
**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): September 28, 2017

IMPRIMIS PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-35814
(Commission File Number)

45-0567010
(IRS Employer Identification No.)

12264 El Camino Real, Suite 350
San Diego, CA
(Address of principal executive offices)

92130
(Zip Code)

Registrant's telephone number, including area code: **(858) 704-4040**

□
N/A

(Former name or former address if changed since last report.)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry into a Material Definitive Agreement.

On September 28, 2017 and amended and restated on April 10, 2018, Imprimis Pharmaceuticals, Inc. (the “Company”) entered into asset assignment and license agreements (the “License Agreements”) with its previously wholly owned subsidiary, Surface Pharmaceuticals, Inc. (“Surface”).

Pursuant to the terms of the License Agreements, Surface was assigned and licensed certain intellectual property and related rights from the Company to develop, formulate, make, sell, and sub-license certain Company ophthalmic formulations (collectively, the “Products”). Under the terms of the License Agreements, Surface is required to make royalty payments to the Company of four to six percent (4 - 6%) of net sales of the Products while any patent rights remain outstanding, as well as other conditions. In addition, Surface is required to make certain milestone payments to the Company including: (i) an initial payment of \$50,000 upon initial patent issuances for each Product.

Item 8.01 Other Information

On May 11, 2018, Surface entered into a definitive stock purchase agreement with an investor for the purchase of Surface’s Series A Preferred Stock (the “Series A Stock”), totaling up to approximately twenty million dollars (\$20,000,000) of proceeds (collectively the “Series A Round”). Surface closed on initial proceeds of approximately fifteen million dollars (\$15,000,000), with a second closing of up to approximately five million dollars (\$5,000,000) expected to occur within the next ninety (90) days. The Series A Stock (i) was issued at a purchase price of \$3.30 per share; (ii) will vote together with the common stock and all other shares of stock of Surface having general voting power; (iii) will be entitled to the number of votes equal to the number of shares of preferred stock held; (iv) will hold liquidation preference over all other equity interests in Surface; and (v) will have mandatory conversion requirements into Surface common stock upon events including an underwritten initial public offering of Surface common stock or similar transaction.

The Company owns three million five hundred thousand (3,500,000) shares of Surface common stock, which will be approximately 30% of the equity and voting interests of Surface following the close of the Series A Round, assuming twenty million dollars (\$20,000,000) is funded. Following the close of the Series A Round, the Company will be reimbursed for cash advances on certain Surface related expenses totaling more than one hundred thousand dollars (\$100,000).

The Company’s Chief Executive Officer, Mark L. Baum, and a member of its board of directors, Dr. Richard Lindstrom, are directors of Surface. In addition, the Company’s Chief Financial Officer, Andrew R. Boll, was a director of Surface and resigned as a director of Surface concurrent with the closing of the Series A Round. Several employees of the Company (including Mr. Baum, Dr. Lindstrom and Mr. Boll) have entered into consulting agreements with Surface. Surface is required to make royalty payments to Dr. Lindstrom of three percent (3%) of net sales of certain Products while certain patent rights remain outstanding. Dr. Lindstrom is also a principal of Flying L Partners, an affiliate of the funding investor.

The foregoing is only a brief description of the License Agreements does not purport to be a complete description of the rights and obligations of the parties thereunder and is qualified in its entirety by reference to the full text of the document, which is filed as Exhibits 10.1 and 10.2 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	<u>Asset Purchase and License Agreement dated September 28, 2017 between Imprimis Pharmaceuticals, Inc. and Surface Pharmaceuticals, Inc.</u>
10.2	<u>Amend and Restated Asset Purchase and License Agreement dated April 10, 2018 between Imprimis Pharmaceuticals, Inc. and Surface Pharmaceuticals, Inc.</u>
99.1	<u>Press Release issued by Imprimis Pharmaceuticals, Inc. on May 15, 2018</u>

SIGNATURES

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

IMPRIMIS PHARMACEUTICALS, INC.

Dated: May 15, 2018

By: /s/ Andrew R. Boll

Name: Andrew R. Boll

Title: Chief Financial Officer

ASSET PURCHASE AND LICENSE AGREEMENT

THIS ASSET PURCHASE AND LICENSE AGREEMENT (this "Agreement") dated as of the last date provided on the signature page (the "Effective Date"), is entered into between IMPRIMIS PHARMACEUTICALS, INC., a Delaware corporation ("Imprimis"), with a place of business at 12264 El Camino Real, Suite 350, San Diego, California 92130, and SURFACE PHARMACEUTICALS, INC., a Delaware corporation ("Surface"), with a place of business at 12264 El Camino Real, Suite 350, San Diego, California 92130. The parties hereby agree as follows:

1. **Definitions.** For the purposes of this Agreement, the following terms shall have the respective meanings set forth below and grammatical variations of such terms shall have corresponding meanings:

1.1 "**Affiliate**" shall mean, with respect to any Person, any other Person which directly or indirectly controls, is controlled by, or is under common control with, such Person. A Person shall be regarded as in control of another Person if it owns, or directly or indirectly controls, more than fifty percent (50%) of the voting stock or other ownership interest of the other Person, or if it directly or indirectly possesses the power to direct or cause the direction of the management and policies of the other Person by any means whatsoever.

1.2 "**Assets**" shall mean, collectively, (a) all Technology as of the Effective Date, (b) the Assigned Patent Rights, (c) the Assigned Know-How Rights, and (d) all compositions, formulations, samples, data and information as of the Effective Date regarding the Technology.

1.3 "**Assigned Know-How Rights**" shall mean Imprimis' rights in all trade secret and other know-how rights as of the Effective Date specific to the Technology.

1.4 "**Assigned Patent Rights**" shall mean, collectively, (a) all patent applications (including provisional patent applications) listed on Schedule A, together with all divisionals, continuations and continuations-in-part that claim priority to, or common priority with, the foregoing; (b) all patents issuing therefrom (including utility models and design patents and certificates of invention), together with all reissues, renewals, extensions or additions thereof and thereto; and (c) all foreign counterparts with or to any of the foregoing.

1.5 "**Confidential Information**" shall mean all information and data that (a) is provided by one party to the other party under this Agreement, and (b) if disclosed in writing or other tangible medium is marked or identified as confidential at the time of disclosure to the recipient, is acknowledged at the time of disclosure to be confidential, or otherwise should reasonably be deemed to be confidential. Imprimis' Confidential Information includes, without limitation, embodiments of the Licensed Know-How Rights. Surface's Confidential information includes, without limitation, the Assets. Notwithstanding the foregoing, Confidential Information of a party shall not include that portion of such information and data which, and only to the extent, the recipient can establish by written documentation: (i) is known to the recipient as evidenced by its written records before receipt thereof from the disclosing party, (ii) is disclosed to the recipient free of confidentiality obligations by a third person who has the right to make such disclosure, (iii) is or becomes part of the public domain through no fault of the recipient, or (iv) the recipient can reasonably establish is independently developed by persons on behalf of recipient without access to or use of the information disclosed by the disclosing party.

1.6 “First Commercial Sale” shall mean, with respect to any Product, the first sale of such Product after all applicable marketing and pricing approvals (if any) have been granted by the applicable governing health authority of such country.

1.7 “Licensed Know-How Rights” shall mean Imprimis’ rights in all trade secret or other know-how rights as of the Effective Date regarding the Technology, excluding the Assigned Know-How Rights and Assigned Patent Rights.

1.8 “Licensee” shall mean a Third Party to whom Surface or its Affiliate has granted a license, immunity or other right under the Assigned Patent Rights to offer to sell, sell or otherwise commercialize one or more Products, provided such license has not expired or been terminated.

1.9 “Net Licensing Revenues” shall mean, with respect to any Product, the aggregate consideration received by Surface or its Affiliates in connection with the grant by Surface or its Affiliates to a Licensee of a license, immunity or other right under the Assigned Patent Rights to offer to sell, sell or otherwise commercialize such Product, excluding amounts calculated on the sales price of such Product.

1.10 “Net Receipts” shall mean, with respect to any Product, the aggregate of the Net Sales thereof and Net Licensing Revenues therefrom.

1.11 “Net Sales” shall mean, with respect to any Product, the gross sales price for such Product invoiced by Surface, its Licensees or their respective Affiliates to customers who are not Affiliates (or are Affiliates but are the end users of such Product), less (a) credits, allowances, discounts and rebates to, and chargebacks from the account of, such customers; (b) freight and insurance costs in transporting such Product to the extent separately invoiced and included in the gross sales price; (c) cash, quantity and trade discounts, rebates and other price reductions for such Product; (d) sales, use, value-added and other direct taxes for such Product to the extent separately invoiced and included in the gross sales price; (e) customs duties, tariffs, surcharges and other governmental charges incurred in exporting or importing such Product to the extent separately invoiced and included in the gross sales price; and (f) an allowance for uncollectible or bad debts for such Product determined in accordance with generally accepted accounting principles not to exceed 3% of Net Sales of such Product for the applicable quarterly reporting period before giving effect to this subsection (f).

