any note or surety in respect of the execution of such powers or otherwise in respect of the premises;

(f) the Rights Agent shall not be liable for or by reason of, and shall be held harmless by Parent with respect to any of the statements of fact or recitals contained in this Agreement or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by Parent only;

(g) the Rights Agent shall have no liability and shall be held harmless by Parent in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution and delivery hereof by the Rights Agent and the enforceability of this Agreement against the Rights Agent assuming the due execution and delivery hereof by Parent); nor shall it be responsible for any breach by Parent of any covenant or condition contained in this Agreement;

(h) Parent agrees to indemnify the Rights Agent for, and hold the Rights Agent harmless against, any loss, liability, damage, judgement, fine, penalty, claim, demands, suits or expense arising out of or in connection with Rights Agent's duties under this Agreement, including the reasonable out-of-pocket costs and expenses of counsel in defending Rights Agent against any loss, liability, damage, judgement, fine, penalty, claim, demands, suits or expense, unless such loss has been determined by a court of competent jurisdiction to be a result of Rights Agent's gross negligence, bad faith or willful or intentional misconduct;

(i) Anything to the contrary notwithstanding, in the absence of fraud or willful or intentional misconduct on the part of the Rights Agent, (i) the Rights Agent shall not be liable for any

special, punitive, indirect, consequential or incidental loss or damage of any kind whatsoever (including but not limited to lost profits) arising out of any act or failure to act hereunder, even if the Rights Agent has been advised of the likelihood of such loss or damage or has foreseen the possibility or likelihood of such damages and (ii) the aggregate liability of the Rights Agent arising in connection with this Agreement, whether in contract, or in tort, or otherwise, is limited to, and shall not exceed, the amounts paid or payable hereunder by Parent to the Rights Agent as fees and charges;

(j) Parent agrees (i) to pay the fees and expenses of the Rights Agent in connection with this Agreement agreed upon in writing by the Rights Agent and Parent prior to the date hereof, and (ii) to reimburse the Rights Agent for all taxes and governmental charges, reasonable out-of-pocket expenses and other charges of any kind and nature incurred by the Rights Agent in the execution of this Agreement (other than Taxes imposed on or measured by the Rights Agent's net income and franchise or similar Taxes imposed on it (in lieu of net income Taxes)); and

(k) No provision of this Agreement shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of its rights if there shall be reasonable grounds for believing that repayment of such funds or adequate indemnification against such risk or liability is not reasonably assured to it.

3.3. Resignation and Removal; Appointment of Successor.

(a) The Rights Agent may resign at any time by giving written notice thereof to Parent specifying a date when such resignation shall take effect, which notice shall be sent at least 60 days prior to the date so specified but in no event shall such resignation become effective until a successor Rights Agent has been appointed and accepted such appointment in accordance with Section 3.4. Parent has the right to remove the Rights Agent at any time by specifying a date when such removal shall take effect but no such removal shall become effective until a successor Rights Agent has been appointed and accepted such appointment in accordance with Section 3.4. Notice of such removal shall be given by Parent to the Rights Agent, which notice shall be sent at least 60 days prior to the date so specified.

(b) If the Rights Agent provides notice of its intent to resign, is removed or becomes incapable of acting, Parent shall, as soon as is reasonably practicable, appoint a qualified successor Rights Agent who shall be a stock transfer agent of national reputation or the corporate trust department of a commercial bank. Notwithstanding the foregoing, if Parent shall fail to make such appointment within a period of sixty (60) days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent, then the incumbent Rights Agent may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. The successor Rights Agent so appointed shall, forthwith upon its acceptance of such appointment in accordance with Section 3.4, become the successor Rights Agent.

(c) Parent shall give notice of each resignation and each removal of a Rights Agent and each appointment of a successor Rights Agent through the facilities of DTC in accordance with DTC's procedures and/or by mailing written notice of such event by first-class mail to the Holders as their names and addresses appear in the CVR Register. Each notice shall include the name and address of the successor Rights Agent. If Parent fails to send such notice within 10 Business Days after acceptance of appointment by a successor Rights Agent, the successor Rights Agent shall cause the notice to be transmitted at the expense of Parent. Failure to give any notice provided for in this Section 3.3, however, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

(d) Notwithstanding anything else in this Section 3.3, unless consented to in writing by the Acting Holders, Parent shall not appoint as a successor Rights Agent any Person that is not a stock transfer agent of national reputation or the corporate trust department of an international commercial bank.

3.4. Acceptance of Appointment by Successor. Every successor Rights Agent appointed hereunder shall, at or prior to such appointment, execute, acknowledge and deliver to Parent and to the retiring Rights Agent an instrument accepting such appointment and a counterpart of this Agreement, and thereupon such successor Rights Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Rights Agent. On request of Parent or the successor Rights Agent, the retiring Rights Agent shall execute and deliver an instrument transferring to the successor Rights Agent all the rights, powers, trusts and duties of the retiring Rights Agent.

4. COVENANTS

4.1. List of Holders. Parent shall furnish or cause to be furnished to the Rights Agent the names and addresses of the Holders within 10 days of the Effective Time.

4.2. Books and Records. Parent shall, and shall cause its subsidiaries to, keep true, complete and accurate records in sufficient detail to enable the Holders and their consultants or professional advisors to determine the amounts payable hereunder.

4.3. Payment of Milestone Amounts. Parent shall duly and promptly deposit with the Rights Agent for payment to the Holders the Milestone Amounts in the manner provided for in Section 2.4 and in accordance with the terms of this Agreement.

4.4. Further Assurances. Parent agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered, all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement.

