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): April 29, 2024

Deciphera Pharmaceuticals, Inc.
(Exact name of registrant as specified in its charter)

Delaware	001-38219	30-1003521
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

200 Smith Street, Waltham, Massachusetts	02451
(Address of principal executive offices)	(Zip code)

Registrant's telephone number, including area code: (781) 209-6400

(Former name or former address, if changed from last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 203.425)

☐ 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 Exchange Act:

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, $0.01 Par Value	DCPH	Nasdaq Global Select Market

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

Emerging growth company ☐

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

Item 1.01. Entry into a Material Definitive Agreement.

On April 29, 2024, Deciphera Pharmaceuticals, Inc., a Delaware corporation (the "Company" or "Deciphera"), Ono Pharmaceutical Co., Ltd., a Japanese company (*kabushiki kaishi*) ("Parent" or "Ono"), and Topaz Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), entered into an Agreement and Plan of Merger (the "Merger Agreement"). Pursuant to the Merger Agreement, and upon the terms and subject to the conditions therein, Merger Sub will commence a cash tender offer (the "Offer") to acquire all of the issued and outstanding shares of the common stock, par value $0.01 per share, of the Company ("Company Common Stock"), at a price per share of $25.60, net to the seller in cash, without interest and subject to any withholding of taxes required by applicable law. The Offer will initially expire at one minute after 11:59 p.m. Eastern Time on the date that is 20 business days following the commencement of the Offer, subject to extension under certain circumstances.

Merger Sub's obligation to accept for payment shares of Company Common Stock validly tendered pursuant to the Offer is subject to the satisfaction or waiver of certain conditions set forth in the Merger Agreement, including that (i) there shall have been validly tendered and not validly withdrawn at or prior to the expiration of the Offer that number of shares of Company Common Stock that, considered together with all other shares of Company Common Stock (if any) beneficially owned by Parent and its controlled affiliates (excluding any shares of Company Common Stock tendered pursuant to guaranteed delivery procedures that have not yet been "received" (as such term is defined in Section 251(h)(6)(f) of the General Corporation Law of the State of Delaware ("DGCL")), represent one more than 50% of the total number of shares of Company Common Stock outstanding at the expiration of the Offer; (ii) the waiting period (and any extension thereof) applicable to consummation of the transactions contemplated by the Merger Agreement under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, has expired or been terminated; (iii) no governmental entity of competent and applicable jurisdiction shall have enacted, issued, promulgated, enforced or entered any order or law that is in effect and restrains, enjoins or otherwise prohibits or makes illegal consummation of the Offer or the Merger (as defined below); (iv) the representations and warranties of the Company contained in the Merger Agreement shall be accurate, subject to customary materiality thresholds and exceptions; (v) the Company shall have performed or complied in all material respects with its covenants and agreements contained in the Merger Agreement; (vi) there shall not have occurred, and be continuing at the expiration time of the Offer, a Company Material Adverse Effect (as defined in the Merger Agreement); and (vii) other customary conditions set forth in Annex I of the Merger Agreement.

Following the consummation of the Offer, subject to the conditions set forth in the Merger Agreement, and in accordance with the DGCL, Merger Sub will merge with and into the Company, with the Company continuing as the surviving corporation (the "Merger"). The Merger will be governed by Section 251(h) of the DGCL, with no stockholder vote required to consummate the Merger.

Pursuant to the Merger Agreement, at the effective time of the Merger (the "Effective Time"), by virtue of the Merger and without any action on the part of any holder of shares of Company Common Stock, each share of Company Common Stock (other than shares of Company Common Stock (a) held in the treasury of the Company, (b) that at the commencement of the Offer were owned by Parent or Merger Sub or any of their direct or indirect subsidiaries, (c) irrevocably accepted for payment by Merger Sub in the Offer, or (d) with respect to which the holders thereof have properly exercised and perfected demands for appraisal of such shares in accordance with Section 262 of the DGCL) will be automatically canceled and converted into the right to receive $25.60 in cash, without interest (the "Merger Consideration").

In addition, immediately prior to the Effective Time, by virtue of the Merger and without any action on the part of any holder thereof, (i) each stock option of the Company (a "Company Option"), whether vested or unvested, that is outstanding and unexercised immediately prior to the Effective Time and has a per share exercise price that is less than the Merger Consideration shall fully vest, be cancelled and automatically converted into the right to receive for each share of Company Common Stock underlying such Company Option, without interest and subject to deduction for any required withholding under applicable tax law, an amount in cash from Parent or the surviving corporation equal to the excess of the Merger Consideration over the per share exercise price of such Company Option, (ii) each outstanding restricted stock unit of the Company that is subject to time-based vesting conditions that is outstanding immediately prior to the Effective Time, whether vested or unvested, shall fully vest, be cancelled and automatically converted into the right to receive, without interest and subject to deduction for any required withholding under

applicable tax law, an amount in cash from Parent or the surviving corporation equal to (A) the number of shares of Company Common Stock underlying such restricted stock unit of the Company, multiplied by (B) the Merger Consideration, and (iii) each outstanding restricted stock unit of the Company whose vesting is conditioned in full or in part based on achievement of performance goals or metrics that is outstanding immediately prior to the Effective Time, whether vested or unvested, shall fully vest, be cancelled and automatically converted into the right to receive, without interest and subject to deduction for any required withholding under applicable tax law, an amount in cash from Parent or the surviving corporation equal to (A) the number of shares of Company Common Stock underlying such restricted stock unit of the Company, multiplied by (B) the Merger Consideration.

The Merger Agreement includes customary representations, warranties and covenants of the Company, Parent and Merger Sub for a transaction of this nature, including covenants regarding the operation of the Company's business prior to the Effective Time.

The Company has agreed to customary restrictions on its ability to solicit alternative acquisition proposals from third parties and engage in discussions or negotiations with third parties regarding acquisition proposals. Notwithstanding these restrictions, the Company may under certain circumstances provide information to and participate in discussions or negotiations with third parties with respect to a bona fide, written acquisition proposal that the board of directors of the Company (the "Company Board") has determined constitutes or could reasonably be expected to lead to a Superior Proposal (as such term is defined in the Merger Agreement).

The Merger Agreement also provides that, in connection with the termination of the Merger Agreement under specified circumstances, including termination by the Company to accept and enter into an agreement with respect to a Superior Proposal, the Company will be required to pay Parent a termination fee in the amount of $78.8 million.

The Company Board has unanimously (i) approved, adopted and declared advisable the Merger Agreement and the transactions contemplated thereby, including the Offer and the Merger, (ii) determined that the transactions contemplated by the Merger Agreement, including the Offer and the Merger, are in the best interests of the Company and its stockholders, (iii) determined that the Merger will be effected under Section 251(h) of the DGCL, and (iv) resolved to recommend that the stockholders of the Company accept the Offer and tender their shares of Company Common Stock to Merger Sub pursuant to the Offer.

In connection with the execution of the Merger Agreement, certain stockholders of the Company who collectively beneficially own approximately 28% of the outstanding shares of Company Common Stock entered into Tender and Support Agreements (the "Tender and Support Agreements") with Parent and Merger Sub. The Tender and Support Agreements provide, among other things, that each applicable stockholder will tender all of the shares of Company Common Stock held by such stockholder to Merger Sub in the Offer. The Tender and Support Agreements will terminate upon certain events, including upon any valid termination of the Merger Agreement.

The foregoing description of the Merger Agreement is not complete and is qualified in its entirety by reference to the full text of the Merger Agreement, which is attached as Exhibit 2.1 to this report and incorporated herein by reference.

The Merger Agreement and the foregoing description thereof have been included to provide investors and stockholders with information regarding the terms of the Merger Agreement. They are not intended to provide any other factual information about the Company or Parent. The representations, warranties and covenants contained in the Merger Agreement were made only as of specified dates for the purposes of such agreement, were solely for the benefit of the parties to such agreement and may be subject to qualifications and limitations agreed upon by such parties. In particular, in reviewing the representations, warranties and covenants contained in the Merger Agreement and discussed in the foregoing description, it is important to bear in mind that such representations, warranties and covenants were negotiated with the principal purpose of allocating risk between the parties, rather than establishing matters as facts. Such representations, warranties and covenants may also be subject to a contractual standard of materiality different from those generally applicable to stockholders and reports and documents filed with the U.S. Securities and Exchange Commission (the "SEC"), and are also qualified in important part by a confidential disclosure schedule delivered by the Company to Parent in connection with the Merger Agreement. Investors and stockholders should not rely on such representations, warranties and covenants as characterizations of the actual state of facts or circumstances described therein. Information concerning the subject matter of such representations, warranties and covenants may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in the parties' public disclosures.

Item 8.01. Other Information.

On April 29, 2024, the Company issued a press release announcing the execution of the Merger Agreement. A copy of this press release is filed herewith as Exhibit 99.1.

Cautionary Note Regarding Forward-Looking Statements

This document contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, as amended, including, without limitation, statements regarding the proposed acquisition of Deciphera by Ono, the expected timetable for completing the transaction, Deciphera's future financial or operating performance, the expectations and timing regarding the potential for Deciphera's preclinical and/or clinical stage pipeline assets to be first-in-class and/or best-in-class treatments, and the ability of Deciphera to become a company with multiple approved medicines. The words "may," "will," "could," "would," "should," "expect," "plan," "anticipate," "intend," "believe," "estimate," "predict," "project," "potential," "continue," "seek," "target" and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. Any forward-looking statements in this document are based on management's current expectations and beliefs and are subject to a number of risks, uncertainties and important factors that may cause actual events or results to differ materially from those expressed or implied by any forward-looking statements contained in this press release, including, without limitation: (i) risks associated with the timing of the closing of the proposed transaction, including the risks that a condition to closing would not be satisfied within the expected timeframe or at all or that the closing of the proposed transaction will not occur; (ii) uncertainties as to how many of Deciphera's stockholders will tender their shares in the offer; (iii) the possibility that a governmental entity may prohibit, delay or refuse to grant approval for the consummation of the transaction; (iv) the possibility that competing offers will be made; (v) the outcome of any legal proceedings that may be instituted against the parties and others related to the merger agreement; (vi) unanticipated difficulties or expenditures relating to the proposed transaction, the response of business partners and competitors to the announcement of the proposed transaction, and/or potential difficulties in employee retention as a result of the announcement and pendency of the proposed transaction; (vii) Deciphera's ability to successfully demonstrate the efficacy and safety of its drug or drug candidates, and the preclinical or clinical results for its product candidates, which may not support further development of such product candidates; (viii) comments, feedback and actions of regulatory agencies; (ix) Deciphera's ability to commercialize QINLOCK® and execute on its marketing plans for any drugs or indications that may be approved in the future; (x) the inherent uncertainty in estimates of patient populations, competition from other products, Deciphera's ability to obtain and maintain reimbursement for any approved product and the extent to which patient assistance programs are utilized; and (xi) other risks identified in Deciphera's SEC filings, including Deciphera's Annual Report on Form 10-K for the year ended December 31, 2023, and subsequent filings with the SEC. Deciphera cautions you not to place undue reliance on any forward-looking statements, which speak only as of the date they are made. Deciphera disclaims any obligation to publicly update or revise any such statements to reflect any change in expectations or in events, conditions or circumstances on which any such statements may be based, or that may affect the likelihood that actual results will differ from those set forth in the forward-looking statements.

Additional Information and Where to Find It

The tender offer referred to in this document has not yet commenced. This document is for informational purposes only and is neither an offer to purchase nor a solicitation of an offer to sell shares, nor is it a substitute for the tender offer materials that Parent or Merger Sub will file with the SEC upon commencement of the tender offer. At the time the tender offer is commenced, Ono and its acquisition subsidiary will cause to be filed a tender offer statement on Schedule TO with the SEC, and Deciphera will file a solicitation/recommendation statement on Schedule 14D-9

with respect to the tender offer. THE TENDER OFFER STATEMENT (INCLUDING AN OFFER TO PURCHASE, A RELATED LETTER OF TRANSMITTAL AND OTHER OFFER DOCUMENTS) AND THE SOLICITATION/RECOMMENDATION STATEMENT WILL CONTAIN IMPORTANT INFORMATION THAT SHOULD BE READ CAREFULLY AND CONSIDERED BY DECIPHERA'S STOCKHOLDERS BEFORE ANY DECISION IS MADE WITH RESPECT TO THE TENDER OFFER. Both the tender offer statement and the solicitation/recommendation statement will be mailed to Deciphera's stockholders free of charge. A free copy of the tender offer statement and the solicitation/recommendation statement will also be made available to all stockholders of Deciphera by accessing www.deciphera.com or by contacting Investor Relations at deciphera@argotpartners.com. In addition, the tender offer statement and the solicitation/recommendation statement (and all other documents filed with the SEC) will be available at no charge on the SEC's website: www.sec.gov, upon filing with the SEC.

DECIPHERA'S STOCKHOLDERS ARE ADVISED TO READ THE SCHEDULE TO AND THE SCHEDULE 14D-9, AS EACH MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME, AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SEC WHEN THEY BECOME AVAILABLE BEFORE THEY MAKE ANY DECISION WITH RESPECT TO THE TENDER OFFER, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION AND THE PARTIES THERETO.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
2.1*	Agreement and Plan of Merger, dated as of April 29, 2024, by and among Ono Pharmaceutical Co., Ltd., Topaz Merger Sub, Inc. and Deciphera Pharmaceuticals, Inc.
99.1	Press Release issued by Deciphera Pharmaceuticals, Inc. on April 29, 2024
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

* Schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to furnish supplemental copies of any of the omitted schedules upon request by the SEC; provided, however, that the Company may request confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934 for any schedules so furnished.

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.

DECIPHERA PHARMACEUTICALS, INC.

Date: April 29, 2024

By: /s/ Steven L. Hoerter
Name: Steven L. Hoerter
Title: President and Chief Executive Officer

Exhibit 2.1

AGREEMENT AND PLAN OF MERGER

by and among

ONO PHARMACEUTICAL CO., LTD.,

TOPAZ MERGER SUB, INC.

and

DECIPHERA PHARMACEUTICALS, INC.

Dated as of April 29, 2024

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "**Agreement**") is made and entered into as of April 29, 2024, by and among: ONO PHARMACEUTICAL CO., LTD., a Japanese company (*kabushiki kaishi*) ("**Parent**"); TOPAZ MERGER SUB, INC., a Delaware corporation and a wholly owned subsidiary of Parent ("**Merger Sub**"); and DECIPHERA PHARMACEUTICALS, INC., a Delaware corporation (the "**Company**"). Certain capitalized terms used in this Agreement are defined in Section 1.1.

RECITALS

A. The Company's outstanding capital stock consists of shares of common stock, par value $0.01 per share, of the Company ("**Company Common Stock**").

B. Upon the terms and subject to the conditions of this Agreement, Merger Sub has agreed to commence a cash tender offer (as it may be extended and amended from time to time as permitted under this Agreement, the "**Offer**") to acquire all of the issued and outstanding shares of Company Common Stock for $25.60 per share of Company Common Stock (such amount, or any different amount per share paid pursuant to the Offer to the extent permitted under this Agreement, being the "**Offer Price**"), net to the seller in cash, without interest.

C. As soon as practicable following the consummation of the Offer, upon the terms and subject to the conditions set forth herein and in accordance with the General Corporation Law of the State of Delaware (the "**DGCL**"), Merger Sub will be merged with and into the Company (the "**Merger**") with the Company as the surviving corporation (the "**Surviving Corporation**"), whereby each share (except as otherwise provided herein) of Company Common Stock not owned directly or indirectly by Parent, Merger Sub or the Company will be converted into the right to receive the Offer Price, net to the seller in cash, without interest.

D. The parties acknowledge and agree that the Merger will be effected under Section 251(h) of the DGCL and will be effected as soon as practicable following the consummation of the Offer and subject to the terms of this Agreement.

E. The Board of Directors of the Company (the "**Company Board**") has (i) approved, adopted and declared advisable this Agreement and the Transactions, including the Offer and the Merger, (ii) determined that the Transactions, including the Offer and the Merger, are in the best interests of the Company and its stockholders, (iii) determined that the Merger will be effected under Section 251(h) of the DGCL, and (iv) resolved to recommend that the stockholders of the Company accept the Offer and tender their shares of Company Common Stock to Merger Sub pursuant to the Offer.

F. The Board of Directors of Parent has, on the terms and subject to the conditions set forth herein, approved, adopted and declared advisable this Agreement and the Transactions, including the Offer and the Merger.

G. The Board of Directors of Merger Sub has declared that, on the terms and subject to the conditions set forth herein, this Agreement and the Transactions, including the Offer and the Merger, are advisable and in the best interests of Merger Sub and its sole stockholder, and has approved and adopted this Agreement and the Transactions, including the Offer and the Merger.

H. As a condition and inducement to the willingness of Parent and Merger Sub to enter into this Agreement, substantially concurrently with the execution and delivery of this Agreement, certain of the Company's stockholders are entering into a tender and support agreement with Parent and Merger Sub (the "**Support Agreement**") pursuant to which, among other things, each such stockholder has agreed to tender all of its shares of Company Common Stock to Merger Sub in the Offer.

AGREEMENT

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

ARTICLE 1
DEFINITIONS

Section 1.1. Definitions.

(a) As used herein, the following terms have the following meanings:

"**Acceptable Confidentiality Agreement**" means a confidentiality agreement containing confidentiality and non-use terms not materially less restrictive to the counterparty thereto than the terms of the Confidentiality Agreement (it being agreed that such confidentiality agreement need not prohibit the making of an Acquisition Proposal or otherwise contain any standstill or similar provision) and does not prohibit any Acquired Company from providing any information to Parent in accordance with Section 6.2. Notwithstanding the foregoing, a Person who has previously entered into a confidentiality agreement with the Company shall not be required to enter into a new or revised confidentiality agreement, and such existing confidentiality agreement shall be deemed to be an Acceptable Confidentiality Agreement for all purposes of this Agreement to the extent such existing confidentiality agreement would otherwise satisfy the definition hereof.

"**Acceptance Time**" means the first time at which Merger Sub irrevocably accepts for payment any shares of Company Common Stock tendered pursuant to the Offer.

"**Acquired Companies**" means the Company and its Subsidiaries, collectively.