1.12 “Patent Issuance” shall mean issuance of a patent from, claiming priority to, or claiming common priority with, a patent application listed on Schedule A, or any foreign counterpart of the foregoing.

1.13 “Person” shall mean any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, as well as any syndicate or group of any of the foregoing.

1.14 “Product” shall mean any product, in a capsule or oral dose composition, comprising a combination of (a) an anti-bacterial agent of the tetracycline class (such as doxycycline) and (b) essential fatty acids (such as omega-3s).

1.15 “Product Supported Patent Rights” shall mean, collectively, (a) all patent applications hereafter filed anywhere in the world; (b) all patents that have issued or in the future issue from any of the foregoing patent applications, including without limitation utility models, design patents and certificates of invention; and (c) all divisionals, continuations, continuations-in-part, reissues, renewals, extensions or additions to any such patents and patent applications; in each case that use or are supported by data and information derived from the development, manufacture or use of the Product or otherwise from the exploitation of the Technology; provided, however, that Product Supported Patent Rights shall exclude the Assigned Patent Rights.

1.16 “Technology” shall mean, collectively, the Product together with all methods of manufacture or use thereof.

1.17 “Third Party” shall mean any Person other than Imprimis, Surface or their respective Affiliates.

1.18 “Valid Claim” shall mean either (a) a claim of an issued and unexpired patent included within the Assigned Patent Rights, which has not been held permanently revoked, unenforceable or invalid by a decision of a court or other governmental agency of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, and which has not been admitted to be invalid or unenforceable through reissue or disclaimer or otherwise, or (b) a claim of a pending patent application included within the Assigned Patent Rights, which claim was filed in good faith and has not been abandoned or finally disallowed without the possibility of appeal or refiling of such application.

2. Purchase and Sale of the Assets.

2.1 Assets. Subject to the terms and conditions of this Agreement, Surface hereby purchases from Imprimis, and Imprimis hereby sells, conveys, transfers and assigns to Surface, on the Effective Date, all of Imprimis’ right, title and interest in and to the Assets. To the extent necessary to comply with applicable privacy laws, Imprimis shall have the right to redact patient identifying information from any data or information transferred to Surface.

2.2 No Assumption of Liabilities. Surface shall not be obligated to assume or perform and is not assuming or performing any liabilities or obligations of Imprimis which relate to Imprimis’ ownership of the Assets prior to the Effective Date or otherwise, whether known or unknown, fixed or contingent, certain or uncertain, and regardless of when they are or were asserted, and Imprimis shall remain responsible for such liabilities.

2.3 Transfer Documents. The sale, conveyance, transfer and assignment of the Assets may be further evidenced by the due execution and delivery by the parties of any additional bills of sale, assignment or other title transfer documents and instruments as reasonably requested by Surface evidencing the sale, conveyance, transfer and assignment of the Assets in accordance with this Agreement.

3. License Grants.

3.1 License to Surface.

3.1.1 Subject to the terms and conditions of this Agreement, Imprimis hereby grants to Surface a non-exclusive, irrevocable, perpetual, non-transferable (except in connection with a permitted assignment of this Agreement), worldwide license under the Licensed Know-How Rights to develop, make, have made, use, offer for sale, sell, and import one or more Products.

3.1.2 Surface shall have the right to grant sublicenses, through multiple tiers, to Third Parties and Affiliates for the purpose of developing, manufacturing, seeking regulatory approval for, or commercializing any Product. Any such sublicense shall be subject and subordinate to the terms and conditions of this Agreement.

3.2 Grantback License.

3.2.1 Subject to the terms and conditions of this Agreement, Surface hereby grants to Imprimis a non-exclusive, irrevocable, perpetual, non-transferable (except in connection with a permitted assignment of this Agreement), worldwide license under the Product Supported Patent Rights for all uses, other than to develop, make, have made, use, offer for sale, sell, and import one or more Products.

3.2.2 Imprimis shall have the right to grant sublicenses, through multiple tiers, to Third Parties and Affiliates.

3.3 No Implied Licenses. Only licenses and rights expressly granted herein shall be of legal force and effect. No license or other right shall be created hereunder by implication, estoppel, or otherwise.

4. Representations and Warranties.

4.1 Mutual Representations and Warranties. Each party represents and warrants to the other party as follows:

4.1.1 Organization. Such party is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized.

4.1.2 Authorization and Enforcement of Obligations. Such party (a) has the requisite power and authority and the legal right to enter into this Agreement and to perform its obligations hereunder; and (b) has taken all requisite action on its part to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder. This Agreement has been duly executed and delivered on behalf of such party, and constitutes a legal, valid, binding obligation, enforceable against such party in accordance with its terms.

4.1.3 Consents. All necessary consents, approvals and authorizations of all governmental authorities and other persons or entities required to be obtained by such party in connection with this Agreement have been obtained.

4.1.4 No Conflict. The execution and delivery of this Agreement and the performance of such party's obligations hereunder (a) do not conflict with or violate any requirement of applicable laws, regulations or orders of governmental bodies; and (b) do not conflict with, or constitute a default under, any contractual obligation of such party.

4.2 DISCLAIMER OF WARRANTIES. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN SECTION 4.1, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE ASSETS, LICENSED KNOW-HOW RIGHTS, OR ANY OTHER MATTER, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY REGARDING VALIDITY, ENFORCEABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. THE ASSETS AND LICENSED KNOW-HOW RIGHTS ARE PROVIDED "AS IS."

5. Financial Terms.

5.1 Milestone Payment. Within thirty (30) days following the first Patent Issuance, Surface shall give written notice to Imprimis and shall pay to Imprimis a non-refundable and noncreditable payment of fifty thousand dollars (\$50,000).

5.2 Net Receipts Payments.

5.2.1 Net Receipts Payment Amounts.

(a) Payment Amount. Subject to the provisions in this Section 5.2.1, on a Product-by-Product and country-by-country basis, Surface shall pay to Imprimis, on a quarterly basis, six percent (6%) of Net Receipts (the "Payment Amount"); provided, however, if the manufacture, use, offer for sale, sale, or import of such Product in a particular country would not infringe a Valid Claim (if such Valid Claim were in an issued patent owned solely by a Third Party), then the applicable Payment Amount with respect to such Product in such country shall be reduced by one-half (½).

(b) Discounts. If Surface, its Licensees or their respective Affiliates sells the Product to a Third Party who also purchases other products or services from Surface, its Licensees or their respective Affiliates, and Surface, its Licensees or their respective Affiliates discounts the purchase price of the Product to a greater degree than it generally discounts the price of its other products or services to such customer, then in such case the Net Sales for the sale of the Product to such Third Party shall equal the arm's length price that Third Parties would generally pay for the Product alone when not purchasing any other product or service from Surface, its Licensee or their respective Affiliates. For purposes of this provision, "discounting" includes establishing the list price at a lower-than-normal level.

(c) Incentives. If Surface, its Licensees or their respective Affiliates sells the Product to a Third Party who also purchases other products or services from Surface, its Licensees or their respective Affiliates during the same period pursuant to a pharmacy, performance or other incentive program, a disease management or similar program, or any other discount, chargeback or credit program for products or services purchased, then for purposes of calculating Net Sales of the Product hereunder for such period, all discounts, chargebacks, credits and the like for such Third Party shall be allocated in proportion to the respective list prices of all products or services sold to such Third Party during such period.

5.2.2 Reports and Net Receipts Payments. Within sixty (60) days after the end of each calendar quarter, Surface shall deliver to Imprimis a report setting forth for such calendar quarter (a) the calculation of the applicable Payment Amount; (b) the payments due under this Agreement for the sale of each Product; and (c) the applicable exchange rate as determined below. Surface shall remit the total payments due for the sale of Products during such calendar quarter at the time such report is made. No such reports or payments shall be due for any Product before the First Commercial Sale of such Product. With respect to Net Receipts received in United States dollars, all amounts shall be expressed in United States dollars. With respect to Net Receipts received in a currency other than United States dollars, all amounts shall be expressed both in the currency in which the amount is invoiced (or received as applicable) and in the United States dollar equivalent. The United States dollar equivalent shall be calculated using the average of the exchange rate (local currency per US\$1) published in The Wall Street Journal, Western Edition, under the heading "Currency Trading" on the last business day of each month during the applicable calendar quarter.

5.3 Payment Provisions.

5.3.1 Payment Method. All payments by Surface to Imprimis hereunder shall be in United States dollars in immediately available funds and shall be made by wire transfer from a United States bank located in the United States to such bank account as designated from time to time by Imprimis to Surface.

5.3.2 Payment Terms. The Payment Amount shown to have accrued by each report provided for under Section 5.2.2 shall be due on the date such report is due. Payment of Payment Amount in whole or in part may be made in advance of such due date.