4.5. Audit Rights.

(a) Until December 31, 2025, upon reasonable advance written notice from the Acting Holders, Parent shall permit an independent certified public accounting firm of nationally recognized standing selected by such Acting Holders and reasonably acceptable to Parent (the "**Independent Accountant**") to have access at reasonable times during normal business hours to the books and records of Parent and its Affiliates as may be reasonably necessary to evaluate and verify Parent's calculation of Net Sales hereunder; provided that (x) such Acting Holders (and the Independent Accountant) enter into customary confidentiality agreements reasonably satisfactory to Parent with respect to the confidential information of Parent or its Affiliates to be furnished pursuant to this Section 4.5 and (y) such access does not unreasonably interfere with the conduct of the business of Parent or any of its Affiliates. The fees charged by such accounting firm shall be borne by Parent. The Independent Accountant shall provide Parent with a copy of all disclosures made to the Acting Holders. The decision of such accounting firm shall be final, conclusive and binding on Parent and the Holders, shall be nonappealable and shall not be subject to further review, absent manifest error. Parent shall not enter into any transaction constituting a Change of Control unless such agreement contains provisions that would permit such accounting firm with such access to the records of the other party in such Change of Control if and to the extent as are reasonably necessary to ensure compliance with this Section 4.5. The audit rights set forth in this Section 4.5(a) may not be exercised by the Acting Holders more than once in any given twelve (12) month period.

(b) If, in accordance with the procedures set forth in Section 4.5(a), the Independent Accountant concludes that any Milestone Amount should have been paid but was not paid when due, Parent shall promptly, and in any event within thirty (30) days of the date the Independent Accountant delivers to Parent the Independent Accountant's written report, pay each Holder such Milestone Amount (to the extent not paid on a subsequent date), plus interest at the thirty (30) day U.S. dollar "prime rate" effective for the date such payment was due, as reported by Bloomberg, from when such Milestone Amount should have been paid, as applicable, to the date of actual payment, pursuant to Section 2.4(a)(i) and Section 2.4(b).

4.6. Commercially Reasonable Efforts. Commencing upon the Closing and continuing until the earlier of December 31, 2024 or the achievement of all Milestones, Parent shall, and shall cause its Affiliates and Licensees to, use Commercially Reasonable Efforts to achieve the Milestones. Without limiting the foregoing, neither Parent nor any of its Affiliates shall act in bad faith for the purpose of avoiding achievement of any Milestone or the payment of any Milestone Amount.

5. **AMENDMENTS**

5.1. Amendments without Consent of Holders.

(a) Without the consent of any Holders, Parent, at any time and from time to time, may enter into one or more amendments hereto, for any of the following purposes:

(i) to evidence the succession of another person to Parent and the assumption by any such successor of the covenants of Parent herein; provided that such succession and assumption is in accordance with the terms of this Agreement;

(ii) to evidence the succession of another Person as a successor Rights Agent and the assumption by any such successor of the covenants and obligations of the Rights Agent herein; provided that such succession and assumption is in accordance with the terms of this Agreement;

(iii) to add to the covenants of Parent such further covenants, restrictions, conditions or provisions as Parent shall consider to be for the protection of the Holders; provided that, in each case, such provisions do not adversely affect the interests of the Holders;

(iv) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein or in the Merger Agreement, or to make any other provisions with respect to matters or questions arising under this Agreement; provided that, in each case, such provisions do not adversely affect the interests of the Holders;

(v) as may be necessary or appropriate to ensure that the CVRs are not subject to registration under the Securities Act, the Exchange Act or any applicable state securities or "blue sky" laws; provided that, such provisions shall not adversely affect the interests of the Holders;

(vi) to evidence the assignment of this Agreement by Parent as provided in Section 7.3; or

(vii) as may be necessary or appropriate to ensure that the Company complies with applicable law.

In addition to the foregoing, upon the request of Parent, the Rights Agent hereby agrees to enter into one or more amendments hereto to evidence the succession of another person as a successor Rights Agent in accordance with the terms of this Agreement and the assumption by any successor of the covenants and obligations of such Rights Agent herein, without modification of such covenants or obligations other than as permitted by this Section 5.1.

(b) Without the consent of any Holders, Parent and the Rights Agent, at any time and from time to time, may enter into one or more amendments hereto to reduce the number of CVRs, in the event any Holder agrees to renounce such Holder's rights under this Agreement in accordance with Section 7.4 or to transfer CVRs to Parent pursuant to Section 2.10.

(c) Promptly after the execution by Parent and the Rights Agent of any amendment pursuant to the provisions of this Section 5.1, Parent shall mail (or cause the Rights Agent to mail) a notice thereof through the facilities of DTC in accordance with DTC's procedures and/or by first class mail to the Holders at their addresses as they appear on the CVR Register, setting forth such amendment.

5.2. Amendments with Consent of Holders.

(a) Subject to Section 5.1 (which amendments pursuant to Section 5.1 may be made without the consent of any Holder), with the written consent of the Holders of not less than a majority of the outstanding CVRs as set forth in the CVR Register, whether evidenced in writing or taken at a meeting of the Holders, Parent and the Rights Agent may enter into one or more amendments hereto for the purpose of adding, eliminating or changing any provisions of this Agreement, even if such addition, elimination or change is materially adverse to the interest of the Holders.

(b) Promptly after the execution by Parent and the Rights Agent of any amendment pursuant to the provisions of this Section 5.2, Parent shall mail (or cause the Rights Agent to mail) a notice thereof through the facilities of DTC in accordance with DTC's procedures and/or by first class mail to the Holders at their addresses as they appear on the CVR Register, setting forth such amendment.

