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

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**FORM 8-K**

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**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 17, 2019**

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**Merrimack Pharmaceuticals, Inc.**

(Exact Name of Registrant as Specified in its Charter)

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**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-35409**  
(Commission  
File Number)

**04-3210530**  
(IRS Employer  
Identification No.)

**One Broadway, 14th Floor  
Cambridge, MA**  
(Address of Principal Executive Offices)

**02142**  
(Zip Code)

**Registrant's telephone number, including area code: (617) 441-1000**

(Former Name or Former Address, if Changed Since Last Report)

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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
<b>Common stock, \$0.01 par value</b>	<b>MACK</b>	<b>Nasdaq Global Market</b>

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR 230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR 240.12b-2).

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.

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**Item 1.01. Entry into a Material Definitive Agreement**

On September 18, 2019, Merrimack Pharmaceuticals, Inc. (the “Company”) entered into a Cooperation Agreement (the “Agreement”) with Newtyn Management, LLC, Newtyn Partners, LP, Newtyn TE Partners, LP, Newtyn Capital Partners, LP, Ledo Capital, LLC and Noah G. Levy (collectively, “Newtyn”) and Western Standard, LLC, Western Standard Partners, LP, Western Standard Partners QP, LP and Eric D. Andersen (collectively, “Western” and with Newtyn, each a “Shareholder Party” and together, the “Shareholder Parties”). According to the Schedules 13D filed by Newtyn and Western on September 19, 2019, Newtyn and Western collectively owned approximately 15.1% of the Company’s outstanding common stock.

Pursuant to the Agreement, and promptly following the execution of the Agreement, the Company increased the size of the Company’s board of directors (the “Board”) by adding two seats and appointed Noah G. Levy, as Newtyn’s designee, and Eric D. Andersen, as Western’s designee (each, a “New Director” and together, the “New Directors”) to the Board. Additionally, the Company agreed to, among other things, nominate the New Directors for re-election at the 2019 annual meeting of stockholders (the “2019 Annual Meeting”) alongside Gary L. Crocker, Ulrik B. Nielsen and Russell T. Ray, all of whom currently serve on the Board. Each Shareholder Party will have the right to designate a replacement for the New Director designated by such Shareholder Party, subject to the approval of the Corporate Governance and Nominating Committee of the Board, if such Shareholder Party owns at least 2.5% of the Company’s voting securities.

For so long as the Shareholder Parties collectively own at least 5% of the Company’s voting securities, the Company has agreed that the size of the Board will not exceed five members unless at least two-thirds of the directors then serving in office, including at least one New Director (or any replacement), approve such increase.

With respect to the 2019 Annual Meeting and any other meeting of the Company’s stockholders held prior to the termination of the Agreement, the Shareholder Parties agreed to, among other things, vote in favor of the Company’s director nominees and, subject to certain exceptions, vote in accordance with the Board’s recommendation on all other proposals.

The Company has agreed to form a special committee of the Board committed to analyzing and evaluating the Company’s strategy and expenses (the “Strategy and Expense Committee”), which will be comprised of three Board members, two of whom will be the New Directors or their replacements.

Each Shareholder Party also agreed to certain customary standstill provisions prohibiting it from, among other things, (i) making certain public announcements, (ii) soliciting proxies, (iii) acquiring beneficial ownership of more than 20.0% of the Company’s voting securities, (iv) selling any Company securities to any person that is known to have filed or threatened to file a proxy solicitation against the Company within the preceding 18 months or has otherwise given such Shareholder Party reasonable cause to believe such person intends to engage in a proxy campaign against the Company, (v) taking any action to support proposals that seek to influence the Board or management of the Company or effect any material change in the Company’s capitalization, management, business or corporate structure, and (vi) joining any group with respect to the Company’s voting securities.

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Unless the parties agree otherwise, the Agreement will terminate as to a Shareholder Party on the earliest of (i) the time at which such Shareholder Party no longer beneficially owns at least 2.5% of the Company's voting securities, (ii) the adjournment of the applicable annual meeting of the Company's stockholders if the New Director (or any replacement) designated by such Shareholder Party is not re-elected at such meeting, (iii) the Company's breach of its obligations with respect to the Strategy and Expense Committee, (iv) the New Director (or any replacement) designated by such Shareholder Party fails to be re-nominated for election at a shareholder meeting, and (v) the consummation of an Extraordinary Transaction (as defined in the Agreement).

The foregoing description of the Agreement does not purport to be complete and is qualified in its entirety by reference to the Agreement, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

On September 19, 2019, the Company issued a press release announcing the signing of the Agreement. A copy of the press release is attached hereto as Exhibit 99.1.

**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers**

The information set forth under Item 1.01 of this Current Report on Form 8-K is hereby incorporated into this Item 5.02 by reference.

On September 17, 2019, the Board, upon the recommendation of the Corporate Governance and Nominating Committee of the Board, appointed each of the New Directors as a member of the Board, effective upon the signing of the Agreement. Messrs. Andersen and Levy will serve on the Board with term expiring at the 2019 Annual Meeting and thereafter until their successors have been duly elected and qualified, or until their earlier death, resignation or removal. The Board has determined that Messrs. Andersen and Levy are each "independent" as contemplated by the Nasdaq Stock Market and other governing laws and applicable regulations. The election of Messrs. Andersen and Levy increases the size of the Board from six to eight members.

Mr. Andersen has been the managing member and portfolio manager at Western Standard, LLC, an investment firm, since June 2008. Prior to that, Mr. Andersen served as an analyst at Ivory Capital and JCK Partners, both investment firms, from 2006 to 2008 and 2004 to 2006, respectively; an associate in the private equity group at J.P. Morgan Partners, LLC from 2002 to 2004; and an analyst, mergers and acquisitions, at The Blackstone Group, an investment firm, from 2000 to 2002. Mr. Andersen holds a B.A. from Dartmouth College and is a CFA Charterholder.

Mr. Levy has been the managing member and portfolio manager at Newtyn Management, LLC, an investment firm, since June 2011. Prior to that, Mr. Levy served as a senior member at Tyndall Management, an investment firm, from 2002 to 2011, and as an analyst at Goldman Sachs, an investment bank and financial services company, from 2000 to 2002. Mr. Levy holds a B.A. from Dartmouth College.

Other than disclosed in this Current Report on Form 8-K, there are no arrangements or understandings between either of the New Directors and any other persons pursuant to which they were elected as directors. There are no transactions in which either of the New Directors have an interest requiring disclosure under Item 404(a) of Regulation S-K of the Securities Act of 1933, as amended.

Pursuant to the Agreement, Messrs. Andersen and Levy have agreed to waive and forego any cash or stock compensation (other than expense reimbursement pursuant to the Company's director compensation program) for their services as directors.

In connection with their election, the Company and each of Messrs. Andersen and Levy will enter into the Company's standard form of indemnification agreement. Pursuant to the terms of the indemnification agreement, the Company may be required, among other things, to indemnify Messrs. Andersen and Levy for certain expenses (including attorneys' fees), judgments, fines and settlement amounts actually and reasonably incurred by them in any action or proceeding arising out of their service as a director of the Company.