5.3.3 Withholding Taxes. Surface shall be entitled to deduct the amount of any withholding taxes, value-added taxes or other taxes, levies or charges with respect to such amounts, other than United States taxes, payable by Surface, its Licensees or their respective Affiliates, or any taxes required to be withheld by Surface, its Licensees or their respective Affiliates, to the extent Surface, its Licensees or their respective Affiliates pay to the appropriate governmental authority on behalf of Imprimis such taxes, levies or charges. Surface shall use reasonable efforts to minimize any such taxes, levies or charges required to be withheld on behalf of Imprimis by Surface, its Licensees or their respective Affiliates. Surface promptly shall deliver to Imprimis proof of payment of all such taxes, levies and other charges, together with copies of all communications from or with such governmental authority with respect thereto.

5.4 Audits. Upon the written request of Imprimis and not more than once in each calendar year, Surface shall permit an independent certified public accounting firm selected by Imprimis and reasonably acceptable to Surface, at Imprimis' expense, to have access during normal business hours to such of the financial records of Imprimis as may be reasonably necessary to verify the accuracy of the Payment Amount reports hereunder for the eight (8) calendar quarters immediately prior to the date of such request. If such accounting firm concludes that additional amounts were owed during the audited period, Surface shall pay such additional amounts within thirty (30) days after the date Imprimis delivers to Surface such accounting firm's written report so concluding. The fees charged by such accounting firm shall be paid by Imprimis; provided, however, if the audit discloses that the Payment Amount payable by Surface for such period are more than one hundred five percent (105%) of the Payment Amount actually paid for such period, then Surface shall pay the fees and expenses charged by such accounting firm. Imprimis shall cause its accounting firm to retain all financial information subject to review under this Section 5.4 in strict confidence. Imprimis shall treat all such financial information as Surface's confidential information, and shall not disclose such financial information to any Third Party or use it for any purpose other than as specified in this Section 5.4.

6. Post-Effective Date Covenants.

6.1 Surface Diligence.

6.1.1 Surface shall use commercially reasonable efforts (whether alone or with or through its Licensees and its or their respective Affiliates) to research, develop and commercialize Products.

6.1.2 Surface shall control, at its sole expense, the preparation, filing, prosecution, maintenance and enforcement of the Assigned Patent Rights consistent with prudent business practices, and shall consider in good faith the interests of Imprimis.

6.2 Imprimis Covenants.

6.2.1 Within thirty (30) days after the Effective Date, Imprimis shall transfer to Surface all tangible embodiments of the Technology in the possession and control of Imprimis.

6.2.2 Imprimis shall provide cooperation reasonably requested by Surface in connection with Surface's efforts to establish, perfect, defend, or enforce its rights in or to the Assets (including without limitation the Assigned Patent Rights). Such cooperation shall include, without limitation, (a) executing such further assignments, transfers, licenses, releases and consents, and (b) providing such data and information, consulting with Surface and executing and delivering all such further documents and instruments, in each case as reasonably requested by Surface regarding the Assets (including without limitation the Assigned Patent Rights).

7. Indemnification.

7.1 Indemnification of Surface. Subject to the provisions of this Section 7, Imprimis shall indemnify, defend and hold harmless Surface, its officers, directors, affiliates, agents, stockholders and representatives (collectively, the "Surface Indemnitees"), from and against any and all losses, liabilities, damages and expenses (including without limitation reasonable attorneys' fees and costs) incurred as a result of any claim, demand, action or proceeding by any Third Party (collectively, "Losses") incurred or suffered by an Surface Indemnitee to the extent arising out of:

7.1.1 any breach of the representations and warranties of Imprimis set forth in this Agreement;

7.1.2 any breach of any covenant or agreement of Imprimis set forth in this Agreement or in any certificate, instrument, or other document delivered pursuant to this Agreement; and

7.1.3 the ownership or exploitation of the Assets prior to the Effective Date or any liability or obligation whatsoever of Imprimis.

7.2 Indemnification of Imprimis. Subject to the provisions of this Section 7, Surface shall indemnify and hold harmless Imprimis, its officers, directors, affiliates, agents, stockholders and representatives (collectively, the "Imprimis Indemnitees"), from and against any and all Losses incurred or suffered by an Imprimis Indemnitee to the extent arising out of:

7.2.1 any breach of the representations and warranties of Surface set forth in this Agreement;

7.2.2 any breach of any covenant or agreement of Surface set forth in this Agreement or in any certificate, instrument, or other document delivered pursuant to this Agreement;

7.2.3 the ownership or exploitation of the Assets after the Effective Date or the manufacture, use, or sale of any Product solely by Surface, its Licensees or their respective Affiliates or the use of any Product by their customers.

7.3 Procedure. A party seeking indemnification (the "Indemnitee") shall promptly notify the other party (the "Indemnifying Party") in writing of a claim or suit; provided that an Indemnitee's failure to give such notice or delay in giving such notice shall not affect such Indemnitee's right to indemnification under this Section 7 except to the extent that the Indemnifying Party has been prejudiced by such failure or delay. The Indemnifying Party shall have the right to control the defense of all indemnification claims hereunder. The Indemnitee shall have the right to participate at its own expense in the claim or suit with counsel of its own choosing. The Indemnifying Party shall consult with the Indemnitee in good faith with respect to all non-privileged aspects of the defense strategy. The Indemnitee shall cooperate with the Indemnifying Party as reasonably requested, at the Indemnifying Party's sole cost and expense. The Indemnifying Party shall not settle any claim or suit without the Indemnitee's prior written consent, which consent shall not be unreasonably withheld.

8. Confidentiality.

8.1 Confidential Information. Following the Effective Date and for a period of five (5) years after the expiration of the last Valid Claim, except as otherwise provided in this Section 8, each party shall maintain in confidence the Confidential Information of the other party except as expressly permitted herein, and shall not use, disclose or grant the use of the Confidential Information except on a need-to-know basis to those directors, officers, employees and contractors, to the extent such disclosure is reasonably necessary in connection with performing its obligations or exercising its rights under this Agreement. To the extent that disclosure by a party is authorized by this Agreement, prior to disclosure, such party shall obtain agreement of any such Person to hold in confidence and not make use of the Confidential Information for any purpose other than those permitted by this Agreement.

8.2 Terms of this Agreement. Neither party shall disclose any terms or conditions of this Agreement to any Third Party without the prior consent of the other party; provided, however, that a party may disclose the terms or conditions of this Agreement, (a) on a need-to-know basis to its legal and financial advisors to the extent such disclosure is reasonably necessary, and (b) to a third party in connection with (i) an equity investment in such party, (ii) a merger, consolidation or similar transaction by such party, (iii) a permitted sublicense under this Agreement, or (iv) the sale of all or substantially all of the assets of such party. Notwithstanding the foregoing, prior to execution of this Agreement, the parties have agreed upon the substance of information that can be used to describe the terms of this transaction, and each party may disclose such information, as modified by mutual agreement from time to time, without the other party's consent.

8.3 Permitted Disclosures. The confidentiality obligations contained in this Section 8 shall not apply to the extent that a party is required (i) in the reasonable opinion of such party's legal counsel, to disclose information by applicable law, regulation, rule (including rule of a stock exchange or automated quotation system), order of a governmental agency or a court of competent jurisdiction or legal process, including tax authorities, or (ii) to disclose information to any governmental agency for purposes of obtaining approval to test or market a product, provided in either case that, to the extent practicable, such party shall provide written notice thereof to the other party and sufficient opportunity to object to any such disclosure or to request confidential treatment.

8.4 Injunctive Relief. Each party acknowledges that it will be impossible to measure in money the damage to the other party if such party fails to comply with the obligations imposed by this Section 8, and that, in the event of any such failure, the other party may not have an adequate remedy at law or in damages. Accordingly, each party agrees that injunctive relief or other equitable remedy, in addition to remedies at law or damages, is an appropriate remedy for any such failure and shall not oppose the granting of such relief on the basis that the disclosing party has an adequate remedy at law. Each party agrees that it shall not seek, and agrees to waive any requirement for, the securing or posting of a bond in connection with the other party seeking or obtaining such equitable relief

9. Condition Precedent. Notwithstanding anything to the contrary herein, the effectiveness of this Agreement is conditioned upon Surface having received net proceeds of the sale of its equity securities to Third Parties of not less than ten million dollars (\$10,000,000.00) in cash, whether individually or in the aggregate, within ninety (90) days after the Effective Date. If Surface fails to satisfy such condition precedent, then unless such condition precedent is expressly waived or modified in writing by Imprimis, this Agreement shall be null and void ab initio.

10. Miscellaneous.

10.1 Assignment. Neither party shall assign its rights or obligations under this Agreement without the prior written consent of the other party; provided, however, that a party may, without such consent, assign this Agreement and its rights and obligations hereunder (a) to any Affiliate, or (b) in connection with the transfer or sale of all or substantially all of its business to which this Agreement relates, or in the event of its merger, consolidation, change in control or similar transaction. Any permitted assignee shall assume all obligations of its assignor under this Agreement. Any purported assignment in violation of this Section 10.1 shall be void.