5.3. Execution of Amendments. Prior to executing any amendment permitted by this Section 5, the Rights Agent shall be entitled to receive, and shall be fully protected in relying upon, an opinion of counsel selected by Parent and reasonably acceptable to Rights Agent stating that the execution of such amendment is authorized or permitted by this Agreement.

5.4. Effect of Amendments. Upon the execution of any amendment under this Section 5, this Agreement shall be modified in accordance therewith, such amendment shall form a part of this Agreement for all purposes and every Holder shall be bound thereby.

6. REMEDIES OF THE HOLDERS

6.1. Event of Default.

(a) "**Event of Default**" with respect to the CVRs, means each one of the following events which shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of Legal Requirements, pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Body or otherwise): (i) default in the payment by Parent pursuant to the terms of this Agreement of all or any part of a Milestone Amount after a period of ten (10) Business Days after the Milestone Amount shall become due and payable and (ii) material default in the performance, or breach in any material respect, of any other covenant or warranty of Parent hereunder, and continuance of such default or breach for a period of sixty (60) days after a written notice specifying such default or breach and requiring it to be remedied is given, which written notice states that it is a "Notice of Default" hereunder and is sent by registered or certified mail to Parent and the Rights Agent by the Acting Holders.

(b) If an Event of Default described above occurs and is continuing (and has not been cured or waived), then, and in each and every such case, the Acting Holders by notice in writing to Parent and the Rights Agent, may, in their discretion, commence a suit to protect the rights of the Holders, including to obtain payment for any amounts then due and payable.

6.2. Suits by Holders. Except for the rights of the Rights Agent set forth herein, the Acting Holders will have the sole right, on behalf of all Holders, by virtue of or under any provision of this Agreement, to institute any action or proceeding with respect to this Agreement, and no individual Holder or other group of Holders will be entitled to exercise such rights. Notwithstanding the foregoing, (a) the right of any Holder of any CVR to receive payment of the amounts that a Milestone Notice indicates are payable in respect of such CVR on or after the applicable due date, or to institute any action or proceeding for the enforcement of any such payment on or after such due date, shall not be impaired or affected without the consent of such Holder and (b) in the event of an insolvency proceeding of Parent, individual Holders shall be entitled to assert claims in such insolvency proceeding and take related actions in pursuit of such claims with respect to any payment that may be claimed by or on behalf of Parent or by any creditor of Parent.

7. OTHER PROVISIONS OF GENERAL APPLICATION

7.1. Notices to the Rights Agent and Parent. Any notice or other communication required or permitted to be delivered to Parent or the Rights Agent under this Agreement shall be in writing and shall be deemed properly delivered, given and received (a) upon receipt when delivered by hand, (b) two Business Days after being sent by registered mail or by courier or express delivery service, (c) if sent by email transmission prior to 6:00 p.m. recipient's local time, upon transmission when receipt is confirmed or (d) if sent by email transmission after 6:00 p.m. recipient's local time and receipt is confirmed, the Business Day following the date of transmission; *provided* that in each case the notice or other communication is sent to the physical address or email address, as applicable, set forth beneath the name of such party below (or to such other physical address or email address as such party shall have specified in a written notice given to the other party):

If to the Rights Agent, to it at:

Computershare Inc.
[Address]
Attention: [ ]
Facsimile: [ ]
Email: [ ]

If to Parent, to it at:

AcelRx Pharmaceuticals, Inc.
351 Galveston Drive
Redwood City, California 94063
Attention: Chief Financial Officer
Phone: 650-216-3500

with a copy to:

AcelRx Pharmaceuticals, Inc.
351 Galveston Drive
Redwood City, California 94063
Attention: Legal Department
Phone: 650-216-3500
Email: legal@acelrx.com

with a copy to:

Cooley LLP
101 California Street, 5th Floor
San Francisco, CA 94111
Attention: Robert Phillips; Rama Padmanabhan
E-mail: rphillips@cooley.com; rama@cooley.com
Facsimile: (415) 693-2222

The Rights Agent or Parent may specify a different address, facsimile number or email address by giving notice in accordance with this Section 7.1.

7.2. Notice to Holders. Where this Agreement provides for notice to Holders, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and transmitted through the facilities of DTC in accordance with DTC's procedures or mailed, first-class postage prepaid, to each Holder affected by such event, at the Holder's address as it appears in the CVR Register, not later than the latest date, and not earlier than the earliest date, if any, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders.

7.3. Successors and Assigns. Parent may assign, in its sole discretion and without the consent of any other Person, any or all of its rights, interests and obligations hereunder to one or more direct or indirect wholly owned subsidiaries of Parent for so long as they remain wholly owned subsidiaries of Parent and any such subsidiary may assign any or all of its rights, interests and obligations hereunder to one or more other direct or indirect wholly owned subsidiaries of Parent for so long as they remain wholly owned subsidiaries of Parent; *provided* that each such assignee agrees to assume and be bound by all of the terms and conditions of this Agreement; *provided*, *further*, that Parent shall remain liable for the performance by each such assignee of all covenants, agreements and obligations of Parent hereunder. This Agreement will be binding upon, inure to the benefit of and be enforceable by Parent's successors and each assignee. Each of Parent's successors and each assignee shall, by a supplemental contingent consideration payment agreement or other acknowledgement executed and delivered to the Rights Agent, expressly agree to assume and be bound by all of the terms and conditions of this Agreement. This Agreement shall not

restrict Parent's or any successor's ability to merge or consolidate or enter into or consummate any Change of Control; *provided*, that in the event of a Change of Control, Parent or the Company, as applicable, shall cause the acquirer to assume Parent's obligations, duties and covenants under this Agreement. Except as otherwise permitted herein, Parent may not assign this Agreement without the prior written consent of the Acting Holders. Any attempted assignment of this Agreement or any such rights in violation of this Section 7.3 shall be void and of no effect.