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

##### (d) Exhibits

<u>Exhibit No.</u>	<u>Exhibit</u>
10.1	<a href="#"><u>Cooperation Agreement, dated as of September 18, 2019, by and among the Company, Newtyn Management, LLC, Newtyn Partners, LP, Newtyn TE Partners, LP, Noah G. Levy, Newtyn Capital Partners, LP, Ledo Capital, LLC, Western Standard, LLC, Western Standard Partners, LP, Western Standard Partners OP, LP and Eric D. Andersen</u></a>
99.1	<a href="#"><u>Press Release, dated September 19, 2019</u></a>

#### **Important Additional Information**

The Company, its directors and certain of its executive officers are participants in the solicitation of proxies from the Company's shareholders in connection with the 2019 Annual Meeting. The Company intends to file a definitive proxy statement and WHITE proxy card with the U.S. Securities and Exchange Commission (the "SEC") in connection with any such solicitation of proxies from the Company's shareholders. SHAREHOLDERS OF THE COMPANY ARE STRONGLY ENCOURAGED TO READ SUCH PROXY STATEMENT, ACCOMPANYING WHITE PROXY CARD AND ALL OTHER DOCUMENTS FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE AS THEY WILL CONTAIN IMPORTANT INFORMATION. The Company's preliminary proxy statement for the 2019 Annual Meeting contains information regarding the direct and indirect interest, by securities holdings or otherwise, of the Company's directors and executive officers in the Company's securities. If the holdings of the Company's securities change from the amounts provided in the Company's preliminary proxy statement for the 2019 Annual Meeting, such changes will be set forth in SEC filings on Forms 3, 4, and 5, which can be found through the Company's website at [www.merrimack.com](http://www.merrimack.com) in the "Investors" section under "SEC Filings" or through the SEC's website at [www.sec.gov](http://www.sec.gov). Information can also be found in the Company's other SEC filings, including the Company's definitive proxy statement for the 2018 Annual Meeting of Shareholders and its Annual Report on Form 10-K for the year ended December 31, 2018. Updated information regarding the identity of potential participants, and their direct or indirect interests, by security holdings or otherwise, will be set forth in the definitive proxy statement and other materials to be filed with the SEC in connection with the 2019 Annual Meeting. Shareholders will be able to obtain the definitive proxy statement, any amendments or supplements to the proxy statement and other documents filed by the Company with the SEC at no charge at the SEC's website at [www.sec.gov](http://www.sec.gov). Copies will also be available at no charge at the Company's website at [www.merrimack.com](http://www.merrimack.com) in the "Investors" section under "SEC Filings."

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**SIGNATURE**

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.

MERRIMACK PHARMACEUTICALS, INC.

Date: September 20, 2019

By: /s/ Gary Crocker  
Gary Crocker  
President

## COOPERATION AGREEMENT

This Cooperation Agreement (this “**Agreement**”), effective as of September 18, 2019 (the “**Effective Date**”), is entered into by and among Merrimack Pharmaceuticals, Inc., a Delaware corporation (the “**Company**” or “**Merrimack**”), the entities and persons listed on Exhibit A hereto (the “**Exhibit A Parties**”) and any entity or person that hereafter shares beneficial ownership with any of the Exhibit A Parties (collectively with the Exhibit A Parties, “**Newtyn**”), and the entities and persons listed on Exhibit B hereto (the “**Exhibit B Parties**”) and any entity or person that hereafter shares beneficial ownership with any of the Exhibit B Parties (collectively with the Exhibit B Parties, “**Western**”) (each of Newtyn and Western, a “**Shareholder Party**” and together, the “**Shareholder Parties**”). Merrimack and the Shareholder Parties are collectively referred to herein as the “**Parties**,” and each, a “**Party**.” Unless otherwise defined herein, capitalized terms shall have the meanings given to them in Section 15 hereof.

**WHEREAS**, Newtyn beneficially owns 1,173,166 shares of Merrimack’s common stock, par value \$0.01 per share (the “**Common Stock**”), as of the Effective Date;

**WHEREAS**, Western beneficially owns 842,913 shares of the Common Stock, as of the Effective Date;

**WHEREAS**, Merrimack and the Shareholder Parties desire to enter into this Agreement regarding the appointment and election of two (2) directors to Merrimack’s Board of Directors (the “**Board**”) and certain other matters, as provided in this Agreement.

**NOW, THEREFORE**, in consideration of the promises, representations and mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Board Composition.

(a) New Directors. Prior to the Effective Date, (i) the Corporate Governance and Nominating Committee of the Board (the “**Nominating Committee**”) has reviewed and approved the qualifications of Noah G. Levy, a director candidate identified by Newtyn, and Eric D. Andersen, a director candidate identified by Western (each of Mr. Levy and Mr. Andersen, a “**New Director**” and together, the “**New Directors**”), to serve as members of the Board and (ii) the Board has confirmed that each New Director is an “Independent Director” as defined in The Nasdaq Stock Market LLC (“**Nasdaq**”) Listing Rule 5605 (or applicable requirement of such other national securities exchange designated as the primary market on which the Common Stock is listed for trading). In connection with the foregoing, and as a condition to each New Director’s appointment to the Board, each New Director has provided to Merrimack information required to be or customarily disclosed by directors or director candidates in proxy statements or other filings under applicable law or stock exchange regulations, information in connection with assessing eligibility, independence and other criteria applicable to directors or satisfying compliance and legal obligations, and a fully completed copy of Merrimack’s director candidate questionnaire and other reasonable and customary director onboarding documentation, and consented to appropriate background checks comparable to those undergone by other non-management directors of Merrimack.

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(b) Board Matters.

- (i) The Board and all applicable committees of the Board shall promptly take all necessary actions to:
- (1) increase the size of the Board by two (2) director seats and appoint each of the New Directors as a director of Merrimack with a term expiring at the 2019 annual meeting of stockholders of Merrimack (the “**2019 Annual Meeting**”) or at such time when such New Director’s successor is duly elected or appointed in accordance with Merrimack’s Amended and Restated Bylaws (as may be amended from time to time, the “**Bylaws**”) and applicable law;
  - (2) set the size of the Board at five (5) directors effective as of the 2019 Annual Meeting and nominate the New Directors (or any Replacements pursuant to Section 1(d)) and Gary L. Crocker, Ulrik B. Nielsen, and Russell T. Ray (together with Mr. Crocker and Mr. Nielsen, the “**Company Nominees**”) as the only Merrimack candidates for election to the Board at the 2019 Annual Meeting, each with a term expiring at the 2020 annual meeting of stockholders of Merrimack; provided, however, that as a condition to Merrimack’s obligation to nominate each of the New Directors (or any Replacement) for reelection at the 2019 Annual Meeting, each New Director (or any Replacement) shall be required to provide information required to be or customarily disclosed by directors or director candidates in proxy statements or other filings under applicable law or stock exchange regulations, information in connection with assessing eligibility, independence and other criteria applicable to directors or satisfying compliance and legal obligations, and a fully completed copy of Merrimack’s director candidate questionnaire, in each case, as promptly as necessary to enable the timely filing of Merrimack’s proxy statement and other periodic reports with the Securities and Exchange Commission (the “**SEC**”); shall have complied at all times with the Company Policies (as defined below); and shall consent to appropriate background checks comparable to those undergone by other non-management directors of Merrimack; and
  - (3) form a special committee of the Board committed to, among other things, analyzing and evaluating the Company’s strategy and expenses (such special committee, the “**Strategy and Expense Committee**”), which shall be comprised of three (3) Board members, two (2) of whom shall be the New Directors (or their respective Replacements). The Strategy and Expense Committee shall be chaired by a New Director (or a Replacement) and shall take action by the affirmative vote of a majority of the members of the Strategy and Expense Committee. The charter document for the Strategy and Expense Committee shall expressly permit the members of the committee to receive and discuss any requests, comments and other information from shareholders of the Company as long as such requests, comments and other information from shareholders were not otherwise obtained in violation of this Agreement, and such requests, comments and other information are promptly (and in any event within one (1) business day) provided to the Board.