10.2 Severability. Any provision of this Agreement which is illegal, invalid or unenforceable shall be ineffective to the extent of such illegality, invalidity or unenforceability, without affecting in any way the remaining provisions hereof.

10.3 Governing Law; Exclusive Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law principles thereof. Each of the parties hereto irrevocably consents to the exclusive jurisdiction and venue of any federal court located in the Southern District of the State of California or state court in San Diego, California having jurisdiction, in connection with any matter based upon or arising out of this Agreement or the matters contemplated herein, agrees that process may be served upon them in any manner authorized by laws of the State of California for such persons and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction, venue and such process.

10.4 Entire Agreement; Amendment. This Agreement, together with the Schedule A hereto, and each additional document, instrument or other agreement to be executed and delivered pursuant hereto constitute all of the agreements of the parties with respect to, and supersede all prior agreements and understandings relating to the subject matter of, this Agreement or the transactions contemplated by this Agreement. This Agreement may not be modified or amended except by a written instrument specifically referring to this Agreement signed by the parties hereto.

10.5 Waiver. No waiver by one party of the other party's obligations, or of any breach or default hereunder by any other party, shall be valid or effective, unless such waiver is set forth in writing and is signed by the party giving such waiver; and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature or any other breach or default by such other party.

10.6 Notices. Any consent, notice or report required or permitted to be given or made under this Agreement by a party to the other party shall be in writing, delivered by any lawful means to such other party at its address indicated below, or to such other address as the addressee shall have last furnished in writing to the addressor and (except as otherwise provided in this Agreement) shall be effective upon receipt by the addressee.

If to Imprimis:

Imprimis Pharmaceuticals, Inc.
12264 El Camino Real, Suite 350
San Diego, California 92130
Attention: Chief Executive Officer

If to Surface:

Surface Pharmaceuticals, Inc.
12264 El Camino Real, Suite 350
San Diego, California 92130
Attention: Executive Director

10.7 Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE

IN WITNESS WHEREOF, each party has caused a duly authorized representative to execute this Agreement as of the date first written above.

IMPRIMIS

Imprimis Pharmaceuticals, Inc.

/s/ Mark L Baum

By: Mark L. Baum
Its: Chief Executive Officer

Date:9/28/2017

SURFACE

Surface Pharmaceuticals, Inc.

/s/ Andrew Boll

By: Andrew R. Boll
Its: Executive Director

Date:9/28/2017

[Signature Page to Asset Purchase and License Agreement]

SCHEDULE A

Assigned Patent Rights

<u>SUMMARY</u>	<u>TITLE</u>	<u>INVENTOR</u>	<u>MATTER TYPE</u>	<u>COUNTRY</u>	<u>STATUS</u>	<u>APPLICATION #</u>	<u>DATE FILED</u>
Dermatology — Rosacea, Acne	Pharmaceutical formulations for treating skin...	Saadeh	Provisional	U.S.	Converted	USSN 62/265,643	December 10, 2015
Dermatology — Rosacea, Acne	Pharmaceutical formulations for treating skin...	Saadeh	Provisional	U.S.	Converted	USSN 62/287,714	January 27, 2016
Dermatology — Rosacea, Acne	Pharmaceutical formulations for treating skin...	Saadeh	Utility	U.S.	Pending	USSN 15/371,508	December 7, 2016
Dermatology — Rosacea, Acne	Pharmaceutical formulations for treating skin...	Saadeh	N/A	PCT	Pending	PCT/US16/65263	December 7, 2016

AMENDED AND RESTATED ASSET PURCHASE AND LICENSE AGREEMENT

THIS AMENDED AND RESTATED ASSET PURCHASE AND LICENSE AGREEMENT (this "Agreement") dated as of the last date provided on the signature page (the "Restatement Date"), is entered into between IMPRIMIS PHARMACEUTICALS, INC., a Delaware corporation ("Imprimis"), with a place of business at 12264 El Camino Real, Suite 350, San Diego, California 92130, and SURFACE PHARMACEUTICALS, INC., a Delaware corporation ("Surface"), with a place of business at 12264 El Camino Real, Suite 350, San Diego, California 92130.

WHEREAS, the parties entered into the Asset Purchase and License Agreement (the "Original Agreement") effective September 28, 2017 (the "Effective Date"); and

WHEREAS, the parties now desire to amend the Original Agreement in certain respects and for convenience to restate the Original Agreement, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby amend and restate the Original Agreement, and otherwise agree, as follows effective as of the Effective Date:

1. **Definitions.** For the purposes of this Agreement, the following terms shall have the respective meanings set forth below and grammatical variations of such terms shall have corresponding meanings:

1.1 "**Affiliate**" shall mean, with respect to any Person, any other Person which directly or indirectly controls, is controlled by, or is under common control with, such Person. A Person shall be regarded as in control of another Person if it owns, or directly or indirectly controls, more than fifty percent (50%) of the voting stock or other ownership interest of the other Person, or if it directly or indirectly possesses the power to direct or cause the direction of the management and policies of the other Person by any means whatsoever. Notwithstanding the foregoing, for purposes of this Agreement, neither Imprimis nor Surface shall be Affiliates of the other or the other's Affiliates.

1.2 "**Assets**" shall mean, collectively, (a) all Technology as of the Effective Date, (b) the Assigned Patent Rights, (c) the Assigned Know-How Rights, and (d) all compositions, formulations, samples, data and information in Imprimis' control as of the Effective Date regarding the Technology.

1.3 "**Assigned Know-How Rights**" shall mean all trade secret and other know-how rights specific to the Technology owned by Imprimis as of the Effective Date.

1.4 "**Assigned Patent Rights**" shall mean, collectively, (a) all patent applications (including provisional patent applications) listed on Schedule A, together with all divisionals, continuations and continuations-in-part that claim priority to, or common priority with, the foregoing; (b) all patents issuing therefrom (including utility models and design patents and certificates of invention), together with all reissues, renewals, extensions or additions thereof and thereto; and (c) all foreign counterparts with or to any of the foregoing.

1.5 “Confidential Information” shall mean all information and data that (a) is provided by one party to the other party under this Agreement, and (b) if disclosed in writing or other tangible medium is marked or identified as confidential at the time of disclosure to the recipient, is acknowledged at the time of disclosure to be confidential, or otherwise should reasonably be deemed to be confidential. Imprimis’ Confidential Information includes, without limitation, embodiments of the Licensed Know-How Rights. Surface’s Confidential Information includes, without limitation, the Assets. Notwithstanding the foregoing, Confidential Information of a party shall not include that portion of such information and data which, and only to the extent, the recipient can establish by written documentation: (a) is known to the recipient as evidenced by its written records before receipt thereof from the disclosing party, (b) is disclosed to the recipient free of confidentiality obligations by a third person who has the right to make such disclosure, (c) is or becomes part of the public domain through no fault of the recipient, or (d) the recipient can reasonably establish is independently developed by persons on behalf of recipient without access to or use of the information disclosed by the disclosing party. For clarity, the Assets shall be the Confidential Information of Surface notwithstanding the fact that such information originated with Imprimis and notwithstanding exception (a) above.

1.6 “Control” and its correlative terms, “Controlled” or “Controls” shall mean, with respect to any patent, patent application, item of know-how or other intellectual property, that a party owns or has a license or sublicense to such item or right, and has the ability to grant the access, license or sublicense contemplated by this Agreement in or to such item or right without violating the terms of any agreement or other arrangement with any Third Party.

1.7 “FDA” shall mean the Food and Drug Administration of the United States, or any successor thereto.

1.8 “First Commercial Sale” shall mean, with respect to any Product, the first sale of such Product after all applicable marketing and pricing approvals (if any) have been granted by the applicable governing health authority.

1.9 “Imprimis Field” shall mean drug products compounded or manufactured in compounding pharmacies or outsourcing facilities as defined and outlined in the Federal Food, Drug & Cosmetic Act (21 U.S.C §353a and 21 U.S.C. §353b).

1.10 “IND” shall mean an investigational new drug application filed with the FDA for approval to commence human clinical trials and any successor form thereto and/or its equivalent in other jurisdictions.

1.11 “Licensed Know-How Rights” shall mean all trade secret or other know-how rights Controlled by Imprimis as of the Effective Date regarding the Technology, but excluding the Assigned Know-How Rights and Assigned Patent Rights.

1.12 “Licensed Patent Rights” shall mean (a) the patents and patent applications listed on Schedule B, (b) all worldwide patents and patent applications that claim or cover the Product, or derivatives, enhancements, improvements and other modifications thereof, or methods of manufacture or uses of any of the foregoing, that share common priority date with the patents and patent applications listed on Schedule B, in each case, which Imprimis heretofore or hereafter Controls, (c) all divisions, continuations, continuations-in-part, that claim priority to, or common priority with, the patent applications described in clauses (a) and (b) above or the patent applications that resulted in the patents described in clauses (a) and (b) above, (d) all patents that have issued or in the future issue from any of the foregoing described patent applications, including utility model, and (e) all extensions, supplemental protection certificates, registrations, confirmations, reissues, reexaminations, inter partes reviews, post-grant reviews, restorations, additions and renewals of or to any of the foregoing described patents.