"**Acquisition Inquiry**" means an inquiry, indication of interest or request for information from a Third Party that would reasonably be expected to result in an Acquisition Proposal.

"**Acquisition Proposal**" means any proposal or offer from a Third Party relating to (i) the acquisition of twenty percent (20%) or more of the outstanding shares of Company Common Stock by any Third Party, (ii) any merger, consolidation, business combination, reorganization, sale of assets, recapitalization, liquidation, dissolution or other similar transaction that would result in any Third Party acquiring assets (including capital stock of or interest in any Subsidiary of the Company) representing, directly or indirectly, twenty percent (20%) or more of the fair market value of the assets of the Acquired Companies, taken as a whole, or to which twenty percent (20%)

of the Company's revenues are attributable, (iii) any tender offer or exchange offer, as such terms are defined under the Exchange Act, that, if consummated, would result in any Third Party beneficially owning twenty percent (20%) or more of the outstanding shares of Company Common Stock (or instruments convertible into or exchangeable for twenty percent (20%) or more of such outstanding shares), (iv) any merger, consolidation, business combination, reorganization, recapitalization, liquidation, dissolution or other similar transaction involving the Company that, if consummated, would result in the stockholders of the Company immediately preceding such transaction holding, directly or indirectly, equity interests in the surviving or resulting Entity of such transaction representing less than eighty percent (80%) of the voting power of the surviving or resulting Entity, or (v) any combination of the foregoing.

"**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person. As used in this definition, the term "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with") means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" means this Agreement and Plan of Merger, together with Annex I, as such Agreement and Plan of Merger (including Annex I) may be amended from time to time.

"**Antitrust Laws**" means the Sherman Antitrust Act of 1890, the Clayton Antitrust Act, the HSR Act, the Federal Trade Commission Act of 1914 and all other applicable federal, state, local or foreign antitrust, competition, premerger notification or trade regulation Laws or Orders.

"**Business Day**" means a day other than a Saturday, Sunday or other day on which banking institutions in New York, New York are authorized or obligated by applicable Law to close.

"**CFIUS**" means the Committee on Foreign Investment in the United States and each member agency thereof, acting in such capacity.

"**Code**" means the U.S. Internal Revenue Code of 1986, as amended.

"**Collective Bargaining Agreement**" means any written or oral agreement, memorandum of understanding or other Contractual obligations with any labor organization or other authorized employee representative.

"**Company Benefit Plan**" means (i) each "employee benefit plan," as defined in Section 3(3) of ERISA (whether or not subject to ERISA), (ii) each employment, severance, change in control or similar contract, plan, arrangement, policy or guidelines, and (iii) each other material plan or arrangement providing for compensation (including variable cash compensation and commissions), bonuses, profit-sharing, stock option or other stock-related rights or other forms of incentive or deferred compensation, insurance, health or medical benefits, employee assistance program, disability or sick leave benefits, supplemental unemployment benefits, severance benefits and post-employment or retirement benefits (including compensation, pension, health, medical or life insurance benefits), which, in each case of clauses (i) through (iii), is maintained, administered or contributed to by the Acquired Companies or with respect to which any Acquired Company has any liability, including with respect to any ERISA Affiliate, other than any contracts, plans, arrangements, policies or guidelines that are statutorily mandated in non-U.S. jurisdictions.

"**Company Bylaws**" means the Amended and Restated By-Laws of the Company, as in effect as of the date hereof, including any amendments thereto.

"**Company Certificate of Incorporation**" means the Company's Amended and Restated Certificate of Incorporation, as in effect as of the date hereof, including any amendments thereto.

"**Company Compensatory Award**" means each Company Option, Company RSU and Company PSU.

"**Company Disclosure Schedule**" means the Company Disclosure Schedule dated the date hereof and delivered by the Company to Parent prior to or simultaneously with the execution of this Agreement.

"**Company Equity Incentive Plans**" means the Company's 2015 Equity Incentive Plan, 2017 Stock Option and Incentive Plan and 2022 Inducement Plan, including, in each case, any amendments thereto.

"**Company ESPP**" means the Company's 2017 Employee Stock Purchase Plan, including any amendments thereto.

"**Company Inbound License**" means any Contract to which any of the Acquired Companies is granted a license or obtains any other right or immunity (including any sublicense, option, right of first refusal or preferential right or covenant not to be sued) under any Intellectual Property of another Person (other than an Affiliate of the Company) that is material to the business of the Acquired Companies taken as a whole, other than (i) agreements between any Acquired Company and its employees or consultants in the Acquired Company's standard form thereof, (ii) agreements for any Third Party non-customized commercially available software, and (iii) non-disclosure agreements entered into in the ordinary course of business.

"**Company Intellectual Property**" means all Intellectual Property owned or purported to be owned solely or jointly by the Acquired Companies and used or held for use by the Acquired Companies in the operation of the business of the Acquired Companies as currently conducted with respect to the Company Products.

"**Company IT Assets**" mean computers, computer software, firmware, middleware, servers, workstations, routers, hubs, switches, data communications lines and all other information technology equipment owned by any Acquired Company or licensed or leased to any Acquired Company (excluding any public networks) and used by the Acquired Companies in the operation of the business of the Acquired Companies as currently conducted with respect to the Company Products.

"**Company Material Adverse Effect**" means, with respect to the Company, any Effect that, individually or in the aggregate with all other Effects, (a) has or would reasonably be expected to have a material adverse effect on the business, assets, condition (financial or otherwise) or results of operations of the Acquired Companies taken as a whole, or (b) would reasonably be

expected to prevent or materially delay the Company from consummating the Offer and the Merger; *provided* that in no event shall any of the following (alone or in combination), or any Effect to the extent arising out of or resulting from any of the following (alone or in combination), be taken into account in determining whether a Company Material Adverse Effect has occurred or may, would or could occur:

(i) changes in the Company's stock price or trading volume (*provided* that the exception in this clause (i) shall not prevent or otherwise affect a determination that any Effect underlying such change has resulted in, or contributed to, a Company Material Adverse Effect);

(ii) any failure by the Company to meet, or changes to, published or internal estimates, projections, expectations, budgets, guidance, milestones, or forecasts of revenue, expenses, earnings or loss, cash burn-rate, cash flow, cash position or any other financial or performance measures or operating statistics (whether made by the Company or any Third Parties) (*provided* that the exception in this clause (ii) shall not prevent or otherwise affect a determination that any Effect underlying such failure or change has resulted in, or contributed to, a Company Material Adverse Effect);

(iii) any continued losses from operations or decreases in the cash balances of the Acquired Companies (*provided* that the exception in this clause (iii) shall not prevent or otherwise affect a determination that any Effect underlying such loss or decrease has resulted in, or contributed to, a Company Material Adverse Effect);

(iv) conditions in the financial, credit, banking, capital or currency markets in the United States or any other country or region in the world, or changes therein, including (A) changes in interest rates in the United States or any other country and changes in exchange rates for the currencies of any countries, (B) any suspension of trading in securities (whether equity, debt, derivative or hybrid securities) generally on any securities exchange or over-the-counter market operating in the United States or any other country or region in the world, or (C) inflation or any changes in the rate of increase or decrease of inflation;

(v) general conditions in any industry in which the Acquired Companies operate or in any specific jurisdiction or geographical area in the United States or elsewhere in the world, or changes therein;

(vi) political conditions in the United States (including a government shutdown) or any other country or region in the world, or changes therein;

(vii) acts of hostilities, war, sabotage, terrorism or military actions (including any outbreak, escalation or general worsening of any such acts of hostilities, war, sabotage, terrorism or military actions) in the United States or any other country or region in the world, including any acts of war or hostilities or sanctions imposed in connection with the current disputes involving (A) the Russian Federation and Ukraine or (B) Israel, Hamas, Lebanon, Syria, Iran and any other state or non-state actors involved;

(viii) earthquakes, hurricanes, tsunamis, tornadoes, floods, mudslides, wild fires, weather conditions, epidemics, pandemics (including COVID-19, any COVID-19 Measures, and any precautionary or emergency measures, recommendations, protocols or Orders taken or issued by any Person in response to COVID-19), quarantines, plagues, other outbreaks of illness or public health events or other natural or man-made disasters or acts of God in the United States or any other country or region in the world, or any escalation of the foregoing;

(ix) the negotiation, execution, announcement or performance of this Agreement or the pendency or consummation of the Transactions, or the identity of Parent or any of its Affiliates as the acquiror of the Company (or any facts and circumstances concerning Parent or any of its Affiliates), including the impact of any of the foregoing on the relationships, contractual or otherwise, of the Acquired Companies with employees, customers, investors, contractors, lenders, suppliers, vendors, partners, licensors, licensees, payors, Governmental Entities or other Third Parties;

(x) (A) any action taken at the written request of Parent or Merger Sub, (B) any action taken that is required by this Agreement, or (C) failure to take any action prohibited by this Agreement; *provided* that Parent's consent was sought in respect of such specific action and to the extent not consented to by Parent;

(xi) (A) changes or proposed changes in Law or other legal or regulatory conditions (or the enforcement or interpretation of any of the foregoing), including the adoption, implementation, repeal, modification, reinterpretation or proposal of any Law or policy (or the enforcement or interpretation thereof) by any Governmental Entity, or any panel or advisory body empowered or appointed thereby or (B) any Effect arising out of or resulting from the Inflation Reduction Act of 2022, or any changes or proposed changes to such Law;

(xii) changes or proposed changes in GAAP or other accounting standards (or the enforcement or interpretation of any of the foregoing);

(xiii) the availability or cost of equity, debt or other financing to Parent, Merger Sub or the Surviving Corporation;

(xiv) any Transaction Litigation or any demand or Legal Proceeding for appraisal of the fair value of any shares of Company Common Stock pursuant to the DGCL in connection herewith;

(xv) except to the extent of any fraud, wrongdoing or willful misconduct by the Company that is or has been the proximate cause of, or resulted in, such Effects, regulatory, preclinical or clinical, competitive, pricing, reimbursement, supply or manufacturing Effects relating to or affecting any products or product candidates of the Company or any product or product candidate competitive with or related to any products or product candidates of the Company, including (A) any suspension, rejection, refusal of, request to refile or any delay in obtaining, making or maintaining any regulatory application, filing or approval relating to any products or product candidates of the Company, (B) any regulatory actions, requests, recommendations, determinations or decisions of any Governmental Entity relating to any products or product candidates of the Company or any product or product candidate competitive with or related to any products or product candidates of the Company (or the manufacture, commercialization or sale thereof), (C) any delay, hold or termination of any preclinical or clinical study, trial or test with respect to any products or product candidates of the Company, any delay,

hold or termination of any planned application for marketing or pricing approval with respect to any products or product candidates of the Company, or any delay in launching commercial sales of any products or product candidates of the Company in any jurisdiction, (D) any results, outcomes, data, adverse events, side effects (including toxicity) or safety observations (including increased incidence or severity of any of the foregoing) related to or arising from any preclinical or clinical studies, trials or tests or otherwise with respect to any products or product candidates of the Company or any product or product candidate competitive with or related to any products or product candidates of the Company, or announcements of any of the foregoing, (E) approval by the FDA or another Governmental Entity, market entry or threatened market entry of any product or product candidate competitive with or related to any products or product candidates of the Company, (F) any adverse events affecting patient enrollment or failure to participate with respect to clinical trials for any products or product candidates of the Company, (G) any production or supply chain disruption affecting the manufacture of any products or product candidates of the Company, (H) any delay, hold or termination of approval with respect to the manufacture, processing, packing or testing of any products or product candidates of the Company or with respect to any manufacturing facilities, or (I) any recommendations, statements, decisions or other pronouncements made, published or proposed by professional medical organizations, payors, Governmental Entities or representatives of any of the foregoing, or any panel or advisory body empowered or appointed thereby, relating to any products or product candidates of the Company or any product or product candidate competitive with or related to any products or product candidates of the Company;

(xvi) any computer hacking, data breaches, ransom-ware, cybercrime or cyberterrorism (including by a nation-state or nation state-sponsored threat actor) affecting or impacting the Acquired Companies; or

(xvi) any item or matter set forth in the Company Disclosure Schedule;

provided that, in each of the foregoing clauses (iv), (v), (vi), (vii), (viii), (xi) and (xii), such Effects referred to therein may be taken into account to the extent that the Acquired Companies, taken as a whole, are materially disproportionally affected relative to other similarly-situated companies in the industry in which the Acquired Companies operate, in which case only the incremental materially disproportionate impact or impacts may be taken into account in determining whether or not there has been a Company Material Adverse Effect.

"**Company Options**" means outstanding options (whether vested or unvested) to purchase shares of Company Common Stock from the Company, whether granted pursuant to the Company Equity Incentive Plans or otherwise (other than the Company ESPP).

"**Company Outbound License**" means any Contract to which any of the Acquired Companies grants a license or any other right or immunity (including any sublicense, option, right of first refusal or preferential right or covenant not to be sued) to or under any Company Intellectual Property that is material to the business of the Acquired Companies taken as a whole, in each case, other than any outbound agreements entered into in the ordinary course of business consistent with past practice where any grant of rights to use any Company Intellectual Property is incidental to the performance under such agreements.

"**Company Product**" means QINLOCK®, vimseltinib and DCC-3116.

"**Company PSU**" means each outstanding restricted stock unit of the Company issued pursuant to the Company Equity Incentive Plans whose vesting is conditioned in full or in part based on achievement of performance goals or metrics.

"**Company RSU**" means each outstanding unsettled restricted stock unit of the Company that is subject to time-based vesting conditions issued pursuant to the Company Equity Incentive Plans, other than Company PSUs.

"**Company Warrants**" means outstanding warrants to purchase shares of Company Common Stock originally issued by the Company on April 29, 2022.

"**Confidentiality Agreement**" means that certain confidentiality agreement between the Company and Parent, dated as of March 8, 2024.

"**Contract**" means any written legally binding agreement, contract, subcontract, lease, instrument, bond, mortgage, indenture, license or sublicense, or other legally binding commitment.

"**COVID-19**" means the coronavirus (COVID-19) pandemic, including any evolutions or mutations of the coronavirus (COVID-19) disease, and any related or associated epidemics, pandemics or disease outbreaks.

"**COVID-19 Measures**" means any quarantine, "shelter in place", "stay at home", workforce reduction, social distancing, shut down, closure, sequester, safety or similar Law, directive, protocols or guidelines promulgated by any Governmental Entity, including the Centers for Disease Control and Prevention and the World Health Organization, in each case, in connection with or in response to COVID-19, including the Coronavirus Aid, Relief and Economic Security Act, as may be amended, and the Families First Coronavirus Response Act, as may be amended.

"**Debt Financing Sources**" shall mean the Persons that have committed to provide or arrange any Debt Financing or Alternative Financing contemplated by this Agreement in connection with the Transactions contemplated by this Agreement, including the loan commitment parties named in the Debt Commitment Letter and any joinder agreements or credit agreements entered into pursuant thereto or relating thereto.

"**Effect**" means any event, change, effect, occurrence or development.

"**Encumbrance**" means any lien, mortgage, pledge, deed of trust, security interest, charge, lease, encumbrance (including easements, restrictions, covenants, options, rights of first refusal, or other similar items, whether or not of record) or other similar adverse claim or interest.

"**Entity**" means any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any company limited by shares, limited liability company or joint stock company), firm, society or other enterprise, association, organization or entity (including any Governmental Entity).

"**Environmental Claims**" means any and all claims or Orders by any Governmental Entity or other Person alleging that any Acquired Company is in violation of, or has liability under, any Environmental Law.

"**Environmental Law**" means all applicable Laws concerning pollution or protection of the natural environment, including any such Law relating to the manufacture, handling, transport, use, treatment, storage, disposal or release of any Hazardous Materials.

"**Environmental Permits**" means all permits required to be obtained by the Acquired Companies under applicable Environmental Law in connection with their respective businesses as currently conducted.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"**ERISA Affiliate**" means any Entity, trade or business that is, or at any applicable time was, a member of a group described in Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes any Acquired Company.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Foreign Investment Laws**" means any applicable Laws, including any state, national or multi-jurisdictional Laws, that are designed or intended to prohibit, restrict or regulate actions by foreigners to acquire interests in domestic equities, securities, Entities, assets, land or interests.

"**GAAP**" means United States generally accepted accounting principles.

"**Governmental Entity**" means any applicable international, multinational, national, regional, federal, territorial, domestic, state or local governmental authority (including any government and any governmental agency, instrumentality, tribunal or commission, or any subdivision, department or branch of any of the foregoing) or body legally entitled to exercise any administrative, executive, judicial, legislative, regulatory or taxing authority or power of any nature.

"**Hazardous Materials**" means all hazardous, toxic, explosive or radioactive substances, wastes or other pollutants or contaminants regulated under Environmental Law, including petroleum or petroleum distillates, medical waste, asbestos and polychlorinated biphenyls.

"**Healthcare Laws**" means all healthcare Laws applicable to the business of the Company and its Subsidiaries as currently conducted, including the Federal Food, Drug, and Cosmetic Act, the federal Medicare and Medicaid statutes (Title XVIII and Title XIX of the Social Security Act), the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010, the Physician Payments Sunshine Act, the Federal Health Care Program Anti-Kickback Statute, the Medicare Exclusion Statute, the False Claims Act, the Program Fraud Civil Remedies Act, the Civil Monetary Penalties Law, Criminal Penalties For Acts Involving Federal Health Care Programs, the Stark Law (42 U.S.C. § 1395nn), Health Insurance Portability and Accountability Act, the Clinical Laboratory Improvement Amendments

of 1988, any applicable healthcare Laws relating to billing or claims for reimbursement submitted to any Governmental Health Program, any comparable federal, state, provincial or local Laws, state or provincial licensing, disclosure and reporting requirements, the Federal Trade Commission Act, any comparable foreign Laws for any of the foregoing and all regulations promulgated under such Laws.