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(ii) At the 2019 Annual Meeting, Merrimack agrees to use best efforts to recommend, support and solicit proxies for (A) the election of each of the Company's slate of director nominees, consisting of the New Directors (and any Replacement) and the Company Nominees, in the same manner as Merrimack has supported its nominees for election at prior annual meetings of stockholders at which the election of directors was uncontested, and (B) any other proposal to be submitted to the stockholders of Merrimack by either Merrimack or any stockholders of Merrimack in accordance with the Board's recommendation. The New Directors (and any Replacement) shall be entitled to receive (1) the same benefits of director and officer insurance as all other non-management directors on the Board; (2) the same compensation for their service as directors as the compensation received by other non-management directors on the Board; provided that the New Directors have each in his sole discretion agreed to waive and forego any cash or stock compensation (other than expense reimbursements) for his service as director of the Company; and (3) such other benefits on the same basis as all other non-management directors on the Board.

(iii) For so long as the Shareholder Parties continuously beneficially own, in the aggregate, at least five-percent (5.0%) of the Company's then outstanding Voting Securities (as defined below), the Company agrees that the size of the Board shall not exceed five (5) members unless at least two-thirds (2/3) of the directors then serving in office, including at least one (1) New Director (or any Replacement), approves such increase.

(c) Board Policies and Procedures. Each Party acknowledges that each New Director (and any Replacement), upon appointment to the Board, shall be governed by all of the same policies, processes, procedures, codes, rules, standards and guidelines applicable to members of the Board, including, but not limited to, Merrimack's Corporate Governance Guidelines, Code of Business Conduct and Ethics and any other policies on stock ownership, public disclosures and confidentiality (collectively, the "**Company Policies**"), and will be required to strictly adhere to Merrimack's policies on confidentiality imposed on all members of the Board.



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(d) Replacement Rights. If, from the Effective Date until the expiration of the Standstill Period (as defined below), the New Director (or any Replacement) designated by a Shareholder Party is unable or unwilling to serve as an independent director for any reason, such Shareholder Party shall identify a replacement director (a “**Replacement**”) with relevant financial and business experience, who qualifies as “independent” pursuant to Nasdaq’s listing standards (or applicable requirement of such other national securities exchange designated as the primary market on which the Common Stock is listed for trading), the SEC rules and regulations, and whose qualifications are substantially similar to the New Director (or any Replacement) being replaced (the “**Former Director**”), and such Replacement shall be expeditiously appointed to the Board, subject to the approval (not to be unreasonably withheld) by the Nominating Committee, after conducting a good faith customary due diligence process and consistent with its fiduciary duties (and who satisfies the Company Policies applicable to all directors). Any Replacement appointed to the Board in accordance with this Section 1(d) shall be appointed to any applicable committees of the Board of which the Former Director was a member immediately prior to such director’s resignation or removal. Any rights or obligations of the Board and a Shareholder Party as provided in this Section 1(d) shall terminate with respect to such Shareholder Party when such Shareholder Party and its Affiliates, in the aggregate, cease to beneficially own at least two and one-half percent (2.5%) of the Company’s then outstanding Voting Securities. In the event the Nominating Committee determines in good faith not to appoint any Replacement proposed by a Shareholder Party, such Shareholder Party shall have the right to propose additional Replacements for consideration, and the provisions of this Section 1(d) shall continue to apply.

2. Voting. From the Effective Date until the Termination Date (as defined below) (the “**Standstill Period**”), each Shareholder Party agrees solely for and on behalf of itself that it will appear in person or by proxy at each annual or special meeting of stockholders of Merrimack (including any adjournment, postponement, rescheduling or continuation thereof), whether such meeting is held at a physical location or virtually by means of remote communications, and will vote (or execute a consent with respect to) all Voting Securities beneficially owned by it in accordance with the Board’s recommendations with respect to (a) each election of directors and any removal of directors, (b) the ratification of the appointment of the Company’s independent registered public accounting firm, (c) the Company’s “say-on-pay” proposal, and (d) any other proposal to be submitted to the stockholders of Merrimack by either Merrimack or any stockholders of Merrimack; provided, however, that in the event that either Institutional Shareholder Services Inc. (“**ISS**”) or Glass Lewis & Co., LLC (“**Glass Lewis**”) makes recommendations inconsistent with such Board recommendations with respect to any proposal submitted by Merrimack or any of its stockholders (other than proposals relating to the election or removal of directors), each Shareholder Party will be permitted to vote in accordance with the ISS or Glass Lewis recommendations in its discretion; provided, further, that each Shareholder Party shall be permitted to vote in its discretion on any proposal of the Company in respect of any Extraordinary Transaction; provided, further, that if (x) either a Board recommendation or the implementation of a Board action would, in the reasonable belief of a New Director, result in an effect, change, event, circumstance, state of facts, development or occurrence that, individually or in the aggregate, would reasonably be expected to have a material adverse effect on the business, operations, results of operations, assets, liabilities or condition (financial or otherwise) of Merrimack and its Affiliates, taken as a whole and (y) as a result, such New Director (or any Replacement) resigns from the Board, then effective upon the resignation of such New Director (or such Replacement), the Shareholder Party that designated the applicable New Director (or Replacement) will no longer be bound to vote for the matter in question in accordance with this Section 2 (but, for the avoidance of doubt, the provisions of this Agreement (including this Section 2 with respect to any other matter) will otherwise remain in effect with respect to such Shareholder Party).

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3. Mutual Non-Disparagement.

(a) Subject to Section 5, each Shareholder Party agrees solely for and on behalf of itself that, during the Standstill Period, neither it nor any of its Representatives shall, and it shall cause each of its Representatives not to, directly or indirectly, in any capacity or manner, make, express, transmit, speak, write, verbalize or otherwise communicate in any way (or cause, further, assist, solicit, encourage, support or participate in any of the foregoing), any remark, comment, message, information, declaration, communication or other statement of any kind, whether verbal, in writing, electronically transferred or otherwise, that might reasonably be construed to be derogatory or critical of, or negative toward, Merrimack or any of its Representatives, or that maligns, harms, disparages, defames or damages the reputation or good name of Merrimack, its business or any of its Representatives; provided, that such Shareholder Party shall not be deemed in breach of this Section 3(a) by virtue of an unpremeditated, private, informal remark that is not part of any coordinated communication or campaign and is not intended or designed to circumvent, directly or indirectly, the restrictions contemplated by this Section 3(a).

(b) Merrimack hereby agrees that, during the Standstill Period, neither it nor any of its Representatives shall, and it shall cause each of its Representatives not to, directly or indirectly, in any capacity or manner, make, express, transmit, speak, write, verbalize or otherwise communicate in any way (or cause, further, assist, solicit, encourage, support or participate in any of the foregoing), any remark, comment, message, information, declaration, communication or other statement of any kind, whether verbal, in writing, electronically transferred or otherwise, that might reasonably be construed to be derogatory or critical of, or negative toward, any of the Shareholder Parties or their Representatives, or that maligns, harms, disparages, defames or damages the reputation or good name of any of the Shareholder Parties, their business or any of their Representatives; provided, that Merrimack shall not be deemed in breach of this Section 3(b) by virtue of an unpremeditated, private, informal remark that is not part of any coordinated communication or campaign and is not intended or designed to circumvent, directly or indirectly, the restrictions contemplated by this Section 3(b).