1.13 “Licensee” shall mean a Third Party to whom Surface or its Affiliate has granted a (sub)license, immunity or other right under the Assigned Patent Rights or Licensed Patent Rights to offer to sell, sell or otherwise commercialize one or more Products, provided such license has not expired or been terminated.

1.14 “Lindstrom License Agreement” shall mean that certain Amended and Restated License Agreement between Richard L. Lindstrom, M.D. (“Lindstrom”) and Imprimis, of approximately even date herewith.

1.15 “Net Licensing Revenues” shall mean, with respect to any Product, the aggregate cash payment (or equity received in lieu of cash payments) received by Surface or its Affiliates as consideration for the grant by Surface or its Affiliates to a Licensee of a license, immunity or other right under the Assigned Patent Rights to offer to sell, sell or otherwise commercialize such Product, excluding: (a) amounts calculated on the sales price of such Product, (b) debt financing; (c) equity investments (and conditional equity, such as warrants, convertible debt) in Surface at market value; (d) reimbursements of patent prosecution costs and patent maintenance expenses; (e) withholding taxes and other amounts actually withheld from or deducted against the amounts paid to such party; (f) amounts received from Licensee for commercial manufacturing of goods if sales of such goods are already subject to an earned royalty; and (g) amounts received as payment or reimbursement for research, development and/or other services conducted by or for Licensee, including costs of materials, equipment, manufacturing services or clinical testing, e.g., provided on the basis of full-time equivalent efforts of personnel at or below commercially reasonable and standard FTE rates and/or the reimbursement of out-of-pocket expenses.

1.16 “Net Receipts” shall mean, with respect to any Product, the aggregate of the Net Sales thereof and Net Licensing Revenues therefrom.

1.17 “Net Sales” shall mean, with respect to any Product, the gross sales price for such Product invoiced by Surface, or its Affiliates or its or their respective Licensees to Third Parties, less (a) credits, allowances, discounts and rebates to, and chargebacks from the account of, such customers; (b) freight and insurance costs in transporting such Product to the extent separately invoiced and included in the gross sales price; (c) cash, quantity and trade discounts, rebates and other price reductions for such Product; (d) sales, use, value-added and other direct taxes for such Product to the extent separately invoiced and included in the gross sales price; (e) customs duties, tariffs, surcharges and other governmental charges incurred in exporting or importing such Product to the extent separately invoiced and included in the gross sales price; and (f) an allowance for uncollectible or bad debts for such Product determined in accordance with generally accepted accounting principles not to exceed three percent (3%) of Net Sales of such Product for the applicable quarterly reporting period before giving effect to this subsection (f). For clarity, the amounts received for the transfer of Product by Surface to and among its Affiliates and Licensees for resale shall be excluded from the computation of Net Sales, but the subsequent resale of such Product to a Third Party (that is not a Licensee) shall be included within the computation of Net Sales.

Disposal of Product for or use in clinical trials, as free samples, or under compassionate use, patient assistance, named patient or test marketing programs or non-registrational studies or other similar programs or studies or testing, shall not result in any Net Sales under this Section to the extent the amounts received for such Product do not exceed manufacturing cost.

If any Product is sold as part of a combination product (being a product containing both a Product and one or more active ingredients or a product in which both Product and one or more active ingredients are packaged), the Net Sales from the combination product, for the purposes of determining royalty payments, shall be determined by multiplying the Net Sales of the combination product (as defined in the standard Net Sales definition), during the applicable royalty period, by the fraction, $A/(A+B)$, where A is the average per unit sale price of Product when sold separately as a stand-alone product in finished form in the country in which the combination product is sold and B is the average per unit sale of the other active ingredients contained in the combination product when sold separately as stand-alone products in finished form in the country in which the combination product is sold, in each case during the applicable royalty reporting period or, if sales of stand-alone Product did not occur in such period, then in the most recent royalty reporting period in which arms-length fair market sales of such Products, as applicable, occurred. If such average sale price cannot be determined for the stand-alone Products or the other products, Net Sales for the purposes of determining royalty payments shall be mutually agreed upon by the Parties based on the relative value contributed by each component.

1.18 "Patent Issuance" shall mean issuance of a patent from, claiming priority to, or claiming common priority with, a patent application listed on Schedule A, or any foreign counterpart of the foregoing.

1.19 "Person" shall mean any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, as well as any syndicate or group of any of the foregoing.

1.20 "Product" shall mean any product, in a topical eyedrop formulation, that if made, used, offered for sale, sold or imported would infringe a Valid Claim within the Assigned Patent Rights (if such Valid Claim were in an issued patent and not owned by Surface).

1.21 "Product Supported Patent Rights" shall mean, collectively, (a) all patent applications hereafter filed anywhere in the world claiming inventions made within five (5) years after the Effective Date by Surface or Imprimis; (b) all patents that have issued or in the future issue from any of the foregoing patent applications, including without limitation utility models, design patents and certificates of invention; and (c) all divisionals, continuations, continuations-in-part, reissues, renewals, extensions or additions to any such patents and patent applications; in each case that use or are supported by data and information derived from the development, manufacture or use of a Product by either party in their respective fields; provided, however, that Product Supported Patent Rights shall exclude the Assigned Patent Rights.

1.22 “Regulatory Exclusivity” shall mean, with respect to any country or other jurisdiction, an additional market protection, other than patent protection, granted by a regulatory authority in such country or other jurisdiction which confers an exclusive commercialization period during which Surface or its Affiliates or Licensees have an exclusive right to market and sell a Product in such country or other jurisdiction through a regulatory exclusivity right (including regulatory data exclusivity).

1.23 “Royalty Term” shall mean with respect to a given Product in a given country, the later of:

1.23.1 ten (10) years from the First Commercial Sale of the first Product in such country, and

1.23.2 the later of (a) expiration of the last to expire Valid Claim in such country of the Assigned Patent Rights covering such Product, and (b) expiration of any Regulatory Exclusivity with respect to such Product in such country.

1.24 “Surface Field” shall mean all fields of use other than the Imprimis Field.

1.25 “Technology” shall mean, collectively, the Product together with all methods of manufacture or use thereof.

1.26 “Third Party” shall mean any Person other than Imprimis, Surface or their respective Affiliates.

1.27 “Valid Claim” shall mean either (a) a claim of an issued and unexpired patent included within the Assigned Patent Rights, which has not been held permanently revoked, unenforceable or invalid by a decision of a court or other governmental agency of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, and which has not been admitted to be invalid or unenforceable through reissue or disclaimer or otherwise, or (b) a claim of a pending patent application included within the Assigned Patent Rights, which claim was filed in good faith and has not been abandoned or finally disallowed without the possibility of appeal or refiling of such application.

2. Purchase and Sale of the Assets.

2.1 Assets. Subject to the terms and conditions of this Agreement, Surface hereby purchases from Imprimis, and Imprimis hereby sells, conveys, transfers and assigns to Surface, on the Effective Date, all of Imprimis’ right, title and interest in and to the Assets. To the extent necessary to comply with applicable privacy laws, Imprimis shall have the right to redact patient identifying information from any data or information transferred to Surface.

2.2 No Assumption of Liabilities. Surface shall not be obligated to assume or perform and is not assuming or performing any liabilities or obligations of Imprimis which relate to Imprimis' ownership of the Assets prior to the Effective Date or otherwise, whether known or unknown, fixed or contingent, certain or uncertain, and regardless of when they are or were asserted, and Imprimis shall remain responsible for such liabilities.

2.3 Transfer Documents. The sale, conveyance, transfer and assignment of the Assets may be further evidenced by the due execution and delivery by the parties of any additional bills of sale, assignment or other title transfer documents and instruments as reasonably requested by Surface evidencing the sale, conveyance, transfer and assignment of the Assets in accordance with this Agreement.

3. License Grants.

3.1 License to Surface.

3.1.1 Subject to the terms and conditions of this Agreement, Imprimis hereby grants to Surface a non-exclusive non-transferable (except in connection with a permitted assignment of this Agreement), worldwide (sub)license under the Licensed Patent Rights and Licensed Know-How Rights to develop, make, have made, use, offer for sale, sell, and import (a) Products in the Surface Field, and (b) any other product(s) in a topical eyedrop formulation, that (i) would infringe the Licensed Patent Rights (if such Licensed Patent Rights were not licensed to Surface), and (ii) contain one or more additional active ingredients not claimed in the Licensed Patent Rights (including without limitation mycophenolic acid, cyclosporine, betamethasone, albumin, plasma, platelet rich plasma, serum or derivatives or analogs thereof), in each case solely in the Surface Field.