"**HSR Act**" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"**Intellectual Property**" means any and all intellectual property rights throughout the world, including: (i) patents and patent applications, including all provisionals, nonprovisionals, continuations, continuations-in-part, divisionals, reissues, extensions, re-examinations, substitutions, and extensions thereof and the equivalents of any of the foregoing in any jurisdiction, and all inventions disclosed in each such patent or patent application (collectively, "**Patents**"); (ii) trade names, logos, slogans, Internet domain names, registered and unregistered trademarks and service marks and related registrations and applications for registration (collectively, "**Marks**"); (iii) copyrights in both published and unpublished works, including all compilations, databases and computer programs, manuals and other documentation and all copyright registrations and applications (collectively, "**Copyrights**"); (iv) rights under applicable trade secret Laws as are applicable to know-how, inventions (including as disclosed in invention disclosures and discoveries) and confidential information, including manufacturing information and processes, assays, engineering and other manuals and drawings, standard operating procedures, regulatory, chemical, pharmacological, toxicological, pharmaceutical, physical and analytical, safety, quality assurance, quality control and clinical data and similar data and information (collectively, "**Trade Secret Rights**"); and (v) the right to assert, claim or sue and collect damages for the past, present or future infringement, misappropriation or other violation of any of the foregoing.

"**IRS**" means the U.S. Internal Revenue Service.

"**Knowledge**", whether or not capitalized, or any similar expression used with respect to the Company, means the actual knowledge of those individuals listed in Section 1.1(a) of the Company Disclosure Schedule that each such individual would have reasonably obtained after making reasonable inquiry of the employees of the Company that report directly to such individual and would be reasonably likely to have knowledge of the particular matter in question.

"**Law**" means any statute, law (including common law), regulation, rule, ordinance or code issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity.

"**Leased Real Property**" means the leasehold or subleasehold interests and any other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interests in real property currently held by the Acquired Companies.

"**Legal Proceeding**" means any suit, claim, action, lawsuit, litigation, arbitration or other formal legal proceeding brought by or before any Governmental Entity or arbitrator or arbitration panel.

"**made available to Parent**" means that such information, document or material was: (i) publicly available on the SEC EDGAR database prior to the execution of this Agreement; (ii) delivered by or on behalf of the Company to Parent or Parent's representatives via electronic mail or in hard copy form prior to the execution of this Agreement; or (iii) made available for review by Parent or Parent's representatives prior to the execution of this Agreement in the virtual "data room" hosted by Donnelley Financial Solutions/Venue and maintained by the Company in connection with the Offer and the Merger.

"**Most Recent Balance Sheet**" means the audited consolidated balance sheet of the Company as of December 31, 2023 and the footnotes thereto set forth in the Company SEC Documents.

"**Nasdaq**" means The Nasdaq Global Select Market, or any successor thereto.

"**Order**" means any writ, judgment, injunction, consent, order or decree of or by any Governmental Entity.

"**Organizational Documents**" means, with respect to any Entity, (i) if such Entity is a corporation, such Entity's certificate or articles of incorporation, bylaws and similar organizational documents, (ii) if such Entity is a limited liability company, such Entity's certificate or articles of formation or organization and operating agreement or limited liability company agreement, and (iii) for any other form of Entity, the organizational documents of such Entity, in each case, as amended and/or amended and restated.

"**Parent Material Adverse Effect**" means, with respect to Parent, any Effect that, individually or taken together with all other Effects that have occurred prior to the date of determination of the occurrence of the Parent Material Adverse Effect, is or would be reasonably likely to prevent or materially delay the performance by Parent or Merger Sub of any of their respective obligations under this Agreement or the consummation of the Offer, the Merger or the other transactions contemplated by the Transaction Documents.

"**Parent Readily Available Funds**" means unrestricted cash of (and owned by) Parent that is maintained in deposit accounts of (and that are property of) Parent that, in each case, are not subject to any Encumbrances, and which cash has not been (a) sourced from (and is not direct or indirect proceeds of) any indebtedness or other obligation of (or incurred by) Parent, Merger Sub or any of their respective Affiliates, and (b) indexed or earmarked for any purpose other than for payment of the aggregate Offer Price and Merger Consideration.

"**Permit**" means any approval, authorization, consent, franchise, license, permit, waiver, exemption, registration, or certificate issued by any Governmental Entity.

"**Permitted Encumbrances**" means (i) Encumbrances disclosed on the Most Recent Balance Sheet, (ii) Encumbrances for Taxes, assessments and other governmental levies, fees or charges that are not yet due and payable, or that are being contested in good faith and for which appropriate reserves have been established in accordance with GAAP, (iii) mechanics, carriers, workmen, warehouseman, repairmen and materialmen liens and similar liens for labor, materials or supplies incurred in the ordinary course of business for amounts that are not yet due and

payable, or that are being contested in good faith and for which appropriate reserves have been established in accordance with GAAP, (iv) zoning, building codes and other land use Law regulating the use or occupancy of real property or the activities conducted thereon that are imposed by any Governmental Entity having jurisdiction over such real property that are not violated in any material respect by the use or occupancy of such real property in the operation of the business currently conducted thereon, (v) restrictions of record identifiable in any title reports obtained by or made available to Parent, or easements, covenants, conditions, restrictions, defects and other similar matters of record affecting title to real property that do not or would not, individually or in the aggregate, materially impair the use or occupancy of such real property in the operation of the business currently conducted thereon, (vi) non-exclusive rights or licenses of Intellectual Property entered in the ordinary course of business consistent with past practice, (vii) deposits or pledges to secure the payment of workers' compensation, unemployment insurance, social security benefits or obligations arising under similar Laws, or to secure the performance of public or statutory obligations, surety or appeal bonds, and other obligations of a like nature, in each case in the ordinary course of business and which are not yet due and payable, and (viii) other Encumbrances that do not materially and adversely affect the use or operation of the asset subject thereto.

"**Person**" means any individual, corporation, partnership (general or limited), limited liability company, limited liability partnership, trust, joint venture, joint stock company, syndicate, association, Entity, unincorporated organization or government, or any political subdivision, agency or instrumentality thereof.

"Personal Information" means data and information concerning an identifiable natural person that are subject to regulation by the Privacy Laws.

"Privacy Laws" mean Laws applicable to the Acquired Companies relating to data protection and/or the collection, use, storage, transfer (including cross-border), and disclosure of Personal Information, including U.S. federal, state, local, international (including the General Data Protection Regulation), health sectoral privacy (including the Health Insurance Portability and Accountability Act and the Health Information Technology for Economic and Clinical Health Act) and security breach notification Laws.

"**QINLOCK**" means ripretinib also known as QINLOCK®.

"Regulatory Approval" means all approvals by the FDA or another comparable Governmental Entity that are necessary for the commercial sale of QINLOCK in a given country or regulatory jurisdiction.

"**Sarbanes-Oxley Act**" means the Sarbanes-Oxley Act of 2002, and the rules and regulations promulgated thereunder.

"**SEC**" means the U.S. Securities and Exchange Commission.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Subsidiary**" of any Person means any corporation, partnership, limited liability company, joint venture or other legal Entity of which such Person (either directly or through or together with another Subsidiary of such Person) owns more than 50% of the voting securities or value of such corporation, partnership, limited liability company, joint venture or other legal Entity.

"**Superior Proposal**" means a *bona fide* written Acquisition Proposal (with all of the references to "20%" and "80%" included in the definition of Acquisition Proposal being replaced with references to "50%") by a Third Party that the Company Board (or a committee thereof) determines in good faith, after consultation with the Company's financial advisor and outside legal counsel, and taking into consideration, among other things, any legal, financial, regulatory, certainty of closing and other aspects of such Acquisition Proposal and this Agreement that the Company Board (or a committee thereof) deems relevant (in each case taking into account any revisions to this Agreement made in writing by Parent prior to the time of determination pursuant to Section 2.3(d)), would result in a transaction more favorable to the holders of shares of Company Common Stock than the Transactions.

"**Tax**" (and, with correlative meaning, "**Taxes**") means any federal, state, local or foreign income, gross receipts, property, sales, use, license, franchise, employment, payroll, premium, withholding, alternative or added minimum, estimated, ad valorem, value-added, stamp, occupation, windfall profits, transfer or excise tax, or any other tax in the nature of the foregoing, together with any interest or penalty or addition thereto, whether disputed or not, imposed by any taxing authority.

"**Tax Return**" means any return, report or similar written statement filed or required to be filed with a taxing authority with respect to any Tax (including any attached schedules), including any information return, claim for refund, amended return or declaration of estimated Tax.

"**Third Party**" means any Person or group (as defined in Section 13(d)(3) of the Exchange Act), other than the Company, Parent, Merger Sub or any Affiliates thereof.

"**Transaction Documents**" means this Agreement and all other agreements, instruments and documents to be executed by Parent, Merger Sub and the Company in connection with the Transactions contemplated by this Agreement.

"**Transaction Litigation**" means any claim, demand or Legal Proceeding (including any class action or derivative litigation) asserted, commenced or threatened by, on behalf of or in the name of, against or otherwise involving the Company, the Company Board, any committee thereof and/or any of the Company's directors or officers relating directly or indirectly to this Agreement, the Offer, the Merger or any of the other Transactions (including any such claim or Legal Proceeding based on allegations that the Company's entry into this Agreement or the terms and conditions of this Agreement or any of the Transactions constituted a breach of the fiduciary duties of any member of the Company Board or any officer of the Company), or alleging or asserting any misrepresentation or omission in the Offer Documents or Schedule 14D-9 or any other related SEC filings by the Company.

"**Transactions**" means the transactions contemplated by this Agreement, including the Offer and the Merger.

"**WARN**" means the United States Worker Adjustment and Retraining Notification Act of 1988, as amended, or any comparable foreign, state or local Law.

"**Willful and Material Breach**" means a material breach that is the consequence of an act or omission by the breaching party with the actual knowledge that the taking of such act or failure to take such act would cause or constitute such material breach.

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
Adverse Effect on Financing	Section 6.14(a)
Agreement	Preamble
Alternative Acquisition Agreement	Section 2.3(c)
Alternative Financing	Section 6.14(b)
Alternative Financing Commitment Letter	Section 6.14(b)
Appraisal Shares	Section 3.9(c)
Book Entry Share	Section 3.5(a)(i)
Capitalization Date	Section 4.3(a)
Certificate of Merger	Section 3.3
Change in Recommendation	Section 2.3(c)
Closing	Section 3.3
Closing Date	Section 3.3
Commitment Letters	Section 5.6(a)
Company	Preamble
Company Board	Recitals
Company Board Recommendation	Section 2.3(a)
Company Common Stock	Recitals
Company Preferred Stock	Section 4.3(a)
Company Registered IP	Section 4.6(a)
Company Related Parties	Section 8.3(b)
Company SEC Documents	Section 4.4(a)
Company Stock Certificate	Section 3.5(a)(i)
Company Termination Fee	Section 8.3(b)
Compensation Committee	Section 6.7(d)
Continuing Employee	Section 6.7(a)
Current Premium	Section 6.9(a)
Debt Commitment Letter	Section 5.6(a)
Debt Financing	Section 5.6(a)
Delaware Courts	Section 9.5
DGCL	Recitals
Effective Time	Section 3.3
Employment Laws	Section 4.13(b)
End Date	Section 8.1(b)
Excluded Shares	Section 3.5(a)(i)
Expiration Time	Section 2.1(d)
FCPA	Section 4.17

Term	Section
FDA	Section 4.9(b)
Fee Letter	Section 5.6(a)
Indemnified Party	Section 6.9(b)
Indemnified Party Proceeding	Section 6.9(b)
Indemnitee	Section 6.15(c)
Initial Expiration Time	Section 2.1(d)
Intervening Event	Section 2.3(d)(ii)
Intervening Event Notice	Section 2.3(d)(ii)
Licensed Intellectual Property	Section 4.6(c)
Material Contract	Section 4.8(b)
Merger	Recitals
Merger Consideration	Section 3.5(a)(i)
Merger Sub	Preamble
Minimum Condition	Annex I
Necessary Funds Amount	Section 5.6(a)
Non-U.S. Benefit Plan	Section 4.12(i)
Offer	Recitals
Offer Commencement Date	Section 2.1(a)
Offer Conditions	Section 2.1(a)
Offer Documents	Section 2.2(a)
Offer Price	Recitals
Parent	Preamble
Parent Welfare Plan	Section 6.7(c)
Paying Agent	Section 3.6(a)
Privacy Requirements	Section 4.16(b)
Schedule 14D-9	Section 2.3(a)
Schedule TO	Section 2.2(a)
Solvent	Section 5.12
Stockholder List Date	Section 2.3(e)
Superior Proposal Notice	Section 2.3(d)(i)
Support Agreement	Recitals
Surviving Corporation	Recitals
Termination Condition	Annex I

ARTICLE 2
THE OFFER

Section 2.1. Tender Offer.

(a) Unless this Agreement shall have previously been validly terminated in accordance with Article 8, as promptly as practicable, but in any event on or prior to the tenth (10^{th}) Business Day following the date hereof (subject to the provision of any information required to be provided by the Company or its transfer agent pursuant to Section 2.2(a) or Section 2.3(e), as applicable), Merger Sub shall (and Parent shall cause Merger Sub to) commence (within the meaning of Rule 14d-2 under the Exchange Act) the Offer to purchase

for cash all of the outstanding shares of Company Common Stock at a price per share equal to the Offer Price. The date on which Merger Sub commences the Offer, within the meaning of Rule 14d-2 under the Exchange Act, is referred to as the "**Offer Commencement Date**." The Offer, and the obligation of Merger Sub to, and of Parent to cause Merger Sub to, irrevocably accept for payment and pay for any shares of Company Common Stock tendered pursuant to the Offer, shall be subject only to the conditions set forth on Annex I (the "**Offer Conditions**").

(b) Subject to any extension by Merger Sub of the Offer pursuant to Section 2.1(e), as promptly as practicable on the later of (i) the earliest date as of which Merger Sub is permitted under applicable Law to accept for payment shares of Company Common Stock tendered pursuant to the Offer (and not validly withdrawn), and (ii) the earliest date as of which each of the Offer Conditions shall have been satisfied or, if permitted hereunder, waived, Merger Sub shall (and Parent shall cause Merger Sub to) consummate the Offer and irrevocably accept for payment all shares of Company Common Stock tendered pursuant to the Offer (and not validly withdrawn). The obligation of Merger Sub to irrevocably accept for payment shares of Company Common Stock tendered pursuant to the Offer shall be subject only to the satisfaction or waiver of each of the Offer Conditions (and shall not be subject to any other conditions). As promptly as possible after (and in any event, no more than one (1) Business Day after) the irrevocable acceptance for payment of any shares of Company Common Stock tendered pursuant to the Offer, Merger Sub shall (and Parent shall cause Merger Sub to) pay (subject to any applicable withholding Tax) for all shares of Company Common Stock validly tendered and not validly withdrawn pursuant to the Offer.

(c) Notwithstanding anything to the contrary contained in this Agreement, neither Parent nor Merger Sub shall (without the prior written consent of the Company in its sole discretion):

(i) amend, modify or waive the Minimum Condition;

(ii) decrease the number of shares of Company Common Stock sought to be purchased by Merger Sub in the Offer;

(iii) reduce the Offer Price (except to the extent required pursuant to Section 2.1(f));

(iv) accelerate, extend or otherwise change the Expiration Time of the Offer (except to the extent required pursuant to Section 2.1(e)) or terminate or withdraw the Offer (except upon a valid termination of this Agreement as provided in Section 2.1(g));

(v) change the form of consideration payable in the Offer;

(vi) impose any condition to the Offer in addition to the Offer Conditions;

(vii) amend, modify or supplement any of the terms of the Offer in any manner adversely affecting, or that could reasonably be expected to have an adverse effect on, any of the holders of shares of Company Common Stock (in their capacities as such); or

(viii) take any action (or fail to take any action) that would result in the Merger not being permitted to be effected pursuant to Section 251(h) of the DGCL.

(d) Unless extended pursuant to and in accordance with the terms of this Agreement, the Offer shall expire at one (1) minute after 11:59 p.m. (New York City time) on the date that is twenty (20) business days (for this purpose determined as set forth in Rule 14d-1(g)(3) under the Exchange Act) following the commencement (within the meaning of Rule 14d-2 under the Exchange Act) of the Offer (the "**Initial Expiration Time**") or, in the event the Initial Expiration Time has been extended pursuant to and in accordance with this Agreement, the date and time to which the Offer has been so extended (the Initial Expiration Time, as it may be so extended, the "**Expiration Time**").

(e) Merger Sub shall, and Parent shall cause Merger Sub to, extend the Offer from time to time as follows: (i) if at the then scheduled Expiration Time, the Minimum Condition has not been satisfied or any of the other Offer Conditions has not been satisfied, or waived by Parent or Merger Sub if permitted hereunder, then upon the Company's written request, Merger Sub shall, and Parent shall cause Merger Sub to, extend the Offer for one (1) or more occasions in consecutive increments of up to ten (10) Business Days each (or such longer period as may be agreed by the Company and Parent) in order to permit the satisfaction of such Offer Conditions (subject to the right of Parent or Merger Sub to waive any Offer Condition to the extent permitted hereunder); and (ii) Merger Sub shall, and Parent shall cause Merger Sub to, extend the Offer for the minimum period required by applicable Law, interpretation or position of the SEC or its staff or Nasdaq or its staff. Notwithstanding the foregoing, in no event shall Merger Sub be required to extend the Offer and the then scheduled Expiration Time to a date later than the earlier to occur of (1) the valid termination of this Agreement in compliance with Article 8 and (2) the End Date.

(f) If, between the date hereof and the Acceptance Time, the outstanding shares of Company Common Stock are changed into a different number or class of shares by reason of any stock split, division or subdivision of shares, stock dividend, reverse stock split, consolidation of shares, reclassification or recapitalization, then the Offer Price shall be equitably adjusted to the extent appropriate; *provided* that nothing in this Section 2.1(f) shall be construed to permit the Company to take any action with respect to its securities that is prohibited by the terms of this Agreement.

(g) Neither Parent nor Merger Sub shall terminate or withdraw the Offer prior to the then scheduled Expiration Time unless this Agreement is validly terminated in accordance with the terms hereof. In the event that this Agreement is validly terminated pursuant to the terms hereof, Merger Sub shall (and Parent shall cause Merger Sub to) promptly (and in any event within twenty-four (24) hours of such termination), irrevocably and unconditionally terminate the Offer, shall not acquire any shares of Company Common Stock pursuant to the Offer and shall cause any depository acting on behalf of Merger Sub to return, in accordance with applicable Law, all tendered shares of Company Common Stock to the registered holders thereof.