(c) Notwithstanding the foregoing, nothing in this Section 3 or elsewhere in this Agreement shall prohibit any Party from making any statement or disclosure required under the federal securities laws or other applicable laws (including to comply with any subpoena or other legal process from any governmental or regulatory authority with competent jurisdiction over the relevant Party hereto) or stock exchange regulations; provided, however, that, unless prohibited under applicable law, such Party must provide written notice to all such other affected Parties at least two (2) business days prior to making any such statement or disclosure required under the federal securities laws or other applicable laws or stock exchange regulations that would otherwise be prohibited by the provisions of this Section 3, and reasonably consider any comments of such other Parties.

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(d) The limitations set forth in Section 3(a) and 3(b) shall not prevent any Party from responding to any public statement made by any other Party of the nature described in Section 3(a) and 3(b) if such statement by the other Party was made in breach of this Agreement.

4. No Litigation.

(a) Each Shareholder Party covenants and agrees solely for and on behalf of itself that, during the Standstill Period, it shall not, and shall not permit any of its Representatives to, alone or in concert with others, knowingly encourage or pursue, or knowingly assist any other person to threaten, initiate or pursue, any lawsuit, claim or proceeding before any court or governmental, administrative or regulatory body (collectively, “**Legal Proceeding**”) against Merrimack or any of its Representatives, except for any Legal Proceeding initiated solely to remedy a breach of or to enforce this Agreement; provided, however, that the foregoing shall not prevent such Shareholder Party or any of its Representatives from responding to oral questions, interrogatories, requests for information or documents, subpoenas, civil investigative demands or similar processes (a “**Legal Requirement**”) in connection with any Legal Proceeding if such Legal Proceeding has not been initiated by, or on behalf of, such Shareholder Party or any of their Representatives; provided, further, that in the event that such Shareholder Party or any of its Representatives receives such Legal Requirement, such Shareholder Party shall, unless prohibited by applicable law, give prompt written notice of such Legal Requirement to Merrimack.

(b) Merrimack covenants and agrees that, during the Standstill Period, it shall not, and shall not permit any of its Representatives to, alone or in concert with others, knowingly encourage or pursue, or knowingly assist any other person to threaten, initiate or pursue, any Legal Proceedings against any of the Shareholder Parties or any of their respective Representatives, except for any Legal Proceeding initiated solely to remedy a breach of or to enforce this Agreement; provided, however, that the foregoing shall not prevent Merrimack or any of its Representatives from responding to a Legal Requirement in connection with any Legal Proceeding if such Legal Proceeding has not been initiated by, or on behalf of, Merrimack or any of its Representatives; provided, further, that in the event Merrimack or any of its Representatives receives such Legal Requirement, Merrimack shall, unless prohibited by applicable law, give prompt written notice of such Legal Requirement to the Shareholder Parties.

5. Standstill.

(a) During the Standstill Period, unless the Company and each Party provide their prior written consent (which may be withheld in each of its sole discretion, and subject to the provisions of clause (xiii) of this Section 5(a)), each Shareholder Party agrees solely for and on behalf of itself that it shall not, and shall cause its Representatives not to, directly or indirectly:

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(i) make any announcement or proposal with respect to, or offer, seek, propose or indicate an interest in, (A) any form of business combination or acquisition or other transaction relating to a material amount of assets or securities of Merrimack or any of its subsidiaries, (B) any form of restructuring, recapitalization or similar transaction with respect to Merrimack or any of its subsidiaries or (C) any form of tender or exchange offer for shares of Common Stock or other Voting Securities, whether or not such transaction involves a Change of Control (as defined below) of Merrimack; it being understood that the foregoing shall not prohibit a Shareholder Party or its Affiliates from acquiring Voting Securities within the limitations set forth in Section 5(a)(iii);

(ii) engage in, or assist in the engagement in, any solicitation of proxies or written consents to vote any voting securities of Merrimack, or conduct, or assist in the conducting of, any type of binding or nonbinding referendum with respect to any Voting Securities, or assist or participate in any other way, directly or indirectly, in any solicitation of proxies (or written consents) with respect to, or from the holders of, any Voting Securities, or otherwise become a “participant” in a “solicitation,” as such terms are defined in Instruction 3 of Item 4 of Schedule 14A and Rule 14a-1 of Regulation 14A, respectively, under the Securities Exchange Act of 1934, as amended, and with the rules and regulations thereunder (the “**Exchange Act**”), to vote any securities of Merrimack (including by initiating, encouraging or participating in any “withhold” or similar campaign);

(iii) purchase or otherwise acquire, or offer, seek, propose or agree to acquire, ownership (including beneficial ownership) of any securities of Merrimack, any direct or indirect rights or options to acquire any such securities, any derivative securities or contracts or instruments in any way related to the price of shares of Common Stock, or any assets or liabilities of Merrimack; provided, that such Shareholder Party and its Affiliates, in the aggregate, may acquire beneficial ownership of up to twenty-percent (20.0%) of the Company’s then outstanding Voting Securities;

(iv) seek to advise, encourage or influence any person with respect to the voting of (or execution of a written consent in respect of) or disposition of any securities of Merrimack;

(v) sell, offer or agree to sell directly or indirectly in a private transaction, through swap or hedging transactions or otherwise, the securities of Merrimack or any rights decoupled from such underlying securities held by such Shareholder Party to any person that (A) the Shareholder Party knows has filed, or threatened in writing to file, a proxy solicitation in opposition to the Company’s recommendations, nominees or proposals within the preceding eighteen (18) months and has not formally withdrawn such filing or threat, or (B) has otherwise given such Shareholder Party reasonable cause to believe that such person intends to engage in a proxy campaign in opposition to the Company’s recommendations, nominees or proposals;

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(vi) except as expressly permitted in Section 1(b) through the New Director designated by such Shareholder Party or any Replacements, take any action in support of or make any proposal or request that constitutes: (A) advising, controlling, changing or influencing any director or the management of Merrimack, including, but not limited to, any plans or proposals to change the number or term of directors or to fill any vacancies on the Board, except as set forth in this Agreement, (B) any material change in the capitalization, stock repurchase programs and practices or dividend policy of Merrimack, (C) any other material change in Merrimack's management, business or corporate structure, (D) seeking to have Merrimack waive or make amendments or modifications to the Bylaws, or other actions that may impede or facilitate the acquisition of control of Merrimack by any person, (E) causing a class of securities of Merrimack to be delisted from, or to cease to be authorized to be quoted on, any securities exchange, or (F) causing a class of securities of Merrimack to become eligible for termination of registration pursuant to Section 12(g)(4) of the Exchange Act;

(vii) communicate with stockholders of Merrimack pursuant to Rule 14a-1(l)(2)(iv) under the Exchange Act;

(viii) engage in any course of conduct with the purpose of causing stockholders of Merrimack to vote contrary to the recommendation of the Board on any matter presented to Merrimack's stockholders for their vote at any meeting of Merrimack's stockholders or by written consent;

(ix) call or seek to call, or request the call of, alone or in concert with others, any meeting of stockholders, whether or not such a meeting is permitted by the Bylaws, including a "town hall meeting";

(x) deposit any shares of Common Stock or other Voting Securities in any voting trust or subject any shares of Common Stock or other Voting Securities to any arrangement or agreement with respect to the voting of any shares of Common Stock or Voting Securities;

(xi) except as otherwise provided in this Agreement, form, join or in any other way participate in any "group" (within the meaning of Section 13(d)(3) of the Exchange Act) with respect to any Voting Security; provided, however, that nothing herein shall limit the ability of an Affiliate of the Shareholder Party to join the "group" comprising the Shareholder Parties following the execution of this Agreement, so long as any such Affiliate agrees to confirm in writing that it is subject to, and bound by, the terms and conditions of this Agreement and, if required under the Exchange Act, files a Schedule 13D or an amendment thereof, as applicable, within two (2) business days after disclosing that the Shareholder Parties have formed a group with such Affiliate;

(xii) demand a copy of Merrimack's list of stockholders or make any request under any statutory or regulatory provisions of Delaware providing for stockholder access to lists of stockholders of Merrimack;

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(xiii) make any request or submit any proposal to amend or waive the terms of this Section 5 other than through non-public communications with Merrimack that would not be reasonably likely to trigger public disclosure obligations for any Party; or

(xiv) enter into any discussions, negotiations, agreements or understandings with any person with respect to any action the Shareholder Party is prohibited from taking pursuant to this Section 5, or advise, assist, knowingly encourage or seek to persuade any person to take any action or make any statement with respect to any such action, or otherwise take or cause any action or make any statement inconsistent with any of the foregoing.