3.1.2 Surface shall have the right to grant sublicenses, through multiple tiers, to Third Parties and Affiliates for the purpose of developing, manufacturing, seeking regulatory approval for, or commercializing any products described in 3.1.1(a) or (b) in the Surface Field. Any such sublicense shall be subject and subordinate to the terms and conditions of this Agreement.

3.1.3 The licenses granted to Surface pursuant to Section 3.1.1 above shall be perpetual and irrevocable, provided that it is understood and acknowledged that with respect to the Licensed Patent Rights and Licensed Know-How licensed to Imprimis under the Lindstrom License Agreement, Imprimis' ability to maintain the license granted to Surface under Section 3.1.1 with respect to such Licensed Patent Rights and Licensed Know-How is contingent upon Imprimis' continued maintenance of the Lindstrom License Agreement in full force and effect. Accordingly, Imprimis agrees that it will use its best efforts to maintain in full force and effect the Lindstrom License Agreement. Without limiting the foregoing, Imprimis covenants that during the term of this Agreement, Imprimis shall not (a) amend or otherwise modify or permit to be amended or modified the Lindstrom License Agreement, in each case in a manner that would encumber or diminish the rights granted to Surface hereunder, or (b) grant to any Third Party any rights under the Lindstrom License Agreement that would conflict with or otherwise diminish the rights granted to Surface hereunder.

3.2 Grantback Licenses

3.2.1 Subject to the terms and conditions of this Agreement, Surface hereby grants to Imprimis a non-exclusive, irrevocable, perpetual, non-transferable (except in connection with a permitted assignment of this Agreement), worldwide license under:

(a) the Assigned Patent Rights for purposes of making, using, selling, offering for sale and importing Products in the Imprimis Field (subject to the limitations contained in Section 6.2.3) and

(b) the Product Supported Patent Rights Controlled by Surface (i) in the Imprimis Field (subject to the limitations contained in Section 6.2.3), and (ii) for purposes of making, using, selling, offering for sale and importing non-combination medical device cleared under Section 510(k) of the Federal Food, Drug & Cosmetic Act. For clarity, the license granted pursuant to subsection (ii) expressly excludes the right to make, use, sell, offer for sale or import the products described in 3.1.1(a) or (b).

3.2.2 Subject to the terms and conditions of this Agreement, Imprimis hereby grants to Surface a non-exclusive, irrevocable, perpetual, non-transferable (except in connection with a permitted assignment of this Agreement), worldwide license under the Product Supported Patent Rights Controlled by Imprimis solely for purposes of making, using, selling, offering for sale and importing products described in 3.1.1(a) or (b) in the Surface Field.

3.2.3 Imprimis shall have the right to grant sublicenses, through multiple tiers, to Third Parties and Affiliates under the license granted to pursuant to Section 3.2.1. Surface shall have the right to grant sublicenses, through multiple tiers, to Third Parties and Affiliates under the license granted to pursuant to Section 3.2.2.

3.3 No Implied Licenses. Only licenses and rights expressly granted herein shall be of legal force and effect. No license or other right shall be created hereunder by implication, estoppel, or otherwise.

4. Representations and Warranties.

4.1 Mutual Representations and Warranties. Each party represents and warrants to the other party as follows:

4.1.1 Organization. Such party is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized.

4.1.2 Authorization and Enforcement of Obligations. Such party (a) has the requisite power and authority and the legal right to enter into this Agreement and to perform its obligations hereunder; and (b) has taken all requisite action on its part to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder. This Agreement has been duly executed and delivered on behalf of such party, and constitutes a legal, valid, binding obligation, enforceable against such party in accordance with its terms.

4.1.3 Consents. All necessary consents, approvals and authorizations of all governmental authorities and other persons or entities required to be obtained by such party in connection with this Agreement have been obtained.

4.1.4 No Conflict. The execution and delivery of this Agreement and the performance of such party's obligations hereunder (a) do not conflict with or violate any requirement of applicable laws, regulations or orders of governmental bodies; and (b) do not conflict with, or constitute a default under, any contractual obligation of such party.

4.2 DISCLAIMER OF WARRANTIES. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN SECTION 4.1, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE ASSETS, LICENSED PATENT RIGHTS, LICENSED KNOW-HOW RIGHTS, OR ANY OTHER MATTER, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY REGARDING VALIDITY, ENFORCEABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. THE ASSETS, LICENSED PATENT RIGHTS, AND LICENSED KNOW-HOW RIGHTS ARE PROVIDED "AS IS."

5. Financial Terms.

5.1 Milestone Payment. Within thirty (30) days following the first Patent Issuance, Surface shall give written notice to Imprimis and shall pay to Imprimis a non-refundable and noncreditable payment of fifty thousand dollars (\$50,000).

5.2 Lindstrom Royalties. In connection with the execution of this Agreement, Surface has entered into a written agreement ("Royalty Agreement") with Richard L. Lindstrom, an individual, pursuant to which Surface shall pay to Richard L. Lindstrom, on a Product-by-Product basis, three percent (3%) of Net Sales on terms and conditions set forth therein. A copy of the Royalty Agreement is attached hereto as Schedule C.

5.3 Net Receipts Payments.

5.3.1 Net Receipts Payment Amounts.

(a) Payment Amount. Subject to the provisions in this Section 5.3.1, on a Product-by-Product and country-by-country basis, Surface shall pay to Imprimis, on a quarterly basis for the duration of the Royalty Term, four percent (4%) of Net Receipts (the "Payment Amount"); provided, however, if the manufacture, use, offer for sale, sale, or import of such Product in a particular country would not infringe a Valid Claim (if such Valid Claim were in an issued patent and not owned by or licensed to Surface) and is not subject to Regulatory Exclusivity, then the applicable Payment Amount with respect to such Product in such country shall be reduced by one-half (½).

(b) Third Party Royalties. If Surface, its Affiliate or its or their respective Licensee is required to pay a Third Party (other than Richard L. Lindstrom) amounts with respect to a Product under agreements for patent rights or other technologies which Surface, its Affiliate or its or their respective Licensee determines are necessary or desirable to license or acquire with respect to such Product, Surface may deduct such amount owing to such Third Parties (prior to any reductions) from the royalty owing to Imprimis pursuant to Section 5.3.1(a) above. Notwithstanding the foregoing provisions of this Section 5.3.1(b), in no event shall the royalties due to Imprimis pursuant to Section 5.3.1(a) above be so reduced to less than fifty percent (50%) of the amount that would otherwise be due Imprimis thereunder.

(c) Discounts. If Surface, its Affiliates, or its or their respective Licensees sells the Product to a Third Party who also purchases other products or services from Surface, its Affiliates, or its or their respective Licensees, and Surface, its Affiliates, or its or their respective Licensees discounts the purchase price of the Product to a greater degree than it generally discounts the price of its other products or services to such customer, then in such case the Net Sales for the sale of the Product to such Third Party shall equal the arm's length price that Third Parties would generally pay for the Product alone when not purchasing any other product or service from Surface, its Licensees, or its or their respective Licensees. For purposes of this provision, "discounting" includes establishing the list price at a lower-than-normal level.

(d) Incentives. If Surface, its Affiliates, or its or their respective Licensees sells the Product to a Third Party who also purchases other products or services from Surface, its Affiliates, or its or their respective Licensees during the same period pursuant to a pharmacy, performance or other incentive program, a disease management or similar program, or any other discount, chargeback or credit program for products or services purchased, then for purposes of calculating Net Sales of the Product hereunder for such period, all discounts, chargebacks, credits and the like for such Third Party shall be allocated in proportion to the respective list prices of all products or services sold to such Third Party during such period.

5.3.2 Reports and Net Receipts Payments. Within sixty (60) days after the end of each calendar quarter, Surface shall deliver to Imprimis a report setting forth for such calendar quarter (a) the calculation of the applicable Payment Amount; (b) the payments due under this Agreement for the sale of each Product; and (c) the applicable exchange rate as determined below. Surface shall remit the total payments due for the sale of Products during such calendar quarter at the time such report is made. No such reports or payments shall be due for any Product before the First Commercial Sale of such Product. With respect to Net Receipts received in United States dollars, all amounts shall be expressed in United States dollars. With respect to Net Receipts received in a currency other than United States dollars, all amounts shall be expressed both in the currency in which the amount is invoiced (or received as applicable) and in the United States dollar equivalent. The United States dollar equivalent shall be calculated using the average of the exchange rate (local currency per US\$1) published in The Wall Street Journal, Western Edition, under the heading "Currency Trading" on the last business day of each month during the applicable calendar quarter.

5.4 Payment Provisions.

5.4.1 Payment Method. All payments by Surface to Imprimis hereunder shall be in United States dollars in immediately available funds and shall be made by wire transfer from a United States bank located in the United States to such bank account as designated from time to time by Imprimis to Surface.

5.4.2 Payment Terms. The Payment Amount shown to have accrued by each report provided for under Section 5.3.2 shall be due on the date such report is due. Payment of Payment Amount in whole or in part may be made in advance of such due date.