7.4. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, shall give to any Person (other than the Rights Agent and its permitted successors and assigns, Parent, Parent's permitted successors and assignees, and the Holders and the Holders' successors and assigns pursuant to Permitted Transfers, each of whom is intended to be, and is, a third party beneficiary hereunder) any benefit or any legal or equitable right, remedy or claim under this Agreement or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the Rights Agent and its permitted successors and assigns, Parent, Parent's permitted successors and assignees, and the Holders and the Holders' successors and assigns pursuant to Permitted Transfers. The rights hereunder of Holders and their successors and assigns pursuant to Permitted Transfers are limited to those expressly provided in this Agreement. Notwithstanding anything to the contrary contained herein, any Holder or Holder's successor or assign pursuant to a Permitted Transfer may at any time agree to renounce, in whole or in part, whether or not for consideration, its rights under this Agreement by written notice to the Rights Agent and Parent, which notice, if given, shall be irrevocable, and Parent may, in its sole discretion, at any time offer consideration to Holders in exchange for their agreement to irrevocably renounce their rights, in whole or in part, hereunder.

7.5. Governing Law; Jurisdiction. This Agreement, the CVRs and all actions arising under or in connection herewith and therewith (whether sounding in contract, tort or otherwise) shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any laws, rules or provisions that would cause the application of the laws of any jurisdiction other than the State of Delaware. In any action between any of the parties arising out of or relating to this Agreement or the CVRs: (a) each of the parties irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Chancery Court of the State of Delaware; and (b) each of the parties irrevocably waives the right to trial by jury. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

7.6. Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and the application of such provision to other Persons or circumstances shall be interpreted so as reasonably to effect the intent of the parties. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

7.7. Termination. This Agreement shall be terminated and of no force or effect, the parties hereto shall have no liability hereunder (other than with respect to monies due and owing by Parent to Rights Agent), and no payments shall be required to be made upon the earlier to occur of (a) the payment in full of the Milestone 1 Amount, the Milestone 2 Amount and the Milestone 3 Amount, by the mailing by the Rights Agent to the address of each Holder as reflected in the CVR Register the full amount of each Milestone Amount, in each case, as required to be paid under the terms of this Agreement, (b) December 31, 2024, if Milestone 2 and/or Milestone 3 has not been achieved on or prior to such date, and (c) the termination of the Merger Agreement in accordance with its terms. Notwithstanding the foregoing, no such termination shall affect any rights or obligations accrued prior to the effective date of such termination or Sections 2.4(c), 2.4(d), 2.4(e), 3.2, 4.5, 7.4, 7.5, 7.6, 7.8, 7.9, 7.10 or this Section 7.7, which shall survive the termination of this Agreement, or the resignation, replacement or removal of the Rights Agent.

7.8. Entire Agreement; Counterparts. As it relates to the Rights Agent, this Agreement constitutes the entire agreement of the parties hereto and supersedes all contemporaneous and prior agreements and understandings, both written and oral, among or between any of the parties hereto, with respect to the subject matter hereof. As between Parent and the Company this Agreement and the Merger Agreement constitute the entire agreement and supersede all contemporaneous and prior agreements and understandings, both written and oral, among or between any of the parties, with respect to the subject matter hereof. If and to the extent that any provision of this Agreement is inconsistent or conflicts with the Merger Agreement, this Agreement shall govern and be controlling. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by PDF shall be sufficient to bind the parties hereto to the terms and conditions of this Agreement.

7.9. No Fiduciary Obligations. Each of Parent and the Rights Agent acknowledges and agrees that the other party, its Affiliates and their respective officers, directors and controlling Persons do not owe any fiduciary duties to the first party or any of its respective Affiliates, officers, directors or controlling Persons. The only obligations of Parent and the Rights Agent to each other and their Affiliates and their respective officers, directors and controlling Persons arising out of this Agreement are the contractual obligations expressly set forth in this Agreement.

7.10. Confidentiality. The Rights Agent and Parent agree that all books, records, information and data pertaining to the business of the other party, including inter alia, personal, non-public Holder information, which are exchanged or received pursuant to the negotiation or the carrying out of this Agreement including the fees for services set forth in the attached schedule shall remain confidential, and shall not be voluntarily disclosed to any other person, except as may be required by a valid order of an arbitration panel, court or governmental body of competent jurisdiction or is otherwise required by law or regulation, including SEC or Nasdaq rules and regulations, or pursuant to subpoenas from state or federal government authorities (e.g., in divorce and criminal actions).

[*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK*]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf by its duly authorized officers as of the day and year first above written.

ACELRX PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____

COMPUTERSHARE INC.

By: _____
Name: _____
Title: _____

[Signature Page to Contingent Value Rights Agreement]

Exhibit 10.2

AMENDMENT NO. 2 TO VOTING AGREEMENT

This AMENDMENT NO. 2 TO VOTING AGREEMENT (this "Amendment"), dated as of May 29, 2020, is entered into by and among AcelRx Pharmaceuticals, Inc., a Delaware Corporation ("Parent"), Consolidation Merger Sub, Inc., a Delaware corporation and an indirect wholly owned subsidiary of Parent ("Merger Sub"), and each of the stockholders of Tetraphase Pharmaceuticals, Inc. set forth on Schedule A-1 hereto (each, a "Stockholder"). Capitalized terms used but not otherwise defined in this Amendment shall have the respective meanings ascribed to such terms in the Merger Agreement (as defined below).