Section 2.2. Actions of Parent and Merger Sub.

(a) As promptly as practicable on the Offer Commencement Date, Parent and Merger Sub shall (i) file with the SEC a Tender Offer Statement on Schedule TO with respect to the Offer (together with all amendments and supplements thereto and including exhibits thereto, the "**Schedule TO**") that will contain or incorporate by reference an offer to purchase and form of the related letter of transmittal (mutually approved by Parent and the Company) and (ii) cause the Schedule TO, the offer to purchase, form of letter of transmittal, and other related documents to be disseminated to holders of shares of Company Common Stock to the extent required by applicable Law. Parent and Merger Sub agree that they shall cause the Schedule TO, together with all documents included therein pursuant to which the Offer will be made (collectively and with any supplements or amendments thereto, the "**Offer Documents**") filed by either Parent or Merger Sub with the SEC to comply in all material respects with the Exchange Act and other applicable Law. Each of Parent, Merger Sub and the Company agrees to promptly correct any information provided by it for use in the Offer Documents if and to the extent that such information shall have become false or misleading in any material respect, and Parent further agrees to use all reasonable efforts to promptly cause the Offer Documents, as so corrected, to be filed with the SEC and to promptly be disseminated to holders of shares of Company Common Stock as and to the extent required by applicable Law. The Company shall promptly furnish or otherwise make available to Parent, Merger Sub or Parent's legal counsel any information concerning the Acquired Companies and the Company's stockholders that is required in connection with any action contemplated by this Section 2.2(a). The Company and its counsel shall be given a reasonable opportunity to review and comment on the Offer Documents (including any amendment or supplement thereto) prior to the filing thereof with the SEC or the dissemination thereof to holders of shares of Company Common Stock, and Parent and Merger Sub shall give reasonable and good faith consideration to any such comments made by the Company or its counsel. Parent and Merger Sub shall (A) provide the Company and its counsel with a copy of any written comments (and a summary of any oral comments) that Parent, Merger Sub or their counsel may receive from the SEC or its staff with respect to the Offer Documents promptly after receipt of such comments, (B) give the Company and its counsel a reasonable opportunity to review and comment on any response to such comments provided to the SEC or its staff, and (C) give reasonable and good faith consideration to any such comments made in respect of any such proposed responses. Each of Parent and Merger Sub shall respond promptly to any comments of the SEC or its staff with respect to the Offer Documents or the Offer.

(b) For purposes of this Agreement, and the Offer, unless otherwise mutually agreed to by the Company and Merger Sub, any shares of Company Common Stock subject to notices of guaranteed delivery shall be deemed not to be validly tendered into the Offer unless and until the shares underlying such notices of guaranteed delivery are delivered to Merger Sub or to an agent of Merger Sub.

(c) Without limiting the generality of Section 9.10, Parent shall cause to be provided to Merger Sub, on a timely basis, all of the funds necessary to purchase any shares of Company Common Stock that Merger Sub becomes obligated to purchase pursuant to the Offer, which funds shall be deposited with the Paying Agent concurrently with or prior to the Acceptance Time, and shall cause Merger Sub to perform, on a timely basis, all of Merger Sub's obligations under this Agreement. Parent and Merger Sub shall, and each of Parent and Merger Sub shall ensure that all of their respective Affiliates shall, tender any shares of Company Common Stock held by them into the Offer.

(d) Parent shall, upon the reasonable request of the Company, advise the Company (including, on each of the last seven (7) Business Days prior to the then scheduled Expiration Time, at least on a daily basis) as to the number of shares of Company Common Stock that have been validly tendered and not validly withdrawn in accordance with the terms of the Offer.

(e) This Agreement and the Transactions contemplated hereby shall be effected under Section 251(h) of the DGCL and Parent and Merger Sub shall cause the Merger to be effected as soon as practicable following the consummation of the Offer.

Section 2.3. Actions of the Company.

(a) On the Offer Commencement Date (subject to (x) reasonable cooperation by Parent as to the timing thereof and (y) the provision of any information required to be provided by Parent pursuant to Section 2.3(a)), the Company shall file with the SEC and (following or contemporaneously with the initial dissemination of the Offer Documents to holders of shares of Company Common Stock to the extent required by applicable federal securities laws, and subject to the final sentence of Section 2.3(b)) disseminate to holders of shares of Company Common Stock a Tender Offer Solicitation/Recommendation Statement on Schedule 14D-9 (together with any amendments or supplements thereto, the "**Schedule 14D-9**") that, subject to Section 2.3(d), shall (i) contain the recommendation of the Company Board that stockholders of the Company tender their shares of Company Common Stock pursuant to the Offer (the "**Company Board Recommendation**"), (ii) set the Stockholder List Date as the record date for purposes of receiving the notice required by Section 262(d)(2) of the DGCL, and (iii) contain a notice of appraisal rights in compliance with Section 262(d) of the DGCL. Parent and Merger Sub shall promptly furnish or otherwise make available to the Company or the Company's legal counsel any information concerning Parent or Merger Sub that is required in connection with any action contemplated by this Section 2.3(a). Parent and its counsel shall be given a reasonable opportunity to review and comment on the Schedule 14D-9 (including any amendment or supplement thereto) prior to the filing thereof with the SEC or the dissemination thereof to holders of shares of Company Common Stock, and the Company shall give reasonable and good faith consideration to any such comments made by Parent or its counsel; *provided*, *however*, that the Company shall not be obligated to give Parent and its counsel such opportunity to review and comment in connection with any amendment or supplement to the Schedule 14D-9 that relates to any Acquisition Proposal or any Change in Recommendation. The Company shall promptly provide Parent and its counsel with a copy of any written comments (and a summary of any oral comments) received by the Company (or its counsel) from the SEC or its staff with respect to the Schedule 14D-9. The Company shall (A) respond promptly to any comments of the SEC or its staff with respect to the Schedule 14D-9, (B) give Parent and its counsel a reasonable opportunity to review and comment on any response to such comments provided to the SEC or its staff and (C) give reasonable and good faith consideration to any such comments made in respect of any such proposed responses; *provided*, *however*, that the Company shall not be obligated to give Parent and its counsel such opportunity to review and comment in connection with any such response or comments that relate to any Acquisition Proposal or any Change in Recommendation.

(b) To the extent required by the applicable requirements of the Exchange Act and/or the listing requirements of Nasdaq, (i) each of Parent, Merger Sub and the Company shall promptly correct any information provided by it for use in the Schedule 14D-9 if such information shall have become false or misleading in any material respect, and (ii) the Company shall promptly cause the Schedule 14D-9, as supplemented or amended to correct such information, to be filed with the SEC and, subject to the final sentence of this Section 2.3(b), to be disseminated to holders of shares of Company Common Stock. Parent and Merger Sub shall promptly furnish to the Company all information concerning Parent or Merger Sub that may be reasonably requested by the Company in connection with any action contemplated by this Section 2.3(b). To the extent requested by the Company, Parent shall cause the Schedule 14D-9 and any supplement or amendment thereto to be mailed or otherwise disseminated to the holders of shares of Company Common Stock together with the Offer Documents disseminated to the holders of shares of Company Common Stock.

(c) Neither the Company Board nor any committee thereof shall, except as permitted by Section 2.3(d) or Section 6.2: (i) withdraw, modify, amend or qualify, in a manner adverse to Parent and Merger Sub, the Company Board Recommendation; (ii) approve, adopt or recommend to the Company's stockholders any Acquisition Proposal (any action described in clause (i) or clause (ii) being referred to as a "**Change in Recommendation**"); or (iii) cause the Company to enter into any Contract (other than a confidentiality agreement entered into in compliance with Section 6.2(a)) contemplating an Acquisition Proposal (any such contract, an "**Alternative Acquisition Agreement**").

(d) Notwithstanding anything to the contrary contained in this Agreement, at any time prior to the Acceptance Time, the Company Board may:

(i) (A) make a Change in Recommendation in response to an Acquisition Proposal and/or (B) cause the Company to enter into an Alternative Acquisition Agreement contemplating an Acquisition Proposal, in each case if: (1) such Acquisition Proposal did not result from a material breach of Section 6.2(a); (2) the Company Board (or a committee thereof) determines in good faith (x) after consultation with the Company's outside legal counsel and financial advisor, that such Acquisition Proposal would constitute a Superior Proposal and (y) after consultation with the Company's outside legal counsel, that in light of such Acquisition Proposal, a failure to make a Change in Recommendation and/or to cause the Company to enter into such Alternative Acquisition Agreement would be inconsistent with the Company Board's fiduciary obligations to the Company's stockholders under applicable Law; (3) the Company delivers to Parent a written notice (the "**Superior Proposal Notice**") stating that the Company Board intends to take such action and, in the event the Company Board contemplates causing the Company to enter into an Alternative Acquisition Agreement, including a summary of the material terms and conditions of such Alternative Acquisition Agreement; (4) during the four (4) Business Day period commencing on the date of Parent's receipt of such Superior Proposal Notice, the Company shall have made its representatives reasonably available for the purpose of engaging in negotiations with

Parent (to the extent Parent desires to negotiate) regarding a possible amendment of this Agreement or the Offer or a possible alternative transaction so that the Acquisition Proposal that is the subject of the Superior Proposal Notice ceases to be a Superior Proposal; (5) after the expiration of the negotiation period described in clause (4) above, the Company Board (or a committee thereof) shall have determined in good faith, after taking into account any amendments or adjustments to this Agreement and the Offer that Parent and Merger Sub have irrevocably agreed in writing to make as a result of the negotiations contemplated by clause (4) above, that (x) after consultation with the Company's outside legal counsel and financial advisor, such Acquisition Proposal continues to constitute a Superior Proposal, and (y) after consultation with the Company's outside legal counsel, the failure to make a Change in Recommendation and/or enter into such Alternative Acquisition Agreement would be inconsistent with the Company Board's fiduciary obligations to the Company's stockholders under applicable Law; and (6) if the Company enters into an Alternative Acquisition Agreement concerning such Superior Proposal, the Company terminates this Agreement in accordance with Section 8.1(f); *provided, however*, that, in the event of any material amendment or adjustment to the terms of any Superior Proposal, the Company shall deliver an additional Superior Proposal Notice and comply again with clauses (3) through (5) of this Section 2.3(d)(i), except that references to four (4) Business Days shall be deemed to be three (3) Business Days; or

(ii) make a Change in Recommendation not related to an Acquisition Proposal if: (A) there is an Effect affecting the Company that does not relate to any Acquisition Proposal and was not known by the Company Board prior to the date hereof (or if known, the consequences of which were not known) (any such Effect unrelated to an Acquisition Proposal being referred to as an "**Intervening Event**"); (B) the Company Board (or a committee thereof) determines in good faith, after consultation with its outside legal counsel, that, in light of such Intervening Event, a failure to effect a Change in Recommendation would be inconsistent with the Company Board's fiduciary obligations to the Company's stockholders under applicable Law; (C) such Change in Recommendation is not effected prior to the fourth (4th) Business Day after Parent receives written notice (the "**Intervening Event Notice**") from the Company confirming that the Company Board intends to effect such Change in Recommendation; (D) during such four (4) Business Day period, if requested by Parent, the Company engages in good faith negotiations with Parent to amend or adjust this Agreement or the Offer or enter into an alternative transaction; and (E) at the end of such four (4) Business Day period, the Company Board (or a committee thereof) determines in good faith, after consultation with its outside legal counsel and after taking into account any amendments or adjustments to this Agreement and the Offer that Parent and Merger Sub have irrevocably agreed in writing to make as a result of the negotiations contemplated by clause (D) above, that, in light of such Intervening Event, a failure to effect a Change in Recommendation would be inconsistent with the Company Board's fiduciary obligations to the Company's stockholders under applicable Law; *provided, however,* that after compliance with clauses (C) through (E) of this Section 2.3(d)(ii) with respect to any Intervening Event, the Company shall have no further obligations under clauses (C) through (E) of this Section 2.3(d)(ii).

(e) In connection with the Offer, the Company shall instruct its transfer agent to furnish to Merger Sub a list, as of the most recent practicable date, of the record holders of shares of Company Common Stock and their addresses, as well as mailing labels containing such names and addresses (the date of the list used to determine the Persons to whom the Offer Documents and Schedule 14D-9 are first disseminated, the "**Stockholder List Date**"). The Company will furnish Merger Sub with such additional information readily available to the Company (including any available computer file containing the names and addresses of record holders of shares of Company Common Stock and lists or computer files of securities positions of shares of Company Common Stock held in stock depositories in the Company's possession) and assistance as Merger Sub may reasonably request for purposes of communicating the Offer to the holders of shares of Company Common Stock. All information furnished in accordance with this Section 2.3(e) shall be held in confidence by Parent and Merger Sub (and their agents) in accordance with the requirements of the Confidentiality Agreement, and shall be used by Parent and Merger Sub (and their agents) only in connection with the communication of the Offer to the holders of shares of Company Common Stock. If this Agreement is terminated, Parent and Merger Sub shall deliver, and shall use their reasonable best efforts to cause their agents to deliver, to the Company (or destroy, at the Company's election) all copies, digital files, and extracts or summaries from such information furnished in accordance with this Section 2.3(e) then in their possession or control.

ARTICLE 3
THE MERGER; EFFECTIVE TIME

Section 3.1. The Merger. Upon the terms and subject to the conditions set forth in this Agreement and in accordance with the DGCL (including Section 251(h) of the DGCL), at the Effective Time, Merger Sub shall be merged with and into the Company, and the separate existence of Merger Sub shall cease. The Company will continue as the Surviving Corporation. The Merger shall be effected under Section 251(h) of the DGCL as soon as practicable following the consummation of the Offer.

Section 3.2. Effect of the Merger. The Merger shall have the effects set forth in this Agreement and in the applicable provisions of the DGCL. Without limiting the foregoing, from and after the Effective Time, the Surviving Corporation shall possess all the property, rights, privileges, powers and franchises of the Company and Merger Sub, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation, all as provided in the DGCL.

Section 3.3. Closing; Effective Time. The consummation of the Merger (the "**Closing**") shall take place at the offices of Goodwin Procter LLP, 100 Northern Avenue, Boston, Massachusetts 02210 as soon as practicable following (but in any event on the same day as) the Acceptance Time, except if any of the applicable conditions set forth in Article 7 shall not be satisfied or, to the extent permissible by applicable Law, waived as of such date, in which case, on the first (1st) Business Day after the date on which all applicable conditions set forth in Article 7 are satisfied or, to the extent permissible by applicable Law, waived (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions) (the date on which the Closing occurs, the "**Closing Date**"). The parties intend that the Closing shall be effected, to the extent practicable, by conference call and the electronic

delivery of documents to be held in escrow by outside counsel to the recipient party pending authorization to release at the Closing. Subject to the provisions of this Agreement, Parent and the Company shall cause a certificate of merger satisfying the applicable requirements of the DGCL (the "**Certificate of Merger**") to be duly executed and delivered to the Secretary of State of the State of Delaware for filing in accordance with the relevant provisions of the DGCL, as soon as practicable on the Closing Date, and shall make any and all other filings or recordings required under the DGCL. The Merger shall become effective upon the date and time of the filing of such Certificate of Merger with the Secretary of State of the State of Delaware or such later date and time as is agreed upon in writing by the parties and specified in the Certificate of Merger (such date and time, the "**Effective Time**").

Section 3.4. Certificate of Incorporation and Bylaws; Directors and Officers. At the Effective Time, unless otherwise jointly determined by Parent and the Company prior to the Effective Time:

(a) the Certificate of Incorporation of the Company shall be amended and restated in its entirety as of the Effective Time to read in its entirety as set forth on Exhibit A hereto and, as so amended and restated, shall be the Certificate of Incorporation of the Surviving Corporation until, subject to Section 6.9(b), thereafter amended in accordance with its terms and as provided by applicable Law;

(b) the Bylaws of the Company shall be amended and restated as of the Effective Time to read as set forth on Exhibit B hereto and, as so amended and restated, shall be the Bylaws of the Surviving Corporation until, subject to Section 6.9(b), thereafter amended in accordance with their terms and as provided by applicable Law; and

(c) (i) the directors of Merger Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation and (ii) the officers of the Company immediately prior to the Effective Time shall be the officers of the Surviving Corporation, in each case until their respective successors are duly elected or appointed and qualified in accordance with applicable Law or until their earlier death, resignation or removal. Prior to the Closing, the Company shall use its reasonable best efforts to deliver to Parent a letter executed by each director of the Company effectuating his or her resignation as a member of the Company Board, to be effective as of the Effective Time.

Section 3.5. Conversion of Company Common Stock.

(a) Subject to Section 3.9, at the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or any holder of shares of Company Common Stock:

(i) Each share of Company Common Stock (other than (i) shares of Company Common Stock (a) held in the treasury of the Company, (b) that at the commencement of the Offer were owned by Parent or Merger Sub or any of their direct or indirect Subsidiaries or (c) irrevocably accepted for payment in the Offer (collectively, the "**Excluded Shares**"), and (ii) Appraisal Shares) shall be automatically canceled and converted into the right to receive an amount in cash equal to the Offer Price (the "**Merger**

Consideration"), without interest. At the Effective Time, all of the shares of Company Common Stock shall cease to be outstanding, shall automatically be cancelled and shall cease to exist, and each certificate (a "**Company Stock Certificate**") formerly representing any of such shares (other than Excluded Shares or Appraisal Shares) and each non-certificated share represented by book entry (a "**Book Entry Share**") (other than Excluded Shares or Appraisal Shares) shall thereafter represent only the right to receive the Merger Consideration, without interest, to be paid upon surrender of such Company Stock Certificate or Book Entry Share in accordance with Section 3.6.

(ii) Each Excluded Share shall, by virtue of the Merger and without any action on the part of the holder thereof, cease to be outstanding, shall be cancelled without payment of any consideration therefor and shall cease to exist.

(iii) At the Effective Time, each share of common stock, par value $0.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall automatically be converted into one share of common stock, par value $0.01 per share, of the Surviving Corporation.

(b) Without duplication of the effects of Section 2.1(f), if, between the date hereof and the Effective Time, the outstanding shares of Company Common Stock are changed into a different number or class of shares by reason of any stock split, division or subdivision of shares, stock dividend, reverse stock split, consolidation of shares, reclassification or recapitalization, then the consideration into which each share of Company Common Stock is converted in the Merger shall be equitably adjusted to the extent appropriate; *provided* that nothing in this Section 3.5(b) shall be construed to permit the Company to take any action with respect to its securities that is prohibited by the terms of this Agreement.