5.4.3 Withholding Taxes. Surface shall be entitled to deduct the amount of any withholding taxes, value-added taxes or other taxes, levies or charges with respect to such amounts, other than United States taxes, payable by Surface, its Affiliates, or its or their respective Licensees, or any taxes required to be withheld by Surface, its Affiliates, or its or their respective Licensees, to the extent Surface, its Affiliates, or its or their respective Licensees pay to the appropriate governmental authority on behalf of Imprimis such taxes, levies or charges. Surface shall use reasonable efforts to minimize any such taxes, levies or charges required to be withheld on behalf of Imprimis by Surface, its Affiliates, or its or their respective Licensees. Surface promptly shall deliver to Imprimis proof of payment of all such taxes, levies and other charges, together with copies of all communications from or with such governmental authority with respect thereto.

5.5 Audits. Upon the written request of Imprimis and not more than once in each calendar year, Surface shall permit an independent certified public accounting firm selected by Imprimis and reasonably acceptable to Surface, at Imprimis' expense, to have access during normal business hours to such of the financial records of Imprimis as may be reasonably necessary to verify the accuracy of the Payment Amount reports hereunder for the eight (8) calendar quarters immediately prior to the date of such request. If such accounting firm concludes that additional amounts were owed during the audited period, Surface shall pay such additional amounts within thirty (30) days after the date Imprimis delivers to Surface such accounting firm's written report so concluding. The fees charged by such accounting firm shall be paid by Imprimis; provided, however, if the audit discloses that the Payment Amount payable by Surface for such period are more than one hundred five percent (105%) of the Payment Amount actually paid for such period, then Surface shall pay the fees and expenses charged by such accounting firm. Imprimis shall cause its accounting firm to retain all financial information subject to review under this Section 5.5 in strict confidence. Imprimis shall treat all such financial information as Surface's confidential information, and shall not disclose such financial information to any Third Party or use it for any purpose other than as specified in this Section 5.5.

6. Post-Effective Date Covenants.

6.1 Surface Diligence.

6.1.1 Surface shall use commercially reasonable efforts (whether alone or with or through its Licensees and its or their respective Affiliates) to research, develop and commercialize Products.

6.1.2 Surface shall control, at its sole expense, the preparation, filing, prosecution, maintenance and enforcement of the Assigned Patent Rights consistent with prudent business practices, and shall consider in good faith the interests of Imprimis.

6.2 Imprimis Covenants.

6.2.1 Within thirty (30) days after the Effective Date, Imprimis shall transfer to Surface all tangible embodiments of the Technology in the possession and control of Imprimis.

6.2.2 Imprimis shall provide cooperation reasonably requested by Surface in connection with Surface's efforts to establish, perfect, defend, or enforce its rights in or to the Assets (including without limitation the Assigned Patent Rights). Such cooperation shall include, without limitation, (a) executing such further assignments, transfers, licenses, releases and consents, and (b) providing such data and information, consulting with Surface and executing and delivering all such further documents and instruments, in each case as reasonably requested by Surface regarding the Assets (including without limitation the Assigned Patent Rights).

6.2.3 Notwithstanding anything in this Agreement to the contrary, for the period commencing on the date thirty (30) days after the First Commercial Sale of a Product and continuing until such time as Surface, its Affiliates and its or their respective Licensees (or their successors) cease for at least twenty-four (24) months all bona fide development or commercialization of such Product, Imprimis shall refrain from compounding pharmaceutical products containing the same active ingredient as contained in such Product (or if there is more than one active ingredient contained in a given Product, then the same combination of active ingredients as is contained in such Product) in the Surface Field; *provided however*, within 30 days of the filing of an IND for a drug candidate containing mycophenolic acid or betamethasone, Surface shall retain the right to demand Imprimis cease production and selling of any topical eye drop products containing mycophenolic acid or betamethasone, and Imprimis shall comply with such demand within 90 days thereafter.

7. Indemnification.

7.1 Indemnification of Surface. Subject to the provisions of this Section 7, Imprimis shall indemnify, defend and hold harmless Surface, its officers, directors, affiliates, agents, stockholders and representatives (collectively, the "Surface Indemnitees"), from and against any and all losses, liabilities, damages and expenses (including without limitation reasonable attorneys' fees and costs) incurred as a result of any claim, demand, action or proceeding by any Third Party (collectively, "Losses") incurred or suffered by an Surface Indemnitee to the extent arising out of:

7.1.1 any breach of the representations and warranties of Imprimis set forth in this Agreement;

7.1.2 any breach of any covenant or agreement of Imprimis set forth in this Agreement or in any certificate, instrument, or other document delivered pursuant to this Agreement;

7.1.3 the ownership or exploitation of the Assets prior to the Effective Date or any liability or obligation whatsoever of Imprimis;
and

7.1.4 the development, manufacture, use, or sale of any product described in 3.1.1(a) or (b) solely by Imprimis, its Affiliates or their respective Licensees or the use of any such product by their customers.

7.2 Indemnification of Imprimis. Subject to the provisions of this Section 7, Surface shall indemnify and hold harmless Imprimis, its officers, directors, affiliates, agents, stockholders and representatives (collectively, the "Imprimis Indemnitees"), from and against any and all Losses incurred or suffered by an Imprimis Indemnatee to the extent arising out of:

7.2.1 any breach of the representations and warranties of Surface set forth in this Agreement;

7.2.2 any breach of any covenant or agreement of Surface set forth in this Agreement or in any certificate, instrument, or other document delivered pursuant to this Agreement;

7.2.3 the ownership or exploitation of the Assets after the Effective Date (other than the exploitation of the Assigned Patent Rights and Product Supported Patent Rights by Imprimis subject to its grantback license) or the manufacture, use, or sale of any product described in 3.1.1(a) or (b) solely by Surface, its Affiliates or their respective Licensees or the use of any such product by their customers.

7.3 Procedure. A party seeking indemnification (the "Indemnatee") shall promptly notify the other party (the "Indemnifying Party") in writing of a claim or suit; provided that an Indemnatee's failure to give such notice or delay in giving such notice shall not affect such Indemnatee's right to indemnification under this Section 7 except to the extent that the Indemnifying Party has been prejudiced by such failure or delay. The Indemnifying Party shall have the right to control the defense of all indemnification claims hereunder. The Indemnatee shall have the right to participate at its own expense in the claim or suit with counsel of its own choosing. The Indemnifying Party shall consult with the Indemnatee in good faith with respect to all non-privileged aspects of the defense strategy. The Indemnatee shall cooperate with the Indemnifying Party as reasonably requested, at the Indemnifying Party's sole cost and expense. The Indemnifying Party shall not settle any claim or suit without the Indemnatee's prior written consent, which consent shall not be unreasonably withheld.

8. Confidentiality.

8.1 Confidential Information. Following the Effective Date and for a period of five (5) years after the expiration of the last Valid Claim, except as otherwise provided in this Section 8, each party shall maintain in confidence the Confidential Information of the other party except as expressly permitted herein, and shall not use, disclose or grant the use of the Confidential Information except on a need-to-know basis to those directors, officers, employees and contractors, to the extent such disclosure is reasonably necessary in connection with performing its obligations or exercising its rights under this Agreement. To the extent that disclosure by a party is authorized by this Agreement, prior to disclosure, such party shall obtain agreement of any such Person to hold in confidence and not make use of the Confidential Information for any purpose other than those permitted by this Agreement.

8.2 Terms of this Agreement. Neither party shall disclose any terms or conditions of this Agreement to any Third Party without the prior consent of the other party; provided, however, that a party may disclose the terms or conditions of this Agreement, (a) on a need-to-know basis to its legal and financial advisors to the extent such disclosure is reasonably necessary, and (b) to a third party in connection with (i) an equity investment in such party, (ii) a merger, consolidation or similar transaction by such party, (iii) a permitted sublicense under this Agreement, or (iv) the sale of all or substantially all of the assets of such party. Notwithstanding the foregoing, prior to execution of this Agreement, the parties have agreed upon the substance of information that can be used to describe the terms of this transaction, and each party may disclose such information, as modified by mutual agreement from time to time, without the other party's consent.

8.3 Permitted Disclosures. The confidentiality obligations contained in this Section 8 shall not apply to the extent that a party is required (a) in the reasonable opinion of such party's legal counsel, to disclose information by applicable law, regulation, rule (including rule of a stock exchange or automated quotation system), order of a governmental agency or a court of competent jurisdiction or legal process, including tax authorities, or (b) to disclose information to any governmental agency for purposes of obtaining approval to test or market a product, provided in either case that, to the extent practicable, such party shall provide written notice thereof to the other party and sufficient opportunity to object to any such disclosure or to request confidential treatment.