WHEREAS, Parent, Merger Sub and the Stockholders are parties to that certain (a) Voting Agreement dated as of March 15, 2020 (the "Voting Agreement") and (b) Amendment to Voting Agreement, dated as of May 26, 2020 ("Amendment No. 1");

WHEREAS, Section 6.3(a) of the Voting Agreement permits the parties to amend the Voting Agreement, if such amendment is in writing and is signed by each party to the Voting Agreement;

WHEREAS, on March 15, 2020, Parent, Merger Sub and Tetraphase Pharmaceuticals, Inc., a Delaware corporation (the "Company"), entered into an Agreement and Plan of Merger (as amended from time to time, the "Merger Agreement"), which provides, among other things, for the merger of Merger Sub with and into the Company, with the Company surviving the Merger and becoming an indirect wholly owned subsidiary of Parent, upon the terms and subject to the conditions set forth in the Merger Agreement; and

WHEREAS, the parties desire to amend the Voting Agreement (as amended by Amendment No. 1) as provided in this Amendment.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1. **Definitions; References.** Each capitalized term used but not defined in this Amendment shall have the meaning assigned to such term in the Voting Agreement. Each reference in the Voting Agreement to "hereof," "hereunder," "hereby," "this Agreement" or any similar term shall, from and after the date of this Amendment, refer to the Voting Agreement (as amended by Amendment No. 1 and this Amendment). Each reference in the Voting Agreement to the "date of this Agreement", the "date hereof" or any similar term shall refer to March 15, 2020. Except as otherwise indicated, all references in the Voting Agreement to "Sections" are intended to refer to Sections of the Voting Agreement (as amended by Amendment No. 1 and this Amendment), and not sections of this Amendment.

ARTICLE II
AMENDMENT TO VOTING AGREEMENT

2.1. **Amendment to Article V of the Voting Agreement**. Article V of the Voting Agreement (as amended by Amendment No. 1) is hereby deleted and replaced in its entirety with the following:

"[(a)] Each Stockholder acknowledges and agrees, severally and not jointly and solely with respect to such Stockholder's Subject Warrants, that, at the Effective Time, each Subject Warrant owned by such Stockholder that is then-outstanding and unexercised as of immediately prior to the Effective Time shall, pursuant to the terms hereof and as a result of the Merger and without any other action on the part of such Stockholder, receive, in lieu of any other amount or consideration to which such Stockholder might otherwise have been entitled to receive pursuant to such Subject Warrant, (i), [for each share of Company Common Stock for which such November Warrant (as set forth on Schedule A) was exercisable immediately prior to the Effective Time (subject to adjustment in the event of a stock split, division or subdivision, stock dividend, reverse stock split, consolidation, reclassification, recapitalization or other similar transaction affecting the Company Common Stock or the Parent Common Stock), (x) $0.8085 in cash, without interest, and (y) 1.0201 of a share of Parent Common Stock, plus (ii),] for each share of Company Common Stock for which such January Warrant (as set forth on Schedule A) was exercisable immediately prior to the Effective Time (subject to adjustment in the event of a stock split, division or subdivision, stock dividend, reverse stock split, consolidation, reclassification, recapitalization or other similar transaction affecting the Company Common Stock or the Parent Common Stock), (x) $0.8123 in cash, without interest, and (y) 1.0250 of a share of Parent Common Stock, plus [(iii)], in lieu of any fractional shares of Parent Common Stock otherwise issuable under clauses (i) [or (ii)] hereof after aggregating the shares of Parent Common Stock to be issued with respect to the Subject Warrant thereunder, cash in a dollar amount (rounded to the nearest whole cent, with numbers ending with .5 or more being rounded up to the nearest whole cent), without interest, determined by multiplying such fraction by the average closing price of a share of Parent Common Stock on the Nasdaq Global Select Market for the 10 most recent trading days that Parent Common Stock has traded ending on the trading day one day prior to the Effective Time.

[(b) At the Effective Time, each Pre-Funded Warrant that is then-outstanding and unexercised as of immediately prior to the Effective Time shall, as a result of the Merger and without any action on the part of any holder of a Pre-Funded Warrant, receive, in lieu of any other amount or consideration to which such Stockholder might otherwise have been entitled to receive pursuant to such Pre-Funded Warrant, (1) the product of (i) (A) the aggregate number of shares of Company Common Stock for which such Pre-Funded Warrant was exercisable immediately prior to the Effective Time, multiplied by (B) in the case of November Pre-Funded Warrants (set forth on Schedule B), 99.42631%, and in the case of January Pre-Funded Warrants (set forth on Schedule B), 99.94263%, and (ii) the Merger Consideration, *plus* (2), in lieu of any fractional shares of Parent Common Stock otherwise issuable under clause (1) hereof, cash in a dollar amount (rounded to the nearest whole cent, with numbers ending with .5 or more being rounded up to the nearest whole

cent), without interest, determined by multiplying such fraction by the average closing price of a share of Parent Common Stock on the Nasdaq Global Select Market for the 10 most recent trading days that Parent Common Stock has traded ending on the trading day one day prior to the Effective Time.]"

ARTICLE III
MISCELLANEOUS

3.1. **No Further Amendment**. Except as otherwise expressly provided in this Amendment, all of the terms and conditions of the Voting Agreement (as amended by Amendment No. 1) remain unchanged and continue in full force and effect.

3.2. **Effect of Amendment**. This Amendment shall form a part of the Voting Agreement (as amended by Amendment No. 1) for all purposes, and each party hereto and thereto shall be bound hereby. This Amendment shall be deemed to be in full force and effect from and after the execution of this Amendment by the parties hereto.

3.3. **Entire Agreement**. The Voting Agreement (as amended by Amendment No. 1 and further amended by this Amendment), together with any Schedule thereto, and the other documents and certificates delivered pursuant to the Voting Agreement, constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and thereof.