Notwithstanding anything to the contrary contained in this Section 5, a New Director (and any Replacement) in his capacity as such shall not be prohibited or restricted from making any non-stockholder proposal or request or entering into discussion regarding any matter at a meeting of the Board or any committee, and a Shareholder Party shall not be prohibited or restricted from: (A) communicating privately with the Board or any officer or director of Merrimack in the manner set forth for stockholders to communicate with the Company in the Company Policies regarding any matter, so long as such communications are not intended to, and would not reasonably be expected to, require any public disclosure of such communications by any of the Shareholder Parties, Merrimack or its Affiliates or any Third Party, subject in any case to any confidentiality obligations to Merrimack of any such director or officer and applicable law, rules or regulations; (B) taking any action necessary to comply with any law, rule or regulation or any action required by any governmental or regulatory authority or stock exchange that has, or may have, jurisdiction over such Shareholder Party, provided, that a breach by such Shareholder Party of this Agreement is not the cause of the applicable requirement; or (C) privately communicating to any of its Affiliates, Associates or potential investors or investors factual information regarding Merrimack, provided such communications are subject to reasonable confidentiality obligations and are not otherwise reasonably expected to be publicly disclosed.

(b) The provisions of this Section 5 shall not limit in any respect the actions of any director of Merrimack (including any New Director) in his or her capacity as such, recognizing that such actions are subject to such director's fiduciary duties to Merrimack and its stockholders and the Company Policies (it being understood and agreed that a Shareholder Party shall not seek to do indirectly through its New Director (or any Replacement) anything that would be prohibited if done by any of such Shareholder Party). The provisions of this Section 5 shall also not prevent a Shareholder Party from freely voting its shares of Common Stock or other Voting Securities (except as otherwise provided in Section 2 hereto).

(c) During the Standstill Period, each Shareholder Party agrees solely for and on behalf of itself that it shall refrain from taking any actions that could have the effect of encouraging, assisting or influencing other stockholders of Merrimack or any other persons to engage in actions which, if taken by such Shareholder Party, would violate this Agreement.

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(d) Notwithstanding anything contained in this Agreement to the contrary, the provisions of Sections 1, 2 and 3 of this Agreement shall automatically terminate upon the occurrence of a Change of Control involving Merrimack if the acquiring or counterparty to the Change of Control transaction has conditioned the closing of the transaction on the termination of such sections.

(e) At any time during the Standstill Period and following the filing of a Schedule 13D by each Shareholder Party, either individually or jointly, with the SEC as provided in Section 8(b), such Shareholder Party ceases to have a Schedule 13D filed with the SEC, upon reasonable written notice from Merrimack pursuant to Section 16 hereof, each Shareholder Party agrees solely for and on behalf of itself that it shall promptly provide Merrimack with information regarding the amount of the securities of Merrimack (i) beneficially owned by such entity or individual, (ii) with respect to which such Shareholder Party has (A) any direct or indirect rights or options to acquire or (B) any economic exposure through any derivative securities or contracts or instruments in any way related to the price of such securities, or (iii) with respect to which such Shareholder Party has hedged its position by selling covered call options. This ownership information provided to Merrimack will be kept strictly confidential, unless required to be disclosed pursuant to applicable laws and regulations, any subpoena, legal process or other legal requirement or in connection with any litigation or similar proceedings in connection with this Agreement.

6. Representations and Warranties of Merrimack. Merrimack represents and warrants to the Shareholder Parties that (a) Merrimack has the corporate power and authority to execute this Agreement and to bind it thereto, (b) this Agreement has been duly and validly authorized, executed and delivered by Merrimack, constitutes a valid and binding obligation and agreement of Merrimack, and is enforceable against Merrimack in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar laws generally affecting the rights and remedies of creditors and subject to general equity principles, and (c) the execution, delivery and performance of this Agreement by Merrimack does not and will not violate or conflict with (i) any law, rule, regulation, order, judgment or decree applicable to it, or (ii) result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both could become a default) under or pursuant to, or result in the loss of a material benefit under, or give any right of termination, amendment, acceleration or cancellation of, any organizational document, or any material agreement, contract, commitment, understanding or arrangement to which Merrimack is a party or by which it is bound.

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7. Representations and Warranties of each Shareholder Party. Each Shareholder Party represents and warrants to Merrimack solely for and on behalf of itself that (a) this Agreement has been duly and validly authorized, executed and delivered by such Shareholder Party, and constitutes a valid and binding obligation and agreement of such Shareholder Party, enforceable against such Shareholder Party in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar laws generally affecting the rights and remedies of creditors and subject to general equity principles, (b) the signatory for such Shareholder Party has the power and authority to execute this Agreement and any other documents or agreements entered into in connection with this Agreement on behalf of itself and such Shareholder Party associated with that signatory's name, and to bind such Shareholder Party to the terms hereof and thereof, (c) the execution, delivery and performance of this Agreement by such Shareholder Party does not and will not violate or conflict with (i) any law, rule, regulation, order, judgment or decree applicable to it, or (ii) result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both could become a default) under or pursuant to, or result in the loss of a material benefit under, or give any right of termination, amendment, acceleration or cancellation of, any organizational document, agreement, contract, commitment, understanding or arrangement to which such member is a party or by which it is bound, (d) the director candidate questionnaire and other information and onboarding documentation provided by the New Director designated by such Shareholder Party to Merrimack in accordance with Section 1(a) is true, accurate and complete, and (e) such Shareholder Party acknowledges that its designated New Director (or any Replacement) is not, nor does such Shareholder Party consider its designated New Director (or any Replacement) to be, a stockholder designee or stockholder representative of such Shareholder Party.

8. SEC Filings.

(a) No later than two (2) business days following the Effective Date, Merrimack shall file with the SEC a Current Report on Form 8-K reporting its entry into this Agreement and appending this Agreement as an exhibit thereto (the "**Form 8-K**"). The Form 8-K shall be consistent with the terms of this Agreement. Merrimack shall provide each of the Shareholder Parties with a reasonable opportunity to review and comment on the Form 8-K prior to the filing with the SEC and consider in good faith any comments of the Shareholder Parties.

(b) No later than two (2) business days following the Effective Date, each Shareholder Party, either individually or jointly, shall file with the SEC a Schedule 13D in compliance with Section 13 of the Exchange Act reporting its entry into this Agreement and appending this Agreement as an exhibit thereto or incorporating this Agreement by reference to Merrimack's Current Report on Form 8-K referred to in Section 8(a) hereof. The Schedule(s) 13D shall be consistent with the terms of this Agreement. The Shareholder Parties shall provide Merrimack with a reasonable opportunity to review and comment on the Schedule(s) 13D prior to being filed with the SEC and consider in good faith any comments of Merrimack.