Section 3.6. Payment for Company Common Stock.

(a) Prior to the Effective Time, (i) Parent shall appoint the Company's transfer agent to act as paying agent (or such other nationally recognized paying agent agreed to between Parent and the Company) with respect to the Merger (the "**Paying Agent**"), and (ii) Parent shall deposit, or shall cause to be deposited, with the Paying Agent cash amounts sufficient to enable the Paying Agent to make payments of the aggregate Merger Consideration payable pursuant to Section 3.5 to holders of shares of Company Common Stock outstanding immediately prior to the Effective Time. Such fund shall not be used for any purpose other than as expressly set forth in this Agreement. Pending its disbursement in accordance with this Section 3.6, such fund may be invested by the Paying Agent as directed by Parent in short-term direct obligations of the United States of America or short-term obligations for which the full faith and credit of the United States of America is pledged to provide for the payment of principal and interest. Any interest and other income from such investments shall become part of the funds held by the Paying Agent for purposes of paying the Merger Consideration. To the extent that such fund diminishes for any reason below the level required to make prompt payment of the Merger Consideration, Parent shall promptly replace or restore, or cause to be replaced or restored, the lost portion of such fund so as to ensure that it is, at all times, maintained at a level sufficient to make such payments.

(b) Promptly after the Effective Time, and in any event no later than one (1) Business Day after the Effective Time, Parent and the Surviving Corporation shall cause the Paying Agent to mail to each Person who was, immediately prior to the Effective Time, a holder of record of Company Common Stock (other than the shares of Company Common Stock to be cancelled in accordance with Section 3.5(a)(ii)) a form of letter of transmittal (mutually approved by Parent and the Company) and instructions for use in effecting the surrender of Company Stock Certificates or Book Entry Shares previously representing such Company Common Stock in exchange for payment therefor. Parent shall ensure that, upon surrender to the Paying Agent of each such Company Stock Certificate or Book Entry Share (or affidavits of loss in lieu of the Company Stock Certificate pursuant to Section 3.6(d)), together with a properly executed letter of transmittal, the holder of such Company Stock Certificate or Book Entry Share (or, under the circumstances described in Section 3.6(e), the transferee of the Company Common Stock previously represented by such Company Stock Certificate or Book Entry Share) shall promptly receive in exchange therefor the Merger Consideration for each share of Company Common Stock formerly represented by such Company Stock Certificate or Book Entry Share pursuant to Section 3.5. Exchange of any Book Entry Shares shall be effected in accordance with the Paying Agent's customary procedures with respect to securities represented by book entry. No interest shall be paid or accrued on the cash payable upon the surrender or transfer of any Company Stock Certificate or Book Entry Share.

(c) On or after the first (1st) anniversary of the Effective Time, the Surviving Corporation shall be entitled to cause the Paying Agent to deliver to the Surviving Corporation any funds made available by Parent to the Paying Agent which have not been disbursed to holders of Company Stock Certificates or Book Entry Shares in accordance with this Section 3.6, and thereafter such holders shall be entitled to look to Parent and the Surviving Corporation with respect to the cash amounts payable upon surrender of their Company Stock Certificates or Book Entry Shares. Neither the Paying Agent nor the Surviving Corporation shall be liable to any holder of a Company Stock Certificate or Book Entry Share for any amount properly paid to a public official pursuant to any applicable abandoned property or escheat Law.

(d) If any Company Stock Certificate shall have been lost, stolen or destroyed, then, upon the making of an affidavit of that fact by the Person claiming such Company Stock Certificate to be lost, stolen or destroyed (or such other replacement requirements reasonably established by the Paying Agent), Parent shall cause the Paying Agent to pay in exchange for such lost, stolen or destroyed Company Stock Certificate the cash amount payable in respect thereof pursuant to this Agreement.

(e) In the event of a transfer of ownership of Company Common Stock that is not registered in the transfer records of the Company, payment may be made with respect to such Company Common Stock to a transferee of such Company Common Stock if the Company Stock Certificate (if applicable) previously representing such Company Common Stock is presented to the Paying Agent, accompanied by all documents reasonably required by the Paying Agent to evidence and effect such transfer. Payment of the applicable Merger Consideration with respect to Book Entry Shares shall only be made to the Person in whose

name such Book Entry Shares are registered. Until surrendered as contemplated by this Section 3.6, each Company Stock Certificate and Book Entry Share shall be deemed at any time after the Effective Time to represent only the right to receive the applicable Merger Consideration. If the payment of the Offer Price or Merger Consideration is to be made to a Person other than the Person in whose name the shares of Company Common Stock are registered on the stock transfer books of the Company, it shall be a condition of payment that the Person requesting such payment shall have paid all stock transfer Taxes required by reason of the payment of the Offer Price or Merger Consideration to a Person other than the registered holder of the shares of Company Common Stock tendered or surrendered, or shall have established to the satisfaction of Parent that such Taxes either have been paid or are not applicable.

(f) At the Effective Time, the stock transfer books of the Company shall be closed with respect to all shares of Company Common Stock outstanding immediately prior to the Effective Time. No further transfer of any such shares of Company Common Stock shall be made on such stock transfer books after the Effective Time. If, after the Effective Time, a valid Company Stock Certificate, which shares were outstanding immediately prior to the Effective Time and converted into the right to receive the Merger Consideration in accordance with this Section 3.6, is presented to the Paying Agent or to the Surviving Corporation or Parent, such Company Stock Certificate shall be canceled and shall be exchanged as provided in this Section 3.6.

(g) Parent and the Surviving Corporation shall bear and pay all charges and expenses, including those of the Paying Agent, incurred in connection with any payments hereunder with respect to Company Common Stock.

(h) Each of the Surviving Corporation, Parent and Merger Sub shall be entitled to deduct and withhold (or cause the Paying Agent to deduct and withhold) from any amounts payable pursuant to this Agreement (including amounts payable to any holder of shares of Company Common Stock, Company Options, Company RSUs or Company PSUs), Taxes as it is required by applicable Law to deduct and withhold. Parent shall cooperate with the Company and such holders to obtain any affidavits, certificates and other documents as may reasonably be expected to afford to the Company and such holders reduction of or relief from any such deduction or withholding. To the extent that any Taxes are so deducted or withheld and timely paid over to the appropriate Governmental Entity, such deducted and withheld Taxes shall be treated for purposes of this Agreement as having been paid to the holder of shares of Company Common Stock or Company Compensatory Awards, or other Person, as applicable, in respect of which such deduction and withholding was made.

Section 3.7. Company Compensatory Awards; Company ESPP.

(a) Immediately prior to the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each Company Option, whether vested or unvested, that is outstanding and unexercised immediately prior to the Effective Time and has a per share exercise price that is less than the Merger Consideration shall fully vest, be cancelled and automatically converted into the right to receive for each share of Company Common Stock underlying such Company Option, without interest and subject to deduction for any required

withholding under applicable Tax Law, an amount in cash from Parent or the Surviving Corporation equal to the excess of the Merger Consideration over the per share exercise price of such Company Option. Immediately prior to the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each Company Option, whether vested or unvested, that is outstanding and unexercised immediately prior to the Effective Time and has a per share exercise price that is equal to or greater than the Merger Consideration shall be cancelled as of the Effective Time for no consideration.

(b) Immediately prior to the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each Company RSU that is outstanding immediately prior to the Effective Time, whether vested or unvested, shall fully vest, be cancelled and automatically converted into the right to receive, without interest and subject to deduction for any required withholding under applicable Tax Law, an amount in cash from Parent or the Surviving Corporation equal to (A) the number of shares of Company Common Stock underlying such Company RSU, multiplied by (B) the Merger Consideration.

(c) Immediately prior to the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each Company PSU that is outstanding immediately prior to the Effective Time, whether vested or unvested, shall fully vest, be cancelled and automatically converted into the right to receive, without interest and subject to deduction for any required withholding under applicable Tax Law, an amount in cash from Parent or the Surviving Corporation equal to (A) the number of shares of Company Common Stock underlying such Company PSU, multiplied by (B) the Merger Consideration.

(d) As soon as practicable, but in no event later than ten (10) Business Days following the date of this Agreement, the Company Board (or, if applicable, any committee thereof administering the Company ESPP) shall adopt such resolutions and take all actions necessary pursuant to the terms of the Company ESPP to provide that (i) no additional Offering (as defined in the Company ESPP) shall be commenced between the date of this Agreement and the Effective Time, (ii) each Offering that would otherwise extend beyond the Effective Time shall have an exercise date (as defined in the Company ESPP) that is no later than seven (7) Business Days prior to the anticipated Effective Time, (iii) each Company ESPP participant's accumulated contributions under the Company ESPP shall be used to purchase shares of Company Common Stock in accordance with the Company ESPP, (iv) the applicable purchase price for shares of Company Common Stock (as a percentage of the fair market value of Company Common Stock) shall not be decreased below the levels set forth in the Company ESPP as of the date of this Agreement, (v) no participant in the Company ESPP may increase his or her rate of payroll deductions or make separate non-payroll contributions to purchase shares of Company Common Stock under the Company ESPP after the date of this Agreement (*provided* that, for the avoidance of doubt, participants shall be entitled to withdraw from the Company ESPP in accordance with the terms of the Company ESPP as in effect as of the date of this Agreement), (vi) only participants in the Company ESPP as of the date of this Agreement may continue to participate in the Company ESPP after the date of this Agreement, and (vii) the Company ESPP shall terminate in its entirety as of the Effective Time and no further rights shall be granted or exercised under the Company ESPP thereafter.

(e) Prior to the Effective Time, the Company shall take any and all such actions as are necessary (under the Company Equity Incentive Plans, applicable award agreements, applicable Law or otherwise) to effect the foregoing provisions of this Section 3.7. At or prior to the Effective Time, Parent shall deposit, or cause to be deposited, funds sufficient to pay the aggregate amount payable to the holders of Company Compensatory Awards pursuant to the provisions of this Section 3.7 to an account or accounts identified by the Company prior to the Effective Time. The payments with respect to any Company Compensatory Awards shall, except as may otherwise be required with respect to Company Compensatory Awards by Section 409A of the Code, be made by the Surviving Corporation at, or within five (5) Business Days of, the Effective Time, without interest. All payments with respect to Company Compensatory Awards pursuant to this Section 3.7 shall be made through the Surviving Corporation's payroll and/or equity award maintenance systems, subject to withholding if required under applicable Tax Law.

Section 3.8. Company Warrants. As of the Acceptance Time, each Company Warrant that is outstanding and unexercised as of immediately prior to the Acceptance Time shall, in accordance with its terms, automatically and without any required action on the part of the holder thereof or any other Person, cease to represent a warrant exercisable for shares of Company Common Stock, and the holder thereof shall have the right to receive, upon exercise of the Company Warrant, the same amount of cash as it would have been entitled to receive if such holder had, immediately prior to the Expiration Time, tendered, and Merger Sub had accepted, the numbers of shares of Company Common Stock then issuable upon exercise in full of the Company Warrant without regard to any limitations on exercise contained therein. In connection with the Offer and the Merger, the Company shall deliver any notices required under the terms of any outstanding Company Warrants to the holders thereof, and the Company shall provide Parent with a reasonable opportunity to review and comment on any such notice and give good faith consideration to any such comments made by Parent.

Section 3.9. Appraisal Rights.

(a) Notwithstanding anything to the contrary contained in this Agreement, any shares of Company Common Stock that constitute Appraisal Shares shall not be converted into the right to receive the Merger Consideration, and each holder of Appraisal Shares shall be entitled only to receive such consideration as is determined to be due with respect to such Appraisal Shares pursuant to Section 262 of the DGCL. From and after the Effective Time, a holder of Appraisal Shares shall not have and shall not be entitled to exercise any of the voting rights or other rights of a stockholder of the Surviving Corporation. If any holder of Appraisal Shares shall fail to perfect or shall otherwise waive, withdraw or lose such holder's right to appraisal under Section 262 of the DGCL, then (i) the right of such holder to be paid such consideration as is determined to be due pursuant to Section 262 of the DGCL shall cease, and (ii) such Appraisal Shares shall be deemed to have been converted as of the Effective Time into and have become exchangeable only for the right to receive (upon the surrender of the Company Stock Certificate(s) or Book Entry Shares previously representing such Appraisal Shares) the Merger Consideration, without interest and reduced by the amount of any withholding that is required under applicable Tax Law, in accordance with Section 3.5.

(b) The Company (i) shall provide to Parent prompt notice of any written demand by any stockholder of the Company for appraisal of such holder's Company Common Stock, any written withdrawal of any such demand, and any other instrument delivered to the Company prior to the Effective Time pursuant to Section 262 of the DGCL that relates to such demand and (ii) shall give Parent the opportunity to participate in all negotiations and proceedings with respect to any such demand. The Company shall not make any payment with respect to any demands for appraisal or offer to settle or settle any such demands for appraisal without the written consent of Parent.

(c) For purposes of this Agreement, "**Appraisal Shares**" shall refer to shares of Company Common Stock outstanding immediately prior to the Effective Time that are held by a holder who is entitled to demand and properly demands appraisal of such shares pursuant to, and who complies in all respects with, Section 262 of the DGCL.

Section 3.10. Merger Without Meeting of Stockholders. The Merger shall be effected under Section 251(h) of the DGCL. The parties agree to take all necessary and appropriate action to cause the Merger to become effective as soon as reasonably practicable following the consummation of the Offer, without a meeting of the stockholders of the Company in accordance with Section 251(h) of the DGCL.

Section 3.11. Further Action. If, at any time after the Effective Time, any further action is necessary to carry out the purposes of this Agreement, the officers and directors of the Surviving Corporation and Parent shall (in the name of Merger Sub, in the name of the Company or otherwise) take such action.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except (x) as set forth in the Company Disclosure Schedule (it being acknowledged and agreed that any disclosure or exception set forth in any Section or subsection of the Company Disclosure Schedule shall be deemed to apply to any other Section or subsection of the Company Disclosure Schedule to the extent that the relevance of such disclosure or exception to such other Section or subsection is reasonably apparent), or (y) as disclosed in the Company SEC Documents filed with or furnished to the SEC prior to the date of this Agreement (other than information that is contained (i) solely in the "risk factors" sections of such Company SEC Documents or (ii) in any "forward-looking statements" disclaimer in such Company SEC Documents, except to the extent any such information described in clause (i) or (ii) consists of factual and/or historical statements), the Company represents and warrants to each of Parent and Merger Sub as follows:

Section 4.1. Organization and Good Standing; Subsidiaries.

(a) The Company (i) is a corporation that is duly organized, validly existing and in good standing under the Law of the State of Delaware, (ii) has corporate power and authority to own, lease and operate its properties and assets and to conduct its business as currently conducted and (iii) is duly qualified or licensed to do business as a foreign corporation and is in good standing (with respect to jurisdictions that recognize such concept) in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business as currently conducted makes such qualification or licensing necessary, except, with respect to clause (iii), where the failure to be so qualified or licensed has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) Section 4.1(b) of the Company Disclosure Schedule lists each of the Company's Subsidiaries and indicates its jurisdiction of organization. Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, each such Subsidiary (i) is a corporation or other business Entity that is duly incorporated or organized (as applicable), validly existing and in good standing (with respect to jurisdictions that recognize such concept) under the Law of its jurisdiction of incorporation or organization, as applicable, (ii) has corporate (or, in the case of any Subsidiary that is not a corporation, other Entity) power and authority to own, lease and operate its properties and assets and to conduct its business as currently conducted and (iii) is duly qualified or licensed to do business as a foreign corporation or company and is in good standing (with respect to jurisdictions that recognize such concept) in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business as currently conducted makes such qualification or licensing necessary. All of the outstanding shares of capital stock or other equity interests of each Subsidiary of the Company are owned by the Company or a wholly owned Subsidiary of the Company, free and clear of any Encumbrances (other than Permitted Encumbrances and transfer restrictions arising under applicable Law).

(c) None of the Acquired Companies owns any capital stock of, or any equity interest of, or any equity interest of any nature in, any other Entity, except (i) in the other Acquired Companies or (ii) marketable securities or short-term investments in the ordinary course of business.

Section 4.2. Organizational Documents. The Company has made available to Parent (or included as an exhibit to the Company SEC Documents) complete and correct copies of the Organizational Documents of the Company and each material Subsidiary of the Company, and each as so made available is in full force and effect. The Company is not in material violation of any of the provisions of the Company Certificate of Incorporation or the Company Bylaws and will not be in material violation of any of the provisions of the Company Certificate of Incorporation or the Company Bylaws, as the Company Certificate of Incorporation and the Company Bylaws may be amended (subject to Section 6.1(b)) between the date hereof and the Closing Date. As of any date following the date hereof, neither the Company nor any of its "significant subsidiaries" (as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act) has filed for bankruptcy or filed for reorganization under the U.S. federal bankruptcy Law or similar state or federal Law, become insolvent or become subject to conservatorship or receivership.

Section 4.3. Capitalization.

(a) As of the date hereof, the authorized capital stock of the Company consists of: (x) 125,000,000 shares of Company Common Stock and (y) 5,000,000 shares of undesignated preferred stock, par value $0.01 per share (the "**Company Preferred Stock**"). As of the close of business on April 24, 2024 (the "**Capitalization Date**"), (i) 82,225,972 shares

of Company Common Stock were issued and outstanding, (ii) 10,100,748 shares of Company Common Stock were subject to issuance pursuant to Company Options, (iii) 3,085,820 shares of Company Common Stock were subject to issuance pursuant to Company RSUs, (iv) 530,544 shares of Company Common Stock were subject to issuance pursuant to Company PSUs, (v) 2,619,550 shares of Company Common Stock were reserved for issuance under the Company ESPP, (vi) 5,466,133 shares of Company Common Stock were subject to issuance pursuant to Company Warrants, (vii) no shares of Company Common Stock were held by the Company as treasury shares, and (viii) no shares of Company Preferred Stock were issued and outstanding. From the close of business on the Capitalization Date through the date hereof, the Company has not issued any shares of Company Common Stock, except upon the exercise of Company Options and Company Warrants or the settlement of Company RSUs or Company PSUs, in each case outstanding as of the close of business on the Capitalization Date and included in Section 4.3(b) of the Company Disclosure Schedule.