3.4. **Jurisdiction; Waiver of Jury Trial**.

(a) This Amendment shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any laws, rules or provisions that would cause the application of the laws of any jurisdiction other than the State of Delaware. In any action between any of the parties arising out of or relating to this Amendment or the transactions contemplated hereby, each of the parties irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Chancery Court of the State of Delaware. The parties agree that irreparable damage would occur and that the parties would not have any adequate remedy at law in the event that any of the provisions of this Amendment were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Amendment and to enforce specifically the terms and provisions of this Amendment, this being in addition to any other remedy to which they are entitled at law or in equity. All rights and remedies existing under this Amendment are cumulative to, and not exclusive of, any rights or remedies otherwise available. Each Stockholder hereby agrees that service of any process, summons, notice or document by U.S. registered mail in accordance with Section 6.1 of the Voting Agreement shall be effective service of process for any proceeding arising out of, relating to or in connection with this Amendment or the transactions contemplated hereby.

(b) EACH STOCKHOLDER ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AMENDMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT

SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THIS AMENDMENT. EACH STOCKHOLDER CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF PARENT OR MERGER SUB HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT PARENT OR MERGER SUB WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) EACH STOCKHOLDER UNDERSTANDS AND HAS CONSIDERED THE IMPLICATION OF THIS WAIVER, (III) EACH STOCKHOLDER MAKES THIS WAIVER VOLUNTARILY, AND (IV) EACH STOCKHOLDER HAS BEEN INDUCED TO ENTER INTO THIS AMENDMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

3.5. **Counterparts**. This Amendment may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. This Amendment or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.

[*Signature Pages Follow*]

The parties are executing this Amendment on the date set forth in the introductory clause.

PARENT

ACELRX PHARMACEUTICALS, INC.

By: _____
Name:
Title:

MERGER SUB

CONSOLIDATION MERGER SUB, INC.

By: _____
Name:
Title:

STOCKHOLDER

[STOCKHOLDER]

By: _____

Name:
Title:

Address: _____

_____

_____

[*Signature Page to Amendment No. 2 to Voting Agreement*]

Schedule A-1

Exhibit 10.3

FINAL

AMENDMENT NO. 1 TO CO-PROMOTION AGREEMENT

THIS AMENDMENT NO. 1 (the **"Amendment") TO THE CO-PROMOTION AGREEMENT DATED MARCH 15, 2020 (the "Agreement"**) is entered into as of May 26, 2020 by and between **ACELRX PHARMACEUTICALS, INC.**, a Delaware corporation, having an address of 351 Galveston Drive, Redwood City, California 94063 (hereinafter referred to as **"AcelRx"**), and **TETRAPHASE PHARMACEUTICALS, INC.**, a Delaware corporation, having an address of 480 Arsenal Way, Suite 100, Watertown, Massachusetts 02472 (hereinafter referred to as **"Tetraphase"**). AcelRx and Tetraphase are sometimes referred to herein individually as a **"Party"** and collectively as the **"Parties"**.

AGREEMENT

WHEREAS, the Parties wish to amend the Agreement in light of market and other developments and restrictions resulting from the Covid-19 pandemic;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. MARKETING PLAN

The Marketing Plan entered into by the Parties at the time of execution of the Agreement is hereby modified as follows:

(a) The co-promotion activities set forth under the Agreement and/or the Marketing Plan shall not begin until June 1, 2020, notwithstanding any other date or time frame set forth in either the Agreement or the Marketing Plan. Beginning on June 1, 2020, (1) Tetraphase hereby agrees that each member of the Tetraphase Sales Force shall (i) use reasonable efforts to conduct in the aggregate forty (40) Calls per calendar month whereby twenty (20) Calls will include AcelRx Products as the Primary Presentation and the other twenty (20) Calls will include AcelRx Products as the Secondary Presentation and (ii) conduct Calls at ten (10) separate health care organizations per calendar month; and (2) AcelRx hereby agrees that each member of the AcelRx Sales Force shall (i) use reasonable efforts to conduct in the aggregate forty (40) Calls per calendar month whereby twenty (20) Calls will include Tetraphase Products as the Primary Presentation and the other twenty (20) Calls will include Tetraphase Products as the Secondary Presentation and (ii) conduct Calls at ten (10) separate health care organizations per calendar month. The Parties agree that from June 1, 2020 until December 31, 2020, the mandatory Calls can be aggregated during this time frame, such that each member of the respective Party's Sales Force must (i) make two hundred eighty (280) Calls, of which one hundred forty (140) Calls must include the other Party's Products as the Primary Presentation and the other one hundred forty (140) Calls must include the other Party's Products as the Secondary Presentation and the aggregated two hundred eighty calls (280) with a target of forty (40) Calls per month must be conducted at ten (10) separate health care organizations on a

monthly basis. This can constitute 70 separate health care organizations or the same 10 health care organizations on the list of the Tier 1 and Tier 2 institutions every month; such health care organizations must either (A) be set forth in the Agreement and defined as a Target Audience or (B) be agreed upon by the JMSC. Due to the COVID-19 pandemic, the Parties agree to review these guidelines periodically in order to allow for flexibility in responding to federal, state and local government requirements.

(b) The term "Call" shall include (1) a face to face meeting; (2) a video conference; (3) a telephone call; or (4) a substantive e-mail exchange.

(c) The Calls shall be made to an appropriate health care provider affiliated with a health care organization defined as a Target Audience or otherwise agreed upon by the JMSC. Any Call not made to a healthcare provider affiliated with such a health care organization shall not be included in the minimum number of Calls required as set forth herein.