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9. Termination. Unless otherwise mutually agreed in writing by each applicable Party, this Agreement shall terminate as to a Shareholder Party on the earliest of (a) the time at which such Shareholder Party no longer beneficially owns at least two and one-half percent (2.5%) of the Company's then outstanding Voting Securities, (b) the adjournment of the applicable annual meeting of the Company's stockholders, if the New Director (or any Replacement) designated by such Shareholder Party is not successfully re-elected at such meeting, (c) the Company's breach of its obligations under Section 1(b)(i)(3); (d) the New Director (or any Replacement) designated by such Shareholder Party fails to be re-nominated for election to the Board at any annual or special meeting of stockholders of Merrimack (including any adjournment, postponement, rescheduling or continuation thereof) at which such New Director (or such Replacement) is up for election, and (e) the consummation of an Extraordinary Transaction (the earliest of such dates, the "**Termination Date**"). Notwithstanding the foregoing, the provisions of Section 9 through Section 21 shall survive the termination of this Agreement. Termination of this Agreement shall not relieve any Party from its responsibilities in respect of any breach of this Agreement prior to such termination.

10. Expenses. Each Party shall be responsible for its own fees and expenses incurred in connection with the negotiation, execution and effectuation of this Agreement and the transactions contemplated hereby.

11. No Other Discussions or Arrangements. Each Shareholder Party represents and warrants solely for and on behalf of itself that, as of the Effective Date, except as disclosed herein, (a) such Shareholder Party does not own, of record or beneficially, any Voting Securities or any securities convertible into, or exchangeable or exercisable for, any Voting Securities and (b) such Shareholder Party has not entered into, directly or indirectly, any agreements or understandings with any person (other than their own Representatives) with respect to any potential transaction involving Merrimack or the voting or disposition of any securities of Merrimack.

12. Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule that would cause the application of laws of any jurisdiction other than those of the State of Delaware. Each Party agrees that it shall bring any suit, action or other proceeding in respect of any claim arising out of or related to this Agreement (each, an "**Action**") exclusively in (a) the Delaware Court of Chancery in and for New Castle County, (b) in the event (but only in the event) that such court does not have subject matter jurisdiction over such Action, the United States District Court for the District of Delaware or (c) in the event (but only in the event) such courts identified in clauses (a) and (b) do not have subject matter jurisdiction over such Action, any other Delaware state court (collectively, the "**Chosen Courts**"), and, solely in connection with an Action, (i) irrevocably submits to the exclusive jurisdiction of the Chosen Courts, (ii) irrevocably submits to the exclusive venue of any such Action in the Chosen Courts and waives any objection to laying venue in any such Action in the Chosen Courts, (iii) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any Party hereto, and (iv) agrees that service of process upon such Party in any such Action shall be effective if notice is given in accordance with Section 16 of this Agreement. Each Party agrees that a final judgment in any Action brought in the Chosen Courts shall be conclusive and binding upon each of the Parties and may be enforced in any other courts the jurisdiction of which each of the Parties is or may be subject, by suit upon such judgment.

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13. Waiver of Jury Trial. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 13.

14. Specific Performance. Each of the Parties acknowledges and agrees that irreparable injury to the other Parties would occur in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached and that such injury would not be adequately compensable by the remedies available at law (including the payment of money damages). It is accordingly agreed that each of the Parties (the “**Moving Party**”) shall be entitled to specific enforcement of, and injunctive or other equitable relief as a remedy for any such breach or to prevent any violation or threatened violation of, the terms hereof, and the other Parties will not take action, directly or indirectly, in opposition to the Moving Party seeking such relief on the grounds that any other remedy or relief is available at law or in equity. The Parties further agree to waive any requirement for the security or posting of any bond in connection with any such relief. The remedies available pursuant to this Section 14 shall not be deemed to be the exclusive remedies for a breach of this Agreement but shall be in addition to all other remedies available at law or equity.

15. Certain Definitions. As used in this Agreement:

(a) “**Affiliate**” shall mean any “**Affiliate**” as defined in Rule 12b-2 promulgated by the SEC under the Exchange Act, including, for the avoidance of doubt, persons who become Affiliates subsequent to the Effective Date;

(b) “**Associate**” shall mean any “**Associate**” as defined in Rule 12b-2 promulgated by the SEC under the Exchange Act, including, for the avoidance of doubt, persons who become Associates subsequent to the Effective Date;

(c) “**beneficial owner**”, “**beneficial ownership**” and “**beneficially own**” shall have the same meanings as set forth in Rule 13d-3 promulgated by the SEC under the Exchange Act;

(d) “**business day**” shall mean any day other than a Saturday, Sunday or day on which the commercial banks in the State of New York are authorized or obligated to be closed by applicable law;

(e) a “**Change of Control**” transaction shall be deemed to have taken place if (i) any person is or becomes a beneficial owner, directly or indirectly, of securities of Merrimack representing more than fifty-percent (50%) of the equity interests and voting power of Merrimack’s then-outstanding equity securities or (ii) Merrimack enters into a stock-for-stock transaction whereby immediately after the consummation of the transaction Merrimack’s stockholders retain less than fifty-percent (50%) of the equity interests and voting power of the surviving entity’s then-outstanding equity securities;

(f) “**Confidential Information**” shall mean all information that is understood to be confidential by a reasonable person by the context of its disclosure and/or its content, scope or nature that is entrusted to or obtained by a director of Merrimack by reason of his or her position as a director of Merrimack, including, but not limited to, discussions or matters considered in meetings of the Board or Board committees; provided, however, Confidential Information shall not include information that (i) at the time of disclosure is, or as of and at such time such disclosure thereafter becomes, generally available to the public other than as a result of any breach of this Agreement by any Shareholder Party or any of their Representatives or any director’s noncompliance with the Company Policies, (ii) at the time of disclosure is, or as of and at such time such disclosure thereafter becomes, available to the Shareholder Parties or their Representatives on a non-confidential basis from a Third-Party source, provided, that to the Shareholder Parties’ or their Representative’s knowledge, such Third-Party is not and was not prohibited from disclosing such Confidential Information to the Shareholder Parties or their Representative by any applicable law or contractual obligation, (iii) was legally obtained by the Shareholder Parties or their Representatives prior to being disclosed by or on behalf of a director of Merrimack (whether or not a New Director), or (iv) was or is independently developed by the Shareholder Parties or any of their Representatives without reliance on, or reference to, any Confidential Information;

(g) “**Extraordinary Transaction**” shall mean any equity tender offer, equity exchange offer, merger, acquisition, business combination, or other transaction with a Third Party that, in each case, would result in a Change of Control of Merrimack, liquidation, dissolution or other extraordinary transaction involving a majority of its equity securities or a majority of Merrimack’s assets, and, for the avoidance of doubt, including any such transaction with a Third Party that is submitted for a vote of Merrimack’s stockholders;

(h) “**person**” or “**persons**” shall mean any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization or other entity of any kind, structure or nature;

(i) “**Representative**” shall mean a person’s Affiliates and Associates and its and their respective directors, officers, employees, partners, members, managers, consultants, legal or other advisors, agents and other representatives; and

(j) “**Voting Securities**” means the Common Stock and any other securities of the Company entitled to vote in the election of directors.

16. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of Merrimack, and on the next business day if sent after normal business hours of Merrimack; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses set forth in this Section 16 (or to such other address that may be designated by a Party from time to time in accordance with this Section 16).