(b) Section 4.3(b) of the Company Disclosure Schedule sets forth, as of the Capitalization Date, a list of (i) all outstanding Company Options, including the grant date, the number of shares of Company Common Stock subject to each such award, and the exercise or purchase price per share, (ii) all outstanding Company RSUs and Company PSUs, including the grant date and the number of shares of Company Common Stock subject to each such award, and (iii) all outstanding Company Warrants.

(c) (i) None of the outstanding Company Common Stock is entitled or subject to any preemptive right, right of repurchase, right of participation or any similar right; (ii) none of the outstanding Company Common Stock is subject to any right of first refusal in favor of any of the Acquired Companies; and (iii) there is no contract to which any of the Acquired Companies is a party relating to the voting or registration of, or restricting any Person from purchasing, selling, pledging or otherwise disposing of (or from granting any option or similar right with respect to), any Company Common Stock. None of the Acquired Companies is under any obligation, nor is any of the Acquired Companies bound by any Contract pursuant to which it will become obligated, to repurchase, redeem or otherwise acquire any outstanding Company Common Stock.

(d) There are no bonds, debentures, notes or other indebtedness of the Acquired Companies issued and outstanding having the right to vote (or convertible or exercisable or exchangeable for securities having the right to vote) on any matters on which stockholders of the Company may vote.

(e) As of the date hereof, and except as set forth in Section 4.3(a) and Section 4.3(b), there was no: (i) outstanding subscription, option, call, warrant or other right (whether or not currently exercisable) to acquire any shares of the capital stock, restricted stock unit, stock-based performance unit, shares of phantom stock, stock appreciation right, profit participation right or any other right that is linked to, or the value of which is based on or derived from, the value of any shares of capital stock of the Company; (ii) outstanding security, instrument, bond, debenture or note that is or may become convertible into or exchangeable for any shares of the capital stock or other securities of any of the Acquired Companies; or (iii) stockholder rights plan (or similar plan commonly referred to as a "poison pill") or Contract under which any Acquired Company is or may become obligated to sell or otherwise issue any shares of its capital stock or any other securities.

(f) All of the outstanding shares of Company Common Stock have been duly authorized and validly issued, and are fully paid and nonassessable.

(g) Each Company Option, Company RSU and Company PSU (i) was granted in material compliance with all applicable securities Laws or exemptions therefrom and (ii) was granted under a Company Equity Incentive Plan and is in compliance in all material respects with all requirements set forth in such Company Equity Incentive Plan.

Section 4.4. SEC Filings; Sarbanes-Oxley Act; Financial Statements.

(a) All reports, schedules, forms, statements and other documents (including exhibits and all other information incorporated therein) required to be filed or furnished by the Company with the SEC since January 1, 2021 (the "**Company SEC Documents**") have been filed or furnished with the SEC on a timely basis (subject to extensions pursuant to Exchange Act Rule 12b-25). As of their respective dates, or, if amended prior to the date of this Agreement, as of the date of (and giving effect to) the last such amendment: (i) each of the Company SEC Documents complied as to form in all material respects with the applicable requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act (as the case may be); and (ii) no Company SEC Document contained when filed or furnished (and, in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of mailing, respectively) any untrue statement of a material fact or omitted, as the case may be, to state a material fact required to be stated or incorporated by reference therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(b) The financial statements (including any related notes and schedules) contained or incorporated by reference in the Company SEC Documents: (i) complied as to form in all material respects with the published rules and regulations of the SEC applicable thereto as in effect at the time of such filing; (ii) were prepared in accordance with GAAP applied on a consistent basis throughout the periods covered (except as may be indicated in the notes to such financial statements or, in the case of unaudited statements, as permitted by Form 10-Q under the Exchange Act, and subject, in the case of the unaudited financial statements, to the absence of footnotes and normal year-end adjustments (none of which are material, individually or in the aggregate)); and (iii) fairly present, in all material respects, the financial position of the Company as of the respective dates thereof and the results of operations of the Company for the periods covered thereby (subject, in the case of the unaudited financial statements, to the absence of footnotes and normal year-end adjustments (none of which are material, individually or in the aggregate)). No financial statements of any Person other than the Acquired Companies are required by GAAP to be included in the consolidated financial statements of the Company.

(c) The Company maintains a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act), which is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, and includes those policies and procedures that: (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Acquired Companies; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and that receipts and expenditures are being made only in accordance with authorizations of management and the Company Board; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Acquired Companies that could have a material effect on the Company's financial statements. Since January 1, 2021, neither the Company nor the Company's independent registered accountant has identified or been made aware of: (A) any significant deficiency or material weakness in the design or operation of the internal control over financial reporting utilized by the Company, which is reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information; or (B) any fraud, whether or not material, that involves the management or other employees of the Company who have a significant role in the Company's internal control over financial reporting. The Company maintains disclosure controls and procedures (as defined by Rule 13a-15(e) or 15d-15(e) under the Exchange Act) that are reasonably designed to ensure that all information required to be disclosed in the Company's reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC and that all such information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure. Since January 1, 2021, the principal executive officer and the principal financial officer of the Company have made all certifications required by the Sarbanes-Oxley Act. The Company is in compliance in all material respects with all current listing and corporate governance requirements of Nasdaq.

(d) None of the Acquired Companies has effected, entered into or created any securitization transaction or "off-balance sheet arrangement" (as defined in Item 303(c) of Regulation S-K under the Exchange Act) where the result, purpose or intended effect of such transaction or arrangement is to avoid disclosure of any material transaction involving, or material liabilities of, the Acquired Companies in its published financial statements or other Company SEC Documents.

(e) As of the date hereof, (i) there are no outstanding or unresolved comments in comment letters received from the SEC with respect to the Company SEC Documents, and (ii) to the Knowledge of the Company, none of the Company SEC Documents is the subject of ongoing SEC review and there are no inquiries or investigations by the SEC or any internal investigations pending or threatened, in each case regarding any accounting practices of the Company.

(f) Except as permitted by the Exchange Act, including Sections 13(k)(2) and (3), since January 1, 2021, none of the Acquired Companies has made or permitted to remain outstanding any "extensions of credit" (within the meaning of Section 402 of the Sarbanes-Oxley Act) or prohibited loans to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of the Company.

(g) The Acquired Companies do not have any liabilities of any nature (whether accrued, absolute, contingent or otherwise), which would be required to be reflected or reserved against on a consolidated balance sheet of the Acquired Companies prepared in accordance with GAAP or the notes thereto, except for: (i) liabilities disclosed in the financial statements (including any related notes) contained in the Company SEC Documents; (ii) liabilities incurred in the ordinary course of business since the date of the Most Recent Balance Sheet; (iii) liabilities to perform under Contracts entered into by the Acquired Companies in the ordinary course (none of which is a liability for breach of contract, breach of warranty, tort, infringement, violation of Law, or that relates to any cause of action, claim or lawsuit); (iv) liabilities incurred in connection with the Transactions; and (v) liabilities that have not been, and would not reasonably be expected to be, material to the Acquired Companies taken as a whole.

Section 4.5. Absence of Certain Changes. Since the date of the Most Recent Balance Sheet through the date hereof, and except as specifically contemplated by, or as disclosed in, this Agreement and except for discussions, negotiations and activities related to this Agreement, (a) the Acquired Companies have conducted their businesses in the ordinary course in all material respects and (b) there has not been any Company Material Adverse Effect.

Section 4.6. Intellectual Property Rights.

(a) Section 4.6 of the Company Disclosure Schedule contains true and complete list of all Patents, Marks and Copyrights included in the Company Intellectual Property that are issued by, registered or the subject of an application filed with, as applicable, the U.S. Patent and Trademark Office, the U.S. Copyright Office or in any similar office or agency anywhere in the world (such registrations and applications, the "**Company Registered IP**"), including, with respect to each such registration and application, (i) the name of the applicant or registrant of record and the current owner, (ii) the jurisdiction of application/registration, (iii) the application or registration number and (iv) the date of filing or issuance for each such item. The Company Registered IP is subsisting and, to the Knowledge of the Company, valid and enforceable. All necessary registration, maintenance and renewal fees in connection with the Company Registered IP have been paid and all documents and certificates related to the registration, maintenance and renewal of the Company Registered IP have been timely filed with the relevant authorities or registrars for the purposes of maintaining such Company Registered IP.

(b) All founders, employees, and consultants involved in the development of Intellectual Property that is material to the Company Products and the business of the Acquired Companies as currently conducted have signed confidentiality and assignment agreements or similar agreements for the transfer or assignment of such Intellectual Property with the Acquired Companies pursuant to which the Acquired Companies either (i) have obtained ownership of and are the exclusive owners of or (ii) have obtained a valid and unrestricted right to exploit, sufficient for the operation of the business of the Acquired Companies as currently conducted, such Intellectual Property.

(c) The Company Intellectual Property is exclusively owned by the Acquired Companies free and clear of any Encumbrance, other than Permitted Encumbrances. The Acquired Companies have valid and enforceable licenses to use all other Intellectual Property owned by a Third Party and used or held of use in, the conduct of the business of the Acquired Companies as currently conducted ("**Licensed Intellectual Property**"). The consummation of the Transactions will not alter, encumber, impair or extinguish any Company Intellectual Property or such Licensed Intellectual Property.

(d) To the Knowledge of the Company, the operation of the business of the Acquired Companies as currently conducted does not infringe, misappropriate or violate any Intellectual Property owned by another Person and has not, in the past five (5) years, infringed, misappropriated or violated any Intellectual Property owned by another Person. As of the date of this Agreement, there is no Legal Proceeding pending or, to the Knowledge of the Company, asserted or threatened in writing, against any of the Acquired Companies relating to any infringement or misappropriation of any Intellectual Property of another Person by any of the Acquired Companies in the operation of the business of the Acquired Companies as currently conducted.

(e) As of the date hereof, none of the Acquired Companies is subject to any Order, nor has any of the Acquired Companies entered into or is a party to any agreement made in settlement of any pending or threatened litigation, which materially restricts or impairs their use of any Company Intellectual Property in the operation of the business of the Acquired Companies as currently conducted.

(f) To the Knowledge of the Company, no other Person is infringing, misappropriating or violating or has, in the past six (6) years, infringed, misappropriated, or otherwise violated any Company Intellectual Property or any Intellectual Property exclusively licensed to the Acquired Companies under any Company Inbound License.

(g) The Acquired Companies have taken commercially reasonable steps necessary to maintain the confidentiality of the material Trade Secret Rights held by any of the Acquired Companies, or purported to be held by any of the Acquired Companies, as a trade secret.

Section 4.7. Title to Assets; Real Property.

(a) The Acquired Companies have good title to, or in the case of assets purported to be leased by the Acquired Companies, valid leasehold interests in, each of the material tangible assets reflected as owned or leased by the Acquired Companies on the Most Recent Balance Sheet (except for tangible assets sold or disposed of since the date of the Most Recent Balance Sheet and except for tangible assets being leased to the Acquired Companies with respect to which the lease has expired since such date), free of any Encumbrances (other than Permitted Encumbrances).

(b) None of the Acquired Companies owns any real property.

(c) Section 4.7(c) of the Company Disclosure Schedule sets forth the address of each Leased Real Property and the applicable Acquired Company which holds a leasehold interest in such Leased Real Property. The Company has made available to Parent a correct and complete copy of each lease, sublease or other use or occupancy agreement (including all written and legally binding amendments/modifications, non-disturbance agreements and guaranties with respect thereto) with respect to each Leased Real Property and, as of the date hereof, each such lease or sublease for a Leased Real Property is valid and binding on the Acquired Companies, as the case may be, and, to the Knowledge of the Company, each other party thereto, as applicable, and in full force and effect, except as may be limited by bankruptcy, insolvency, moratorium and other similar applicable Law affecting creditors' rights generally and by general principles of equity. As of the date hereof, no Acquired Company has, and to the Knowledge of the Company, none of the other parties thereto have, violated any provision of, or committed or failed to perform any act, and no event or condition exists, which with or without notice, lapse of time or both would constitute a breach or default under the provisions of any such lease or sublease, except in each case for those violations, commitments, failures to act, and defaults which would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect and, as of the date hereof, to the Knowledge of the Company, no Acquired Company has received written notice of any of the foregoing. The Leased Real Property listed on Section 4.7(c) of the Company Disclosure Schedule constitutes all of the real property and improvements used and occupied by the Acquired Companies necessary to conduct the business of the Acquired Companies as is presently conducted.

Section 4.8. Material Contracts.

(a) Section 4.8 of the Company Disclosure Schedule lists each Contract to which any Acquired Company is a party, or by which it is bound, as of the date of this Agreement (other than Company Benefit Plans, the Transaction Documents and Contracts filed as exhibits to the Company SEC Documents):

(i) that is a "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the Exchange Act);

(ii) to which any of the top ten (10) customers of the Acquired Companies (determined on the basis of the consolidated revenue of the Acquired Companies, taken as a whole, for the fiscal year ended December 31, 2023) is a party (excluding any non-disclosure agreements and other similar Contracts that are ancillary to Contracts pursuant to which payments are made to the Acquired Companies);

(iii) to which any of the top ten (10) vendors to the Acquired Companies (determined on the basis of the consolidated costs of goods and services paid by the Acquired Companies, taken as a whole, for the fiscal year ended December 31, 2023) is a party (excluding any non-disclosure agreements and other similar Contracts that are ancillary to Contracts pursuant to which payments are made by the Acquired Companies);

(iv) containing a covenant limiting the ability of any Acquired Company to compete with any Person or engage in any line of business in any geographic area that is not terminable by such Acquired Company upon notice of ninety (90) days or less without material penalty or liability;

(v) (A) containing any "most favored nations" terms and conditions (including with respect to pricing) granted by an Acquired Company or (B) containing exclusivity obligations or otherwise limiting the freedom or right of any Acquired Company to sell, distribute or manufacture any products or services for any other Person;

(vi) relating to or evidencing indebtedness for borrowed money or any guarantee of indebtedness for borrowed money by any Acquired Company in excess of $2,000,000 (excluding loans between the Company and any wholly owned Acquired Company or between Acquired Companies wholly owned by the Company);

(vii) providing for or governing the formation of any joint venture, partnership, strategic alliance, material research and development collaboration, or similar arrangement;

(viii) that is a Company Inbound License or Company Outbound License, except for such licenses that are not material to the Acquired Companies taken as a whole;

(ix) that has continuing obligations or interests involving (A) "milestone" or other similar contingent payments, including upon the achievement of regulatory or commercial milestones, which would result in an aggregate payment in excess of $2,000,000, or (B) payment of royalties or other amounts calculated based upon sales, revenue, income or similar measure of an Acquired Company;

(x) any Contract providing for the resolution or settlement of any Legal Proceeding involving an Acquired Company with payment obligations in excess of $2,000,000;

(xi) that is a Collective Bargaining Agreement; and

(xii) that is the type of Contract that would be required to be disclosed under Item 404 of Regulation S-K of the Exchange Act.

(b) Each Contract of the type described above in this Section 4.8, whether or not set forth in Section 4.8 of the Company Disclosure Schedule, is referred to herein as a "**Material Contract**". Except Material Contracts that have expired or terminated by their terms, as of the date hereof, all of the Material Contracts are (i) valid and binding on the Acquired Companies, as the case may be, and, to the Knowledge of the Company, each other party thereto, and (ii) in full force and effect, except as may be limited by bankruptcy, insolvency, moratorium and other similar applicable Law affecting creditors' rights generally and by general principles of equity. No Acquired Company has, and to the Knowledge of the Company, none of the other parties thereto have, violated any provision of, or committed or failed to perform any act, and no event or condition exists, which (with or without notice, lapse of time or both) would constitute a default under the provisions of any Material Contract, except in each case for those violations, commitments, failures to act, and defaults which would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect and, as of the date hereof, no Acquired Company has received written notice of any of the foregoing. Subject to any redactions of competitively sensitive information made known to Parent on or prior to the date hereof, the Company has made available to Parent complete and correct copies of all Material Contracts in effect as of the date hereof.

Section 4.9. Compliance.

(a) The Acquired Companies are and, since January 1, 2021, have been in compliance with all Laws (including Healthcare Laws) applicable to the Acquired Companies, and, since January 1, 2021 through the date hereof, have not received any written notice alleging any violation with respect to any applicable Laws (including Healthcare Laws) as well as rules and policies of non-governmental accreditation or oversight bodies applicable to the Acquired Companies, except in each case as would not reasonably be expected to be material to the Acquired Companies, taken as a whole.

(b) To the Knowledge of the Company, Company Products are being, and, since January 1, 2021, have been, developed, tested, manufactured, labeled, distributed and stored, as applicable, in compliance with the Federal Food, Drug, and Cosmetic Act, as amended, and applicable regulations enforced by the U.S. Food and Drug Administration (the "**FDA**") and comparable applicable Laws outside of the United States, including those requirements relating to current good manufacturing practices, good laboratory practices and good clinical practices, as applicable, except in each case as would not reasonably be expected to be material to the Acquired Companies, taken as a whole. As of the date hereof, QINLOCK has not been recalled, withdrawn, suspended, seized or discontinued by any Acquired Company or any applicable Governmental Entity (whether voluntarily or otherwise), and no Legal Proceedings seeking the recall, withdrawal, suspension, seizure or discontinuation of QINLOCK are pending, or since January 1, 2021 have been brought, against any Acquired Company, or to the Knowledge of the Company, its contract manufacturers or any licensee of QINLOCK, except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. To the extent any of the foregoing representations and warranties are made with respect to activities conducted by Third Parties, such representation and warranty is made solely to the Knowledge of the Company.