(d) Through December 31, 2020, the Calls may be made to Tier 1, Tier 2 and Tier 3 heath care organizations to qualify for inclusion in the minimum set forth herein; provided that such health care organizations are defined as a Target Audience or otherwise agreed upon by the JMSC. Calls on Tier 3 accounts should focus on those accounts affiliated with Tier 1 or Tier 2 accounts.

(e) The AcelRx Sales Force and the Tetraphase Sales Force shall be trained on the requirements set forth in this Amendment as well as the requirements of inputting data into each Party's respective proprietary Veeva system.

(f) To the extent that any member of the Tetraphase Sales Force voluntarily terminates employment with or is involuntarily terminated by Tetraphase (the "**Terminated Tetraphase Employee**"), beginning forty-five (45) calendar days following such termination Tetraphase shall use commercially reasonable efforts to make Calls in the territory of the Terminated Tetraphase Employee, or rehire and train a new employee for the vacated territory. The agreed upon call frequency starts once the new representative has completed training. To the extent any member of the AcelRx Sales Force voluntarily terminates employment with or is involuntarily terminated by AcelRx (the "**Terminated AcelRx Employee**"), beginning forty-five (45) calendar days following such termination AcelRx shall use commercially reasonable efforts to make Calls in the territory of the Terminated AcelRx Employee, or rehire and train a new employee for the vacated territory. The agreed upon call frequency starts once the new representative has completed training.

(g) The Calls shall be documented in each Parties' proprietary Veeva system. The Tetraphase Sales Force must log Calls within three (3) business days of the Call occurring. The AcelRx Sales Force must log Calls within three (3) business days of the Call occurring. For any month, AcelRx shall deliver to Tetraphase the number of Calls made by the AcelRx Sales Force during the prior month; this call delivery shall be calculated by the fifth (5^{th}) business day of the following month. For any month, Tetraphase shall deliver to AcelRx the number of Calls made by the Tetraphase Sales Force during the prior month; this call delivery shall be calculated by the fifth (5^{th}) business day of the following month.

(h) The respective Veeva systems used by the Parties to track activities under the Agreement and this Amendment shall be re-configured as necessary and appropriate to permit compliance with the Agreement and this Amendment. Moreover, the reports generated by the Veeva system in compliance with the Agreement and this Amendment shall be of such form and detail as mutually agreed to by the Parties, with periodic changes as needed.

2. GENERAL PROVISIONS

2.1 Definitions; Full Force and Effect. Any and all capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement. All other provisions of the Agreement remain in full force and effect.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties, intending to be bound hereby, have executed this Amendment as of the date first written above.

ACELRX PHARMACEUTICALS, INC.

By: /s/ Vincent J. Angotti
Name: Vincent J. Angotti
Title: CEO

TETRAPHASE PHARMACEUTICALS, INC.

By: /s/ Larry Edwards
Name: Larry Edwards
Title: President and CEO

Exhibit 99.1

AcelRx Pharmaceuticals Announces Revised Merger Agreement with Tetraphase

Under revised terms, AcelRx to acquire Tetraphase for $37.0 million in stock and cash plus CVRs

Continues to believe the Tetraphase acquisition complements AcelRx's commercial strategy and will deliver long-term shareholder value

REDWOOD CITY, Calif., May 29, 2020 – AcelRx Pharmaceuticals, Inc. (AcelRx) (Nasdaq: ACRX), a specialty pharmaceutical company focused on the development and commercialization of innovative therapies for use in medically supervised settings, today announced the execution of an amendment to its merger agreement to acquire Tetraphase Pharmaceuticals, Inc. (Tetraphase) (NASDAQ: TTPH), with revised consideration of $37.0 million in stock and cash based on the AcelRx closing share price on May 28, 2020, plus up to $16.0 million in contingent value rights (CVRs) payable in cash.

The total consideration payable to Tetraphase stockholders and warrant holders includes AcelRx stock valued at $24.2 million, based upon the closing share price of AcelRx stock of $1.50 on May 28, 2020, plus $12.8 million in cash.

Tetraphase stockholders will receive, for each share of Tetraphase common stock, (1) $0.59 in cash and 0.7409 shares of AcelRx common stock, representing approximately $1.70 in upfront per share value, based upon the closing share price of AcelRx stock of $1.50 on May 28, 2020, and (2) one CVR, which would entitle the Tetraphase stockholders to receive potential aggregate payments of up to $16.0 million in cash upon the achievement of certain future XERAVA™ net sales milestones starting in 2021.

Tetraphase's board of directors has determined that as a result of the amendment to the merger agreement, competing bidders' proposals were not superior and recommends the merger agreement, as amended, to its stockholders. In addition to delivering overall higher value, the AcelRx agreement delivers a higher per share valuation to Tetraphase warrant holders and stockholders.

Vince Angotti, Chief Executive Officer at AcelRx said, "We continue to believe there is significant value created for our stockholders in the combination of Tetraphase and AcelRx and stand ready to close this transaction in June."

Under the terms of the merger agreement, the transaction is expected to close following Tetraphase's stockholder meeting, which is currently set for June 8, 2020. Closing of the transaction is subject to receipt of approval of its stockholders, as well as satisfaction of other customary closing conditions. The transaction does not require a vote by AcelRx stockholders.

Cooley LLP is acting as legal counsel to AcelRx.

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About AcelRx Pharmaceuticals, Inc.