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If to Merrimack, to its address at:

Merrimack Pharmaceuticals, Inc.  
One Broadway, 14th Floor  
Cambridge, Massachusetts 02142  
Attention: Gary Crocker  
Email: gcrocker@merrimack.com

With copies (which shall not constitute notice) to:

Wilmer Cutler Pickering Hale and Dorr LLP  
1875 Pennsylvania Avenue NW  
Washington, DC 20006  
Attention: Brian Johnson  
Lillian Brown  
Email: brian.johnson@wilmerhale.com  
lillian.brown@wilmerhale.com

Vinson & Elkins L.L.P.  
666 Fifth Avenue, 26th Floor  
New York, NY 10103  
Attention: Lawrence S. Elbaum  
C. Patrick Gadson  
Email: lelbaum@velaw.com  
pgadson@velaw.com

If to Newtyn, to the address at:

Newtyn Management, LLC  
60 East 42nd Street, 9th Floor  
New York, NY 10165  
Attention: Noah G. Levy  
Email: nlevy@newtyn.com

With a copy (which shall not constitute notice) to:

Paul Hastings LLP  
515 South Flower Street, 25th Floor  
Los Angeles, CA 90071  
Attention: Alicia Harrison  
Email: aliciaharrison@paulhastings.com

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If to Western, to the address at:

Western Standard, LLC  
5900 Wilshire Boulevard, Suite 650  
Los Angeles, CA 90036  
Attention: Eric D. Andersen  
Email: eric@westernstandardllc.com

With a copy (which shall not constitute notice) to:

Paul Hastings LLP  
515 South Flower Street, 25<sup>th</sup> Floor  
Los Angeles, CA 90071  
Attention: Alicia Harrison  
Email: aliciaharrison@paulhastings.com

17. Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party.

18. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

20. Assignment. No Party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other Parties; provided, that each Party may assign any of its rights and delegate any of its obligations hereunder to any person or entity that acquires substantially all of that Party's assets, whether by stock sale, merger, asset sale or otherwise. Any purported assignment or delegation in violation of this Section 20 shall be null and void. No assignment or delegation shall relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

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21. Waivers. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

22. Public Announcement. Promptly following the execution of this Agreement, the Company shall issue a press release (the “**Press Release**”) substantially in the form attached hereto as Exhibit C. Prior to the issuance of the Press Release, neither the Company nor any of the Shareholder Parties shall issue any press release or make any public announcement regarding this Agreement or take any action that would require public disclosure thereof without the prior written consent of the other Party, except to the extent required by applicable law or the rules of any national securities exchange.

*[Remainder of Page Intentionally Left Blank]*

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IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

**MERRIMACK:**

**MERRIMACK PHARMACEUTICALS, INC.**

By: /s/ Timothy R. Surgenor

Name: Timothy R. Surgenor

Title: Secretary

Signature Page to  
Cooperation Agreement

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**NEWTYN**

**NEWTYN MANAGEMENT, LLC**

By: /s/ Noah G. Levy

Name: Noah G. Levy

Title: Managing Member

**NEWTYN PARTNERS, LP**

By: Newtyn Management, LLC  
Investment Manager

By: /s/ Noah G. Levy

Name: Noah G. Levy

Title: Managing Member

**NEWTYN TE PARTNERS, LP**

By: Newtyn Management, LLC  
Investment Manager

By: /s/ Noah G. Levy

Name: Noah G. Levy

Title: Managing Member

/s/ Noah G. Levy

Noah G. Levy



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**NEWTYN CAPITAL PARTNERS, LP**

By: Ledo Capital, LLC  
General Partner

By: /s/ Noah G. Levy  
Name: Noah G. Levy  
Title: Managing Member

**LEDO CAPITAL, LLC**

By: /s/ Noah G. Levy  
Name: Noah G. Levy  
Title: Managing Member

Signature Page to  
Cooperation Agreement

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**WESTERN**

**WESTERN STANDARD, LLC**

By: /s/ Eric D. Andersen  
Name: Eric D. Andersen  
Title: Managing Member

/s/ Eric D. Andersen  
Eric D. Andersen

**WESTERN STANDARD PARTNERS, LP**

By: Western Standard, LLC  
General Partner

By: /s/ Eric D. Andersen  
Name: Eric D. Andersen  
Title: Managing Member

**WESTERN STANDARD PARTNERS QP, LP**

By: Western Standard, LLC  
General Partner

By: /s/ Eric D. Andersen  
Name: Eric D. Andersen  
Title: Managing Member

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**EXHIBIT A**

Newtyn Management, LLC  
Newtyn Partners, LP  
Newtyn TE Partners, LP  
Noah G. Levy  
Newtyn Capital Partners, LP  
Ledo Capital, LLC

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**EXHIBIT B**

Western Standard, LLC  
Eric D. Andersen  
Western Standard Partners, LP  
Western Standard Partners QP, LP

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**EXHIBIT C**



## **Merrimack Pharmaceuticals Announces Changes to Board of Directors**

*Company Enters into Cooperation Agreement with Newtyn Management and Western Standard*

*Independent Directors Noah Levy of Newtyn and Eric Andersen of Western Standard to Be Added to Merrimack Board, Effective Immediately*

*Newtyn and Western Have Agreed to Vote for Merrimack Slate of Nominees for 2019 Annual Meeting*

*Merrimack Believes that JFL Capital's Plans for the Company Do Not Align with Views of Other Shareholders and Could Imperil Ability to Protect Potential Milestone Payments and NOLs*

**CAMBRIDGE, MA, September 19, 2019** – Merrimack Pharmaceuticals (Nasdaq: MACK) (the “Company” or “Merrimack”) announced today that, effective immediately, its Board of Directors has appointed Noah G. Levy, of Newtyn Management, LLC (“Newtyn”) and Eric D. Andersen, of Western Standard, LLC (“Western”) to the Board, pursuant to a cooperation agreement.

Including Messrs. Levy and Andersen, the Board will nominate five directors for election at the 2019 Annual Meeting of Shareholders (the “2019 Annual Meeting”), which is scheduled for October 17, 2019. Mr. Levy’s and Mr. Andersen’s funds, Newtyn and Western, collectively represent approximately 15% of Merrimack shares outstanding, and Merrimack shares represented by all five Merrimack nominees now total approximately 23% of shares outstanding.

Under the agreement Messrs. Levy and Andersen have agreed to waive compensation for their Board service. It also provides that the Board will form a Committee on Strategy and Expenses, chaired by Mr. Levy, that will focus on cost containment, continued NOL safeguarding and milestone payment and shareholder distribution maximization. As part of the cooperation agreement, both Newtyn and Western have agreed to vote for all five of Merrimack’s nominees for election at the 2019 Annual Meeting. Newtyn’s and Western’s voting and other commitments under the cooperation agreement generally are evergreen with certain limited exceptions.

These changes were reached following engagement with a significant portion of Merrimack’s institutional and retail shareholders. During this process, it became clear to Merrimack that the key priorities for its shareholders – including Newtyn and Western – generally are to:

- Do everything possible to protect the more than \$500 million in potential milestone payments the Company could receive from Ipsen S.A. and 14ner Oncology;
- Protect the approximately \$200 million in NOLs to shield potential tax payments related to the potential milestones;
- Monetize the Company’s TNFR2 program, if possible, and other preclinical assets, in a cost-effective manner; and

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- Maximize asset value per share by conserving the Company’s cash reserves while maintaining minimal operations and periodically examining ways to return additional capital to shareholders whenever possible.