(c) Since January 1, 2021, none of the Acquired Companies has (i) made an untrue statement of a material fact or a fraudulent statement to the FDA, (ii) failed to disclose a material fact required to be disclosed to the FDA or (iii) failed to make a statement to the FDA, in each such case, related to the business of the Acquired Companies, that, at the time such statement was made or such disclosure or statement was not made, would reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991) or for any Governmental Entity to invoke any similar policy, except for any act or statement or failure to make a statement that has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Since January 1, 2021, none of the Acquired Companies has been excluded from participation in any federal health care program or, to the Knowledge of the Company, engaged in any conduct for which such Acquired Company could be excluded from participating in any federal health care program under 42 U.S.C. 1320a-7, except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(d) The Acquired Companies are and, since January 1, 2021, have been, in compliance with all terms and conditions of the Regulatory Approvals for QINLOCK, except as would not reasonably be expected to be material to the Acquired Companies, taken as a whole. There are no, and since January 1, 2021, have not been any, Legal Proceedings pending or, to the Knowledge of the Company, threatened in writing, relating to the suspension, revocation, modification or termination of any Regulatory Approvals for QINLOCK.

(e) Except as would not reasonably be expected to be material to the Acquired Companies, taken as a whole, all clinical, preclinical and other studies and tests conducted by or on behalf of, or sponsored by, an Acquired Company were, since January 1, 2021, and, if still pending, are being conducted in accordance with the applicable protocols and in compliance with applicable Healthcare Laws, to the Knowledge of the Company. The Acquired Companies have not received any written notices, correspondence or other communications from the FDA or any comparable Governmental Entity, institutional review board, ethics committee or safety monitoring committee requiring or, to the Knowledge of the Company, threatening to initiate any action to place a clinical hold order on, or otherwise terminate, delay or suspend any clinical studies currently being conducted by or on behalf of, or sponsored by, an Acquired Company. To the Knowledge of the Company, as of the date hereof, (i) no clinical investigator, researcher or clinical staff participating in any clinical study conducted by or on behalf of an Acquired Company has been disqualified from participating in clinical studies conducted by or on behalf of, or sponsored by, an Acquired Company, and (ii) no such administrative action to disqualify such clinical investigators, researchers or clinical staff from participating in any such clinical study is pending or has been threatened in writing.

(f) The Acquired Companies are in possession of all Permits (including any required by a Governmental Entity) necessary for each Acquired Company to own, lease and operate its properties and to carry on its business as currently conducted, except where the failure to have, or the suspension or cancellation of, any of such Permits would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. All Permits held by the Acquired Companies are in full force and effect, except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. There is no proceeding pending or, to the Knowledge of the Company, threatened in writing that would result in the termination, revocation, suspension or the imposition of a restriction on any such material Permit.

(g) Since January 1, 2021, the Acquired Companies have not issued, or caused to be issued any material notice, alert or warning to healthcare professionals, other customers or patients relating to an alleged or actual lack of safety, efficacy or regulatory compliance of the Company Products or been required to do so.

Section 4.10. Legal Proceedings; Orders.

(a) There are no material Legal Proceedings pending (or, to the Knowledge of the Company, threatened in writing) against the Acquired Companies.

(b) None of the Acquired Companies is subject to any outstanding Order under which any of them is subject to ongoing material obligations.

(c) There is no material investigation by any Governmental Entity pending or, to the Knowledge of the Company, threatened in writing with respect to the Acquired Companies.

Section 4.11. Tax Matters.

(a) Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect:

(i) The Acquired Companies have filed with the appropriate Governmental Entities all Tax Returns that are required to be filed by them, and all such Tax Returns are true, correct and complete. All Taxes due and owing by the Acquired Companies have been timely paid. None of the Acquired Companies currently is the beneficiary of any extension of time within which to file any Tax Return other than customary extensions that have been obtained consistent with past practice. There are no Encumbrances on any of the assets of the Acquired Companies that arose in connection with any failure to pay any Tax, other than Permitted Encumbrances.

(ii) The Acquired Companies have withheld and paid to the appropriate Governmental Entity all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other Third Party.

(iii) As of the date hereof, there is no dispute concerning any Tax liability of the Acquired Companies raised by any Governmental Entity in writing to the Acquired Companies that remains unpaid, and none of the Acquired Companies has received written notice of any threatened audits or investigations relating to any Taxes. No claim has been made in writing by any Tax authority in a jurisdiction where any Acquired Company has not filed Tax Returns that such Acquired Company is or may be subject to Tax by, or required to file Tax Returns with respect to Taxes in, such jurisdiction.

(iv) None of the Acquired Companies has waived any statute of limitations in respect of Taxes or agreed to, or requested, any extension of time with respect to a Tax assessment or deficiency, in each case that is in effect as of the date hereof.

(v) There are no agreements relating to the allocating or sharing of Taxes to which the Acquired Companies are a party other than customary agreements entered into in the ordinary course of business, the principal purpose of which is not related to Taxes.

(b) None of the Acquired Companies (i) has been a member of an affiliated group of corporations within the meaning of Section 1504 of the Code or within the meaning of any similar provision of Law to which the Acquired Companies may be subject, other than the affiliated group of which the Company is the common parent or (ii) has any liability for the Taxes of any Person (other than any Acquired Company) under Treasury Regulations Section 1.1502-6 (or any similar provision of Law) as a transferee or successor, or by contract (other than a contract entered into in the ordinary course of business the principal purposes of which is not related to Taxes).

(c) No Acquired Company is bound with respect to the current or any future taxable period by any closing agreement (within the meaning of Section 7121(a) of the Code or any similar or analogous state, local or non-U.S. Law) or other ruling or written agreement with a Tax authority, in each case, with respect to material Taxes.

(d) During the two (2) year period ending on the date hereof, no Acquired Company was a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(a)(1)(A) of the Code) in a transaction intended to qualify for tax-free treatment under Section 355 of the Code.

(e) No Acquired Company has been a party to or participated in a transaction that constitutes a "listed transaction" within the meaning of Section 6707A(c)(2) of the Code and Treasury Regulations Section 1.6011-4(b)(2) for a taxable period for which the applicable statute of limitations remains open.

(f) Notwithstanding anything to the contrary contained in this Agreement, (i) no representation or warranty is made with respect to the amount or availability of any Tax attribute (including a net operating loss or Tax credit) for any taxable period or portion thereof beginning after the Closing Date, and (ii) this Section 4.11, Section 4.4 (to the extent it relates to Taxes), Section 4.5 (to the extent it relates to Taxes) and Section 4.12 (to the extent it relates to Taxes) contain the only representations and warranties by the Company with respect to Taxes in this Agreement.

Section 4.12. Employee Benefit Plans.

(a) Section 4.12(a) of the Company Disclosure Schedule sets forth a correct and complete list of each material Company Benefit Plan. To the extent applicable, the Acquired Companies have either delivered or made available to Parent prior to the execution of this Agreement with respect to each material Company Benefit Plan accurate and complete copies of: (i) all plan documents and all amendments thereto, and all related trust or other funding documents, and in the case of unwritten material Company Benefit Plans, written descriptions thereof, (ii) all determination letters, rulings, opinion letters, information letters or advisory opinions issued by the IRS or the United States Department of Labor within the past three (3) years, (iii) the most recently filed annual return/report (Form 5500) and accompanying schedules and attachments thereto, (iv) the most recently prepared actuarial report and financial statements, and (v) the most recent prospectus or summary plan descriptions and any material modifications thereto.

(b) None of the Acquired Companies nor any ERISA Affiliate thereof sponsors, maintains or contributes or is obligated to contribute to, or has in the past six (6) years sponsored, maintained or contributed or in the past six (6) years has been obligated to contribute to, or has or is reasonably expected to have any direct or indirect liability with respect to, any Company Benefit Plan subject to Title IV of ERISA or any multiemployer plan within the meaning of Section 4001(a)(3) or 3(37) of ERISA.

(c) Each Company Benefit Plan intended to be qualified under Section 401(a) of the Code has received or is permitted to rely upon a favorable determination or opinion letter that it is so qualified, and to the Knowledge of the Company, there are no circumstances that would reasonably be expected to adversely affect such qualification.

(d) (i) Each Company Benefit Plan has been operated and maintained, in all material respects, in compliance with its terms and with the requirements prescribed by applicable Laws, including ERISA and the Code; (ii) no material Legal Proceeding is pending with respect to any Company Benefit Plan (other than routine claims for benefits) and, to the Knowledge of the Company, no such Legal Proceeding is threatened in writing; and (iii) as of the date hereof, to the Knowledge of the Company, there are no material governmental audits or investigations pending or threatened in writing in connection with any Company Benefit Plan.

(e) Neither the execution and delivery of this Agreement nor the consummation of the Transactions will (either alone or together with any other event) (i) result in, or cause the accelerated vesting, funding or delivery of, or increase the amount or value of, any payment or benefit to any current or former employee, officer, director or other service provider of any Acquired Company, (ii) result in any "parachute payment" (as defined in Section 280G(b)(2) of the Code) or (iii) limit or restrict the right of any of the Acquired Companies or, after Effective Time, Parent or the Surviving Corporation, to merge, amend or terminate any Company Benefit Plan.

(f) None of the Acquired Companies has any obligation to pay or provide any tax "gross-up" or similar "make-whole" payments or indemnities to any current or former employee, officer, director or consultant of any Acquired Company.

(g) No Company Benefit Plan provides for post-retirement or post-termination health, life insurance or other welfare benefits except as required under Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Code or similar state Law or for a limited period of time following a termination of employment pursuant to the terms of an existing employment, severance or similar agreement in effect as of the date hereof.

(h) Any Company Benefit Plan that is a "non-qualified deferred compensation plan" (as such term is defined in Section 409A(d)(1) of the Code) has been operated and maintained in material compliance with the requirements of Section 409A of the Code and applicable guidance issued thereunder.

(i) Except as would not reasonably be expected to result, individually or in the aggregate, in a material liability to the Acquired Companies taken as a whole, all Company Benefit Plans subject to the Laws of any jurisdiction outside the United States (each, a "**Non-U.S. Benefit Plan**") (i) have been maintained, funded and administered in accordance with all applicable requirements, (ii) that are intended to qualify for special tax treatment, meet all the requirements for such treatment, (iii) that are intended to be funded or book-reserved, are fully funded or book reserved, as applicable, based upon reasonable actuarial assumptions, and (iv) do not have any unfunded or underfunded liabilities not accurately accrued in accordance with applicable accounting standards. No Non-U.S. Benefit Plan is a defined benefit pension plan.

Section 4.13. Labor Matters.

(a) The Company has provided to Parent a schedule that sets forth, for each employee of the Acquired Companies as of the date hereof, his or her name, title, hire date, whether full- or part-time and whether active or on leave, annual base salary, and current annual bonus target.

(b) The Acquired Companies have been in compliance with all applicable Laws and Orders governing labor or employment, including those relating to labor-management relations, wages, hours, overtime, employee classification, discrimination, sexual harassment, civil rights, affirmative action, work authorization, immigration, safety and health, workers' compensation, continuation coverage under group health plans, wage payment and the payment and withholding of Taxes (collectively, the "**Employment Laws**"), except where the failure to so comply would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(c) As of the date hereof, the employees of the Acquired Companies are not represented by a labor union or works council and there is not, to the Knowledge of the Company, any attempt to organize any employees of the Acquired Companies for the purpose of forming or joining a labor union or works council. There have been no strikes, slowdowns, picketing, work stoppages or other material labor disputes by the employees of the Acquired Companies pending or, to the Knowledge of the Company, threatened. None of the Acquired Companies has ever been party to or subject to a Collective Bargaining Agreement, nor are there any negotiations currently pending related to, any Collective Bargaining Agreement or similar labor Contract. There are no material unfair labor practice complaints pending or, to the Knowledge of the Company, threatened against any of the Acquired Companies before the National Labor Relations Board or any other Governmental Entity.

(d) As of the date hereof, no material Legal Proceeding relating to any Employment Law is pending or, to the Knowledge of the Company, is threatened.

(e) The Company has reasonably investigated all sexual harassment allegations made by or about any employee or individual independent contractor of the Acquired Companies since January 1, 2021 as to which the Company has Knowledge. With respect to any such allegation with potential merit, the relevant Acquired Company has taken prompt corrective action that is reasonably calculated to prevent further harassment.

(f) Within the past three (3) years ending on the date hereof, none of the Acquired Companies has implemented any plant closing or layoff of employees that (in either case) violated WARN or any similar foreign, state or local Law.

(g) As of the date hereof, no officer of the Company with the title of Vice President or above has provided notice to his or her supervisor of the voluntary termination of his or her employment, nor has any of the Acquired Companies provided notice to any such officer of the involuntary termination of his or her employment.

(h) As of the date hereof, each U.S. employee of the Acquired Companies is: (a) a United States citizen; (b) a lawful permanent resident of the United States; or (c) an alien authorized to work in the United States. The Company has retained a Form I-9 (Employment Eligibility Verification) for each employee pursuant to and in compliance in all material respects with the Immigration Reform and Control Act of 1986, and all regulations promulgated thereunder.

Section 4.14. Environmental Matters. Except for such matters that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect: (i) each of the Acquired Companies is in compliance with all applicable Environmental Laws, possesses all Environmental Permits, and is in compliance with all such Environmental Permits; (ii) there are no Environmental Claims pending or, to the Knowledge of the Company, threatened in writing against the Acquired Companies; and (iii) to the Knowledge of the Company, none of the Acquired Companies has released any Hazardous Materials at, on, under or from any property currently owned or leased by the Acquired Companies in an amount or manner which would reasonably be expected to result in liability to any Acquired Company under Environmental Law.

Section 4.15. Insurance. Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect: (a) all insurance policies maintained by the Acquired Companies are in full force and effect and all premiums due and payable thereon have been paid; (b) none of the Acquired Companies is in breach of or default under any of such insurance policies; and (c) since January 1, 2021 through the date hereof, the Company has not received any written notice of termination or cancelation or denial of coverage with respect to any insurance policy. As of the date hereof, there is no pending material claim by any Acquired Company against any insurance carrier under any insurance policy held by any Acquired Company.

Section 4.16. Privacy and Data Security.

(a) Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company IT Assets operate and perform in a manner that permits the Acquired Companies to conduct their business as currently conducted, and the Acquired Companies have implemented and maintain commercially reasonable administrative, technical, and physical measures designed to protect the Company IT Assets (and all Personal Information and other confidential information stored or contained therein or transmitted thereby) against loss, damage and unauthorized access, use, modification or other misuse, including the implementation of commercially reasonable (i) data backup, (ii) disaster avoidance and recovery procedures and (iii) business continuity procedures, in each case designed to be consistent with practices in the industry in which the Acquired Companies operate. To the Knowledge of the Company, as of the date hereof, there has been no material unauthorized: use, access or security breaches, or material unauthorized: interruption, modification, loss or corruption of any of the Company IT Assets.

(b) Since January 1, 2021, each of the Acquired Companies has complied with all applicable Privacy Laws in connection with the operation of the Acquired Companies' business, except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Acquired Companies have complied with each of their respective written and published (both internally and externally) policies concerning the

privacy of Personal Information, and contractual obligations involving Personal Information and cybersecurity (together, "**Privacy Requirements**"), except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. As of the date hereof, the Company has not received written notice of any claims against the Acquired Companies by any Person alleging a violation of Privacy Laws and/or Privacy Requirements. To the Knowledge of the Company, as of the date hereof, there have been no (i) material losses or thefts of, or material security breaches relating to, Personal Information in the possession, custody or control of any Acquired Company, (ii) material unauthorized access or material unauthorized use of any Personal Information in the possession, custody, or control of any Acquired Company or (iii) material unauthorized disclosure of any Personal Information in the possession, custody or control of any Acquired Company.

Section 4.17. Foreign Corrupt Practices Act. Since January 1, 2021, none of the Acquired Companies, nor to the Knowledge of the Company, any of their respective directors, officers, employees, agents, or representatives (in each case, while acting on behalf of the Acquired Companies) have: (a) directly or indirectly, made, offered, promised or authorized any payment or gift of any money or anything of value to or for the benefit of any "foreign official" (as such term is defined in the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "**FCPA**")), foreign political party or official thereof or candidate for foreign political office for the unlawful purpose of (i) influencing any official act or decision of such official, party or candidate, (ii) inducing such official, party or candidate to use his, her or its influence to affect any act or decision of a foreign governmental authority, or (iii) securing any improper advantage, in the case of clauses (i), (ii) and (iii) above in order to assist the Acquired Companies or any of its Affiliates in obtaining or retaining business for or with, or directing business to, any Person; or (b) made or authorized any bribe, rebate, payoff, influence payment, kickback or other unlawful payment of funds or received or retained any funds in violation of any Law, rule or regulation. The Acquired Companies further represent that they have maintained systems of internal controls and procedures to promote compliance with the FCPA. None of the Acquired Companies, and to the Knowledge of the Company, none of its or any of the Acquired Companies' officers, directors, employees, agents, or representatives (in each case, while acting behalf of the Acquired Companies), are the subject of any allegation, voluntary disclosure, investigation, prosecution or other enforcement action related to the FCPA or any other applicable anti-corruption Law.

Section 4.18. Trade Control Laws. Since January 1, 2021, the Acquired Companies have been in material compliance with all applicable import, export control, and economic and trade sanctions Laws, regulations, statutes, and orders, including, but not limited to, the Export Administration Regulations, the International Traffic in Arms Regulations, the regulations administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury, and the Tariff Act of 1930, as amended, and have obtained, or are otherwise qualified to rely upon, all necessary import and export licenses, consents, notices, waivers, approvals, orders, authorizations, registrations, declarations or other authorizations from, and made any required filings with, any Governmental Entity required for (i) the import, export, and reexport of products, services, software and technologies and (ii) releases of technologies and software to foreign nationals.

Section 4.19. CFIUS. None of the Acquired Companies (a) are a "TID U.S. Business" as defined in the Department of the Treasury's Office of Investment Security regulations at 31 C.F.R. § 800.248; (b) produce, design, test, manufacture, fabricate, or develop any "critical technologies" as defined at 31 C.F.R. § 800.215; (c) maintain or collect "sensitive personal data" as defined in 31 C.F.R. § 800.241; or (d) own, operate, manufacture, service or supply any "covered investment critical infrastructure" as defined in 31 C.F.R. § 800.212.