AcelRx Pharmaceuticals, Inc. is a specialty pharmaceutical company focused on the development and commercialization of innovative therapies for use in medically supervised settings. AcelRx's proprietary, non-invasive sublingual formulation technology delivers sufentanil with consistent pharmacokinetic profiles. The Company has one approved product in the U.S., DSUVIA® (sufentanil sublingual tablet, 30 mcg), known as DZUVEO™ in Europe, indicated for the management of acute pain severe enough to require an opioid analgesic for adult patients in certified medically supervised healthcare settings, and one product candidate, Zalviso® (sufentanil sublingual tablet system, SST system, 15 mcg), an investigational product in the U.S., is being developed as an innovatively designed patient-controlled analgesia (PCA) system for reduction of moderate-to-severe acute pain in medically supervised settings. DZUVEO and Zalviso are both approved products in Europe.

For additional information about AcelRx, please visit www.acelrx.com.

About Tetraphase Pharmaceuticals, Inc.

Tetraphase Pharmaceuticals, Inc. is a biopharmaceutical company using its proprietary chemistry technology to develop and commercialize novel tetracyclines for serious and life-threatening conditions, including bacterial infections caused by many multidrug-resistant, or MDR, bacteria. There is a medical need for new antibiotics as resistance to existing antibiotics increases. The company's commercial product, XERAVA™ (eravacycline), a fully synthetic fluorocycline, is an intravenous, or IV, antibiotic that is approved for use as a first-line empiric monotherapy for the treatment of MDR infections, including those found in complicated intra-abdominal infections, or cIAI.

Forward-Looking Statements

This press release contains forward-looking statements, including, but not limited to, statements related to future prospects or results, strategy, intentions, plans, hopes, beliefs, anticipations, expectations or predictions of the future, or the expected closing and timing of the Tetraphase acquisition and the potential benefits of the proposed transaction. These statements may be identified by the use of forward-looking terminology such as "believes," "expects," "anticipates," "may," "will," "should," "seeks," "approximately," "intends," "plans," "estimates," or the negative of these words or other comparable terminology. These forward-looking statements involve risks and uncertainties that could cause actual results to differ materially from those projected, anticipated or implied by such statements, including the risk that we may not be able to close the acquisition of Tetraphase or achieve the expected benefits and cost synergies from the proposed transaction with Tetraphase, that actions taken by competing bidders for Tetraphase or fluctuations in the market price of AcelRx's common stock could delay or prevent the consummation of the proposed transaction, or that the impacts AcelRx experiences from the ongoing COVID-19 pandemic may be prolonged or exacerbated. In addition, such risks and uncertainties may include, but are not limited to, those described in AcelRx's annual, quarterly and current reports (i.e., Form 10-K, Form 10-Q and Form 8-K) as filed or furnished with the Securities and Exchange Commission (SEC). You are cautioned not to place undue reliance on any such forward-looking statements, which speak only as of the date such statements were first made. AcelRx's SEC reports are available at www.acelrx.com under the "Investors" tab. Except to the extent required by law, AcelRx undertakes no obligation to publicly release the result of any revisions to these forward-looking statements to reflect events or circumstances after the date hereof, or to reflect the occurrence of unanticipated events.

Additional Information and Where to Find It

In connection with the proposed transaction between AcelRx and Tetraphase, AcelRx filed with the SEC a registration statement on Form S-4 (No. 333-237584) (the "Registration Statement") containing a document constituting a prospectus of AcelRx and a proxy statement of Tetraphase. The Registration Statement was declared effective by the SEC on April 24, 2020, and Tetraphase mailed the definitive proxy statement/prospectus to stockholders of Tetraphase on or about April 28, 2020. AcelRx and Tetraphase also plan to file other relevant documents with the SEC regarding the transaction. INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THE PROXY STATEMENT/PROSPECTUS AND OTHER RELEVANT

DOCUMENTS FILED OR THAT WILL BE FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION. Investors and security holders are able to obtain free copies of the Registration Statement and the definitive proxy statement/prospectus and other relevant documents filed or that will be filed by AcelRx or Tetraphase with the SEC through the website maintained by the SEC at http://www.sec.gov. Copies of the documents filed with the SEC by AcelRx are available free of charge within the Investors section of AcelRx's website at http://ir.acelrx.com. Copies of the documents filed with the SEC by Tetraphase are available free of charge within the Investors section of Tetraphase's website at https://ir.tphase.com/investor-relations.

Participants in the Solicitation

Each of AcelRx and Tetraphase and their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from Tetraphase stockholders in connection with the proposed transaction. Information about AcelRx's directors and executive officers is included in the definitive proxy statement for its 2020 annual meeting of stockholders, which was filed with the SEC on April 24, 2020. Information about Tetraphase's directors and executive officers is included in Tetraphase's Annual Report on Form 10-K for the fiscal year ended December 31, 2019, which was filed with the SEC on March 12, 2020. Other information regarding the participants in the solicitation of proxies in connection with the proposed transaction and a description of their direct and indirect interests, by security holdings or otherwise, is contained in the definitive proxy statement/prospectus filed with the SEC on April 24, 2020. When available, investors may obtain free copies of these documents from AcelRx or Tetraphase as indicated above.

No Offer or Solicitation

This communication is being made in respect of the proposed transaction involving AcelRx and Tetraphase. This communication does not constitute an offer to sell or the solicitation of an offer to buy any securities nor a solicitation of any vote or approval with respect to the proposed transaction or otherwise. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended, and otherwise in accordance with applicable law.

Media Contacts

Evoke
Theresa Dolge / Jessica Ross
215-928-2748 / 215-928-2346
theresa.dolge@evokegroup.com /
jessica.ross@evokegroup.com

Sloane & Company
Dan Zacchei / Joe Germani
Dzacchei@sloanepr.com / JGermani@sloanepr.com

Investor Contacts

Raffi Asadorian, CFO AcelRx
investors@acelrx.com

Brian Korb, Solebury Trout
646-378-2923
Investors@acelrx.com