“We are pleased to welcome Noah and Eric to our Board and appreciate the support of two of our significant investors throughout this process,” said Gary Crocker, Chairman of Merrimack’s Board of Directors. “Merrimack has a carefully considered plan in place to continue our intense focus on cash management and to maximize the distribution of cash and potential milestone payments to our shareholders. Following numerous discussions with investors we feel confident that our strategy is aligned with their views.”

“As one of the Company’s largest shareholders, I look forward to serving on the Board. I also look forward to serving as Chair of the planned Committee on Strategy and Expenses, a position in which I intend to work to reduce costs, minimize risk and protect all fellow shareholders,” said Noah G. Levy of Newtyn.

Added Eric D. Andersen of Western, “I appreciate the constructive engagement and open dialogue with Merrimack’s Board, and with this cooperation agreement, I look forward to collaborating with other Board members to maximize value for all shareholders.”

Prior to reaching an agreement with Newtyn and Western, Merrimack also engaged extensively with JFL and its advisors in an effort to reach a constructive solution that would prevent a contested election. During these discussions, JFL communicated to the Board that its intended strategy was to use approximately \$10-15 million of the Company’s current cash reserves to purchase and develop a new small molecule in early stages of therapeutic development – a strategy JFL admitted could also require the Company to raise additional funds, which would dilute existing shareholders and could impair the Company’s NOLs. Under JFL’s plan the Company would also explore the potential issuance of a preferred security entitling holders to the potential milestone payment, assuming this was possible from a tax perspective.

These discussions with JFL were constructive and resulted in the Company offering the fund two seats on the Board and proposing the formation of a strategic committee that would be chaired by one of the JFL nominees. Unfortunately, these discussions broke down over a few key issues, including the requirement by JFL that the strategic committee would have binding conditions placed on it preventing the committee from voting against an asset acquisition if they did not think it was in the best interest of the Company and all shareholders. Without this requirement in place, JFL would not agree to refrain from proxy fights against the Company following the 2019 Annual Meeting. Merrimack ultimately concluded this was not something that could be agreed to while preserving the Board’s ability to fulfill its fiduciary duties. Further, after receiving substantial shareholder feedback, the Board concluded that a one proxy season standstill did not provide a long-term solution to the cost and distraction associated with the constant threat of a proxy fight by JFL looming over the Company and the investment of our shareholders. In order to convince JFL to accept a standstill that lasted more than just through the 2019 Annual Meeting, the Board made a reasonable and shareholder-centric proposal that any strategy proposed by the strategic committee that the Board could not accept after taking into account its fiduciary duties would be put to a vote by all shareholders. JFL was unwilling to accept this proposal.

#### **About Eric D. Andersen**

Mr. Andersen has been a managing member / portfolio manager at Western Standard, LLC, an investment firm, since June 2008. Prior to that, Mr. Andersen served as an analyst at Ivory Capital and JCK Partners, both investment firms, from 2006 to 2008 and 2004 to 2006, respectively; an associate in the private equity group at J.P. Morgan Partners, LLC, from 2002 to 2004; and an analyst, mergers and acquisitions, at The Blackstone Group, an investment firm, from 2000 to 2002. Mr. Andersen holds a B.A. from Dartmouth College and is a CFA Charterholder.

#### **About Noah G. Levy**

Mr. Levy has been a managing member and portfolio manager at Newtyn Management, LLC, an investment firm, since June 2011. Prior to that, Mr. Levy served as a senior member at Tyndall Management, an investment firm, from 2002 to 2011, and as an analyst at Goldman Sachs, an investment bank and financial services company, from 2000 to 2002. Mr. Levy holds a B.A. from Dartmouth College.

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## **About Merrimack**

Merrimack Pharmaceuticals, Inc. is a biopharmaceutical company based in Cambridge, Massachusetts that is entitled to receive up to \$455.0 million in contingent milestone payments related to its sale of ONIVYDE® to Ipsen S.A. in April 2017 and up to \$54.5 million in contingent milestone payments related to its sale of anti-HER3 programs to 14ner Oncology, Inc. in July 2019. The Company is seeking potential acquirers for its remaining preclinical and clinical assets.

## **Investor Contact**

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## **Important Additional Information**

The Company, its directors and certain of its executive officers are participants in the solicitation of proxies from the Company's shareholders in connection with the Company's 2019 Annual Meeting of Stockholders (the "2019 Annual Meeting"). The Company intends to file a definitive proxy statement and WHITE proxy card with the U.S. Securities and Exchange Commission (the "SEC") in connection with any such solicitation of proxies from the Company's shareholders. **SHAREHOLDERS OF THE COMPANY ARE STRONGLY ENCOURAGED TO READ SUCH PROXY STATEMENT, ACCOMPANYING WHITE PROXY CARD AND ALL OTHER DOCUMENTS FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE AS THEY WILL CONTAIN IMPORTANT INFORMATION.** The Company's preliminary proxy statement for the 2019 Annual Meeting contains information regarding the direct and indirect interest, by securities holdings or otherwise, of the Company's directors and executive officers in the Company's securities. If the holdings of the Company's securities change from the amounts provided in the Company's preliminary proxy statement for the 2019 Annual Meeting, such changes will be set forth in SEC filings on Forms 3, 4, and 5, which can be found through the Company's website at [www.merrimack.com](http://www.merrimack.com) in the "Investors" section under "SEC Filings" or through the SEC's website at [www.sec.gov](http://www.sec.gov). Information can also be found in the Company's other SEC filings, including the Company's definitive proxy statement for the 2018 Annual Meeting of Shareholders and its Annual Report on Form 10-K for the year ended December 31, 2018. Updated information regarding the identity of potential participants, and their direct or indirect interests, by security holdings or otherwise, will be set forth in the definitive proxy statement and other materials to be filed with the SEC in connection with the 2019 Annual Meeting. Shareholders will be able to obtain the definitive proxy statement, any amendments or supplements to the proxy statement and other documents filed by the Company with the SEC at no charge at the SEC's website at [www.sec.gov](http://www.sec.gov). Copies will also be available at no charge at the Company's website at [www.merrimack.com](http://www.merrimack.com) in the "Investors" section under "SEC Filings."



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**Forward-Looking Statements**

To the extent that statements contained in this press release are not descriptions of historical facts, they are forward-looking statements reflecting the current beliefs and expectations of management made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, as amended. Forward-looking statements include any statements about Merrimack's strategy, future operations, future financial position, future revenues and future expectations and plans and prospects for Merrimack, and any other statements containing the words "anticipate," "believe," "estimate," "expect," "intend," "may," "plan," "predict," "project," "target," "potential," "will," "would," "could," "should," "continue" and similar expressions. In this press release, Merrimack's forward-looking statements include, among others, statements about the declared special cash dividend, the sufficiency of Merrimack's cash resources and Merrimack's strategic plan, including the potential distribution of additional cash. Such forward-looking statements involve substantial risks and uncertainties that could cause Merrimack's future results, performance or achievements to differ significantly from those expressed or implied by the forward-looking statements. Such risks and uncertainties include, among others, risks related to the actions of JFL Capital Management LLC and other activist stockholders, expectations for achievement of contractual milestones and the availability of funding sufficient for Merrimack's foreseeable and unforeseeable operating expenses and capital expenditure requirements. Merrimack undertakes no obligation to update or revise any forward-looking statements. Forward-looking statements should not be relied upon as representing Merrimack's views as of any date subsequent to the date hereof. For a further description of the risks and uncertainties that could cause actual results to differ from those expressed in these forward-looking statements, as well as risks relating to Merrimack's business in general, see the "Risk Factors" section of Merrimack's Quarterly Report on Form 10-Q filed with the SEC on July 17, 2019 and the other reports Merrimack files with the SEC.