8.4 Injunctive Relief. Each party acknowledges that it will be impossible to measure in money the damage to the other party if such party fails to comply with the obligations imposed by this Section 8, and that, in the event of any such failure, the other party may not have an adequate remedy at law or in damages. Accordingly, each party agrees that injunctive relief or other equitable remedy, in addition to remedies at law or damages, is an appropriate remedy for any such failure and shall not oppose the granting of such relief on the basis that the disclosing party has an adequate remedy at law. Each party agrees that it shall not seek, and agrees to waive any requirement for, the securing or posting of a bond in connection with the other party seeking or obtaining such equitable relief.

9. Miscellaneous.

9.1 Assignment. Neither party shall assign its rights or obligations under this Agreement without the prior written consent of the other party; provided, however, that a party may, without such consent, assign this Agreement and its rights and obligations hereunder (a) to any Affiliate, or (b) in connection with the transfer or sale of all or substantially all of its business to which this Agreement relates, or in the event of its merger, consolidation, change in control or similar transaction. Any permitted assignee shall assume all obligations of its assignor under this Agreement. Any purported assignment in violation of this Section 9.1 shall be void.

9.2 Severability. Any provision of this Agreement which is illegal, invalid or unenforceable shall be ineffective to the extent of such illegality, invalidity or unenforceability, without affecting in any way the remaining provisions hereof.

SIGNATURE PAGE

IN WITNESS WHEREOF, each party has caused a duly authorized representative to execute and deliver this Agreement as of the date below.

IMPRIMIS

SURFACE

Imprimis Pharmaceuticals, Inc.

Surface Pharmaceuticals, Inc.

/s/ Mark L. Baum

/s/ Andrew R. Boll

By: Mark L. Baum
Its: Chief Executive Officer

By: Andrew R. Boll
Its: Executive Director

Date: 4/10/2018

Date: 4/10/2018

[Signature Page to Amended and Restated Asset Purchase and License Agreement]

SCHEDULE A

Assigned Patent Rights

<u>SUMMARY</u>	<u>TITLE</u>	<u>INVENTOR</u>	<u>MATTER TYPE</u>	<u>COUNTRY</u>	<u>STATUS</u>	<u>APPLICATION #</u>	<u>DATE FILED</u>
Composition for treating dry eye etc.	Ophthalmic pharmaceutical compositions and...	Saadeh	Provisional	U.S.	Pending	USSN 62/562,809	September 25, 2017

SCHEDULE B

Licensed Patent Rights

<u>TITLE</u>	<u>INVENTOR</u>	<u>MATTER TYPE</u>	<u>COUNTRY</u>	<u>STATUS</u>	<u>PATENT #</u>	<u>DATE FILED</u>	<u>DATE ISSUED</u>
OPHTHALMIC COMPOSITIONS INCLUDING LUBRICANT, DETURGESCENT AGENT, AND GLYCOSAMINOGLYCAN AND METHODS OF USING THE SAME	Richard L. Lindstrom	Utility	USA	Issued	7,820,639	September 30, 2005	October 26, 2010
OPHTHALMIC COMPOSITIONS INCLUDING LUBRICANT, DETURGESCENT AGENT, AND GLYCOSAMINOGLYCAN AND METHODS OF USING THE SAME	Richard L. Lindstrom	Utility	USA	Issued	8,551,974	June 11, 2010	October 8, 2013

SCHEDULE C

Royalty Agreement



Surface Pharmaceuticals, Inc. Announces \$20 Million Series A Financing from Flying L Partners

Investment will enable Surface to fund its development programs focused on FDA approval of its ocular disease drug candidates

San Diego, CA and Pleasanton, CA — May 15, 2018 – Surface Pharmaceuticals, Inc., an affiliated company of Imprimis Pharmaceuticals, Inc. (NASDAQ: IMMY), today announced it has entered into a definitive stock purchase agreement with an affiliate of Flying L Partners to raise proceeds of up to approximately \$20 million in a private placement of its Series A preferred stock. Surface Pharmaceuticals intends to use the proceeds of the Series A financing to advance its clinical development programs focused on ocular surface disease, including Dry Eye Disease treatments, by seeking FDA approval for three drug candidates for up to five indications, as well as for general corporate purposes.

Surface Pharmaceuticals CEO, Kamran Hosseini MD, PhD, stated, “The drug candidates we are developing may provide solutions to millions of Americans who are in need of effective therapies to treat ocular surface conditions such as Dry Eye Disease and Blepharitis. The proceeds from this transaction, along with the involvement of Flying L Partners, will help ensure our long-term success as we execute the initial stages of our drug development programs.”

“We are excited to fund this Series A round of financing and team up with Surface Pharmaceuticals. There are an estimated 30 million Americans who suffer from some form of Dry Eye Disease, but only approximately 4 million prescriptions were dispensed in 2017, leaving a large unmet need in the market. We believe the opportunity to finance these drug development programs will ultimately benefit patients, their providers, and reward investors,” said Dr. William J. Link, Principal, Flying L Partners.

Imprimis CEO, Mark L. Baum, concluded, “The principals of Flying L have backed many of the most consequential ophthalmic companies over the past three decades. We could not have found a better partner to help develop Surface’s ocular surface disease drug candidates.”

The closing of the Series A financing will allow Surface Pharmaceuticals to be deconsolidated from Imprimis and make it a separately financed and managed entity. Upon the expected completion of the Series A financing, Imprimis will maintain an approximately 30% ownership stake in Surface Pharmaceuticals and retain royalty interests in the Imprimis contributed formulations. Upon signing of the definitive stock purchase agreement on May 11, 2018, Surface Pharmaceuticals closed on initial proceeds of approximately \$15 million, with a second closing of up to an additional \$5 million expected to occur within the next 90 days.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy any securities described herein, nor shall there be any sale of any such securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such jurisdiction.

ABOUT SURFACE PHARMACEUTICALS

Surface Pharmaceuticals, Inc. is a biopharmaceutical company focused on development and commercialization of innovative therapeutics for ocular diseases and is seeking FDA approval for its drug candidates through the Section 505(b)(2) regulatory pathway under the federal Food Drug & Cosmetic Act. Its current drug pipeline consists of three proprietary drug candidates. Surface topical eye drop drug candidates, SURF-100 and SURF-200, utilize a patented delivery vehicle, that was invented by renowned ophthalmologist, Dr. Richard Lindstrom. Surface's third drug candidate, SURF-300, is a patent-pending oral capsule that will target patients also suffering from certain ocular surface diseases.

ABOUT FLYING L PARTNERS

Flying L Partners is a partnership formed by trusted colleagues with a track record of bringing meaningful innovation to the ophthalmic sector and creating value for investors. Flying L Partners' investment strategy is to raise capital to invest in selected, promising opportunities. Flying L Partners then significantly engages with the company to accelerate progress with a tight focus on innovation. Their mission is to create value for investors by bringing meaningful innovation to providers and patients which improve vision and treat diseases.

ABOUT IMPRIMIS PHARMACEUTICALS

Imprimis Pharmaceuticals, Inc. (NASDAQ: IMMY) is dedicated to making high-quality innovative medications accessible and affordable. The company's flexible business model allows a drug to be compounded or developed as an FDA-approved product through one of its subsidiaries or deconsolidated companies. For more information about Imprimis, please visit the Investor Relations section of the corporate website by [clicking here](#).

SAFE HARBOR

This press release contains forward-looking statements within the meaning of the U.S. Private Securities Litigation Reform Act of 1995. Any statements in this release that are not historical facts may be considered such "forward-looking statements." Forward-looking statements are based on management's current expectations and are subject to risks and uncertainties which may cause results to differ materially and adversely from the statements contained herein. Some of the potential risks and uncertainties that could cause actual results to differ from those predicted include our ability to make commercially available our compounded formulations and technologies in a timely manner or at all; physician interest in prescribing our formulations; risks related to our compounding pharmacy operations; our ability to enter into other strategic alliances, including arrangements with pharmacies, physicians and healthcare organizations for the development and distribution of our formulations; our ability to obtain intellectual property protection for our assets; our ability to accurately estimate our expenses and cash burn, and raise additional funds when necessary; risks related to research and development activities; the projected size of the potential market for our technologies and formulations; unexpected new data, safety and technical issues; regulatory and market developments impacting compounding pharmacies, outsourcing facilities and the pharmaceutical industry; competition; and market conditions. These and additional risks and uncertainties are more fully described in Imprimis' filings with the Securities and Exchange Commission, including its Annual Report on Form 10-K and its Quarterly Reports on Form 10-Q. Such documents may be read free of charge on the SEC's web site at www.sec.gov. Undue reliance should not be placed on forward-looking statements, which speak only as of the date they are made. Except as required by law, Imprimis undertakes no obligation to update any forward-looking statements to reflect new information, events or circumstances after the date they are made, or to reflect the occurrence of unanticipated events.

Source: Imprimis Pharmaceuticals, Inc.; Surface Pharmaceuticals, Inc.

CONTACTS

Investor Contact for Surface:

Kamran Hosseini
kamran@surfacepharma.com

Investor Contact for Imprimis:

Jon Patton
jpatton@imprimispharma.com
858-704-4587