Section 4.20. Authority; Binding Nature of Agreement. The Company has the necessary corporate power and authority to enter into and to perform its obligations under this Agreement. At a meeting duly called and held, prior to the execution of this Agreement, the Company Board (a) approved, adopted and declared advisable this Agreement and the Transactions, including the Offer and the Merger, (b) determined that the Transactions, including the Offer and the Merger, are in the best interests of the Company and its stockholders, (c) determined that the Merger will be effected under Section 251(h) of the DGCL, and (d) resolved to recommend that the stockholders of the Company accept the Offer and tender their shares of Company Common Stock to Merger Sub pursuant to the Offer, which resolutions have not been subsequently withdrawn or modified in a manner adverse to Parent (except for in connection with a Change in Recommendation permitted in accordance with this Agreement). Assuming the Transactions are consummated in accordance with Section 251(h) of the DGCL, and assuming the accuracy of Parent's and Merger Sub's representations and warranties set forth in Section 5.5, the execution and delivery of this Agreement by the Company and the consummation by the Company of the Merger have been duly authorized by all necessary corporate action on the part of the Company, and no other corporate proceedings on the part of the Company are necessary to authorize the execution, delivery and performance by the Company of this Agreement. This Agreement has been duly executed and delivered on behalf of the Company and, assuming the due authorization, execution and delivery of this Agreement on behalf of Parent and Merger Sub, constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as may be limited by bankruptcy, insolvency, moratorium and other similar applicable Law affecting creditors' rights generally and by general principles of equity.

Section 4.21. No Vote Required. Assuming the Transactions are consummated in accordance with Section 251(h) of the DGCL and assuming the accuracy of Parent and Merger Sub's representations and warranties set forth in Section 5.5, no stockholder votes or consents by the Company's stockholders are needed to authorize this Agreement or to consummate the Transactions.

Section 4.22. Non-Contravention; Consents. Except, in the case of the following clauses (b) and (c), as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the execution and delivery of this Agreement by the Company, and subject to receipt or delivery of the consents, approvals, waivers and/or notifications contemplated in Section 4.22 of the Company Disclosure Schedule, the acquisition of shares of Company Common Stock by Merger Sub pursuant to the Offer and the consummation by the Company of the Merger will not: (a) cause a violation of any of the provisions of the Organizational Documents of any Acquired Company; (b) cause a violation by the Company of any Law applicable to the business of any Acquired Company; or (c) cause a default, or give rise to a right of termination, cancelation or acceleration of any obligation or loss of a material benefit of any Acquired Company, under any Material Contract or Leased Real Property. Except as may be required by the applicable provisions of the Exchange Act, any other applicable U.S. state, federal or foreign securities laws, the DGCL, the rules and listing requirements of Nasdaq, the HSR Act or other applicable Antitrust Laws or applicable Foreign Investment Laws, and except

for any filings with or consents from any Governmental Entity that may be required as a result of the identity or business of Parent, Merger Sub or any of their Affiliates, none of the Acquired Companies is required to make any filing with or to obtain any consent from any Governmental Entity at or prior to the Acceptance Time in connection with the execution and delivery of this Agreement by the Company or the consummation by the Company of the Merger, except where the failure to make any such filing or obtain any such consent would not adversely affect or materially delay the Company's ability to perform any of its obligations under this Agreement or consummate any of the Transactions.

Section 4.23. Section 203 of the DGCL. Assuming the accuracy of Parent and Merger Sub's representations and warranties set forth in Section 5.5, the Company Board has taken or will take all action necessary to render Section 203 of the DGCL inapplicable to the Offer and the Merger.

Section 4.24. Opinion of Financial Advisor. The Company Board has received the written opinion of J.P. Morgan Securities LLC to the effect that, as of the date of such opinion and based upon and subject to the assumptions made, procedures followed, matters considered and limitations on the review undertaken by J.P. Morgan Securities LLC in preparing its opinion, the consideration to be paid to the holders of Company Common Stock (other than Parent, Merger Sub and their respective Affiliates) in the Offer and the Merger pursuant to this Agreement is fair, from a financial point of view, to such holders. A copy of such written opinion shall be provided to Parent solely for informational purposes after receipt thereof by the Company Board.

Section 4.25. Brokers. No broker, finder or investment banker (other than J.P. Morgan Securities LLC) is entitled to any brokerage, finder's or other similar fee or commission in connection with the Offer or the Merger based upon arrangements made by or on behalf of the Company.

Section 4.26. Schedule 14D-9. The Schedule 14D-9 will comply as to form in all material respects with the requirements of the Exchange Act. On the date filed with the SEC and on the date first published, sent or given to the Company's stockholders, the Schedule 14D-9 will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that no representation is made by the Company with respect to any information supplied by Parent or Merger Sub for inclusion in the Schedule 14D-9.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub hereby jointly and severally represent and warrant to the Company that:

Section 5.1. Organization and Good Standing. Each of Parent and Merger Sub is duly organized, validly existing and in good standing under the Law of the jurisdiction of its organization, has necessary corporate or other power and authority to own, lease and operate its properties and assets and to conduct its business as currently conducted and is duly qualified or

licensed to do business as a foreign corporation or company and is in good standing (with respect to jurisdictions that recognize such concept) in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except in each case as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.2. Legal Proceedings; Orders.

(a) There is no Legal Proceeding pending (or, to the knowledge of Parent, threatened) against Parent or Merger Sub that would adversely affect Parent's or Merger Sub's ability to perform any of its obligations under this Agreement or consummate any of the Transactions.

(b) There is no Order to which Parent or Merger Sub is subject that would adversely affect Parent's or Merger Sub's ability to perform any of its obligations under this Agreement or consummate any of the Transactions.

(c) No investigation by any Governmental Entity with respect to Parent, Merger Sub or any other Affiliate of Parent is pending or, to the knowledge of Parent, threatened, other than any investigation that would not adversely affect Parent's or Merger Sub's ability to perform any of its obligations under this Agreement or consummate any of the Transactions.

Section 5.3. Authority; Binding Nature of Agreement.

(a) Parent has the necessary corporate power and authority to enter into and to perform its obligations under this Agreement. At a meeting duly called and held, prior to the execution of this Agreement, the Board of Directors of Parent (i) determined that the Transactions, including the Offer and the Merger, are in the best interests of Parent, and (ii) authorized and approved the execution, delivery and performance of this Agreement by Parent. The execution and delivery of this Agreement by Parent and performance of its obligations hereunder and the consummation by Parent of the Transactions have been duly authorized by all necessary corporate action on the part of Parent, and no other proceeding, approval, permit, consent, declaration, registration or authorization by or in respect of, or filing with, any Governmental Entity on the part of Parent are necessary, required or advisable, directly or indirectly, to authorize the execution, delivery and performance of this Agreement. This Agreement has been duly executed and delivered on behalf of Parent and, assuming the due authorization, execution and delivery of this Agreement on behalf of the Company, constitutes the valid and binding obligation of Parent, enforceable against Parent in accordance with its terms, except as may be limited by bankruptcy, insolvency, moratorium and other similar applicable Law affecting creditors' rights generally and by general principles of equity.

(b) Merger Sub is a newly formed, wholly owned Subsidiary of Parent and has the necessary corporate power and authority to enter into and to perform its obligations under this Agreement. The board of directors of Merger Sub has (i) determined that the Transactions, including the Offer and the Merger, are fair to, and in the best interests of, Merger Sub and its stockholder, (ii) declared this Agreement and the Transactions, including the Offer

and the Merger, advisable, and (iii) authorized and approved the execution, delivery and performance of this Agreement by Merger Sub. The execution and delivery of this Agreement by Merger Sub and the performance of its obligations hereunder and the consummation by Merger Sub of the Transactions have been duly authorized by all necessary corporate action on the part of Merger Sub, and no other proceeding, approval, permit, consent, declaration, registration or authorization by or in respect of, or filing with, any Governmental Entity on the part of Merger Sub are necessary, required or advisable, directly or indirectly, to authorize the execution, delivery and performance of this Agreement, other than, with respect to the Merger, the filing and recordation of the appropriate merger documents as required by the DGCL. Parent, as the sole stockholder of Merger Sub, will vote to adopt this Agreement immediately after the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by Merger Sub and, assuming the due authorization, execution and delivery of this Agreement on behalf of the Company, constitutes the valid and binding obligation of Merger Sub, enforceable against Merger Sub in accordance with its terms, except as may be limited by bankruptcy, insolvency, moratorium and other similar applicable Law affecting creditors' rights generally and by general principles of equity.

Section 5.4. Non-Contravention; Consents. Except for violations and defaults that would not adversely affect Parent's or Merger Sub's ability to perform any of its obligations under this Agreement or consummate any of the Transactions, the execution and delivery of this Agreement by Parent and Merger Sub, and the consummation of the Transactions, will not: (i) cause a violation of any of the provisions of the Organizational Documents of Parent or Merger Sub; (ii) cause a violation by Parent or Merger Sub of any Law applicable to Parent or Merger Sub; or (iii) cause a default on the part of Parent or Merger Sub under any Contract. Except as may be required by the applicable provisions of the Exchange Act, any other applicable U.S. state or federal or foreign securities laws, the DGCL, the rules and listing requirements of the Tokyo Stock Exchange or the HSR Act or other applicable Antitrust Laws, neither Parent nor Merger Sub, nor any of Parent's other Affiliates, is required to make any filing with or to obtain any consent from any Person at or prior to the Acceptance Time or the Effective Time in connection with the execution and delivery of this Agreement by Parent or Merger Sub or the consummation by Parent or Merger Sub of any of the Transactions, except where the failure to make any such filing or obtain any such consent would not adversely affect or materially delay Parent's or Merger Sub's ability to perform any of its obligations under this Agreement or consummate any of the Transactions. No vote of Parent's stockholders is necessary to adopt this Agreement or to approve any of the Transactions.

Section 5.5. Not an Interested Stockholder. Neither Parent nor any of its "affiliates" or "associates" is, or has been within the three (3) years preceding the date hereof, an "interested stockholder" (in each case as such terms are defined in Section 203 of the DGCL) of the Company. Neither Parent nor any of Parent's Subsidiaries directly or indirectly owns, and at all times within the last three (3) years, neither Parent nor any of Parent's Subsidiaries has directly or indirectly owned, beneficially or otherwise, any Company Common Stock or any securities, contracts or obligations convertible into or exchangeable for Company Common Stock.

Section 5.6. Financing.

(a) Parent has delivered to the Company a true, correct and complete copy of the fully executed commitment letter, dated as of April 29, 2024 (including all exhibits, schedules and annexes thereto, and as amended, restated, amended and restated, supplemented or replaced from time to time after the date of this Agreement in compliance with Section 6.14, the "**Debt Commitment Letter**"), between Parent and the Debt Financing Sources party thereto, pursuant to which such Debt Financing Sources have committed, subject only to the express conditions set forth therein, to lend the amounts set forth therein (the "**Debt Financing**"). Parent has also delivered to the Company a true, correct and complete copy of any fee letter with respect to the Debt Financing (as amended, restated, amended and restated, supplemented or replaced from time to time after the date of this Agreement in compliance with Section 6.14, the "**Fee Letter**"), which may be redacted solely with respect to fee amounts, economic terms and the "market flex" fee amounts, solely to the extent customary to so redact; *provided* that none of such redactions or the "market flex" provisions covers terms that would (i) reduce the amount of the Debt Financing available to Parent and Merger Sub at the Acceptance Time to an amount, when aggregated with the amount of Parent Readily Available Funds, less than the aggregate amount of funds necessary to fulfill its obligations to pay the aggregate Offer Price payable pursuant to this Agreement, the aggregate Merger Consideration payable pursuant to this Agreement, and the other payments to be made by Parent, Merger Sub or any of their respective Affiliates pursuant to this Agreement, the Debt Commitment Letter or the Fee Letter and any expenses incurred by Parent, Merger Sub or any of their respective Affiliates in connection with the transactions contemplated by this Agreement, the Debt Commitment Letter or the Fee Letter, and all other fees and expenses required to be paid at Closing by Parent, Merger Sub and their respective Affiliates in connection with the consummation of the Offer and the Merger and the Debt Financing and to cover all potential currency risk with respect to any potential funds to be used for any of the foregoing amounts that is in a currency other than U.S. dollars (collectively, the "**Necessary Funds Amount**"), (ii) impose any new condition or otherwise adversely amend, modify or expand any conditions precedent to the Debt Financing in a manner that would reasonably be expected to make the timely funding of the Debt Financing or the satisfaction of any condition to the funding thereof materially less likely to occur, (iii) reasonably be expected to prevent, delay or impede Closing, or adversely affect the enforceability, availability or termination of the Debt Commitment Letter, or (iv) have an Adverse Effect on Financing. The Debt Commitment Letter, in the form so delivered, is a legal, valid and binding obligation of Parent (and, to the extent a party thereto, Merger Sub) and, to the knowledge of Parent, of the Debt Financing Sources party thereto. As of the date hereof, the Debt Commitment Letter has not been amended, restated, supplemented, waived or modified, and no such amendment, restatement, supplement, waiver or modification is contemplated, and the commitments contained in the Debt Commitment Letter have not been withdrawn, terminated, repudiated, amended, replaced, amended and restated, supplemented, modified or rescinded in any respect, and no such withdrawal, termination, repudiation, amendment, replacement, amendment and restatement, supplement, modification or rescindment, is pending or contemplated. As of the date hereof, the Debt Commitment Letter is in full force and effect. As of the date hereof, the only conditions precedent to the Debt Financing commitments or the funding of the full amount of the Debt Financing on the Closing Date are those contemplated by the express terms of the Debt Commitment Letter. As of the date hereof, assuming that (A) the representations and warranties of the Company contained in

Article 4 of this Agreement are true in all material respects in the manner required for Parent to not have a right to terminate this Agreement pursuant to Section 8.1(g) (after giving effect to all cure and grace periods therein), and (B) the Company complies in all material respects with its obligations hereunder in the manner required for Parent to not have a right to terminate this Agreement pursuant to Section 8.1(g) (after giving effect to all cure and grace periods therein) (clause (A) and clause (B), collectively, the "**Financing Assumptions**"), neither Parent nor Merger Sub (nor any of their respective Affiliates who may be parties thereto) is in default or breach of any of the terms or conditions set forth in the Debt Commitment Letter and no event has occurred which, with or without notice or lapse of time or both, would constitute a default or breach on the part of Parent, Merger Sub or any of their respective Affiliates under any term or condition of the Debt Commitment Letter, would reasonably be expected to constitute a failure of any condition to the funding of the Debt Financing on the Closing Date, or would otherwise be reasonably likely to result in any portion of the Debt Financing contemplated by the Debt Commitment Letter to be unavailable, delayed or further conditioned. Parent and its Affiliates have fully paid any and all commitment fees or other fees and amounts required by the terms of the Debt Commitment Letter to be paid on or before the date hereof, and will pay, after the date hereof, all such commitment fees and other fees and amounts as they become due (both before and after giving effect to all "market flex" provisions as if the modifications contemplated by such provisions had been implemented to the maximum extent contemplated thereunder). There are no contracts, agreements, side letters, or arrangements relating to the Debt Financing that would reasonably be expected to (x) affect the availability of the full amount of the Debt Financing contemplated by the Debt Commitment Letter at the Acceptance Time, or (y) cause an Adverse Effect on Financing. Assuming that the Financing Assumptions are satisfied, the proceeds from the Debt Financing, together with Parent Readily Available Funds, constitute all of the financing required to be provided to Parent and Merger Sub in order for Parent to pay the Necessary Funds Amount (both before and after giving effect to all "market flex" provisions set forth in the Debt Commitment Letter as if the modifications contemplated by such provisions had been implemented to the maximum extent contemplated thereunder). As of the date of this Agreement, assuming that the Financing Assumptions are satisfied, neither Parent nor Merger Sub knows of any facts or circumstances that would reasonably be expected to result in any of the conditions to the funding or availability of the Debt Financing set forth in the Debt Commitment Letter not being satisfied on a timely basis (and in any event, prior to or at the Acceptance Time and the Closing on the Closing Date), nor does Parent or Merger Sub have any reason to believe that any of the Debt Financing Sources will not perform their respective funding obligations with respect to the Debt Financing under the Debt Commitment Letter.

(b) Without limiting Section 9.10, in no event shall the receipt or availability of any funds or financing (including the Debt Financing or any other financing) by or to Parent, Merger Sub or any of their respective Affiliates or any other financing transaction be a condition to any of the obligations of Parent or Merger Sub hereunder.

Section 5.7. Offer Documents. The Offer Documents will comply as to form in all material respects with the requirements of the Exchange Act. On the date filed with the SEC, on the date first published, sent or given to the Company's stockholders and at all other times at or prior to the Acceptance Time, the Offer Documents will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that no representation is made by Parent or Merger Sub with respect to any information supplied in writing by the Company specifically for inclusion in the Offer Documents.

Section 5.8. Information in Schedule 14D-9. None of the information supplied or to be supplied by or on behalf of Parent for inclusion in the Schedule 14D-9 will, at the time the Schedule 14D-9 is filed with the SEC, at the time the Schedule 14D-9 is mailed to the stockholders of the Company, or at any other time at or prior to the Acceptance Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading.

Section 5.9. Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with this Agreement, the Merger or the other Transactions based upon arrangements made by or on behalf of Parent or Merger Sub for which the Acquired Companies could be liable.

Section 5.10. Merger Sub. As of the date hereof, the authorized capital stock of Merger Sub consists of 1,000 shares of common stock, par value $0.01 per share, all of which shares are validly issued and outstanding. All of the issued and outstanding capital stock of Merger Sub is, and at the Effective Time will be, owned by Parent. Merger Sub was formed solely for the purpose of engaging in the Transactions, and, prior to the Effective Time, Merger Sub will have engaged in no business and have no liabilities or obligations other than in connection with the Transactions. There are no actions pending or, to the knowledge of Parent, threatened against Parent or any of its Subsidiaries, including Merger Sub, that would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.11. Stockholder and Employee Matters. As of the date hereof, neither Parent nor Merger Sub has, directly or indirectly, made or entered into any formal or informal arrangements or other understandings (whether or not binding), with any of the Company's stockholders, directors, officers or employees (in their respective capacities as such), or any Contract with such Persons relating to this Agreement, the Merger or any of the other Transactions.

Section 5.12. Solvency. Assuming that the Financing Assumptions are satisfied, as of the Closing and immediately after giving effect to the Closing (and any transactions related thereto or incurred in connection therewith), Parent, Merger Sub, and the Acquired Companies, on a consolidated basis, (i) will be able to pay their debts and other liabilities as they become due, (ii) will own property and assets which will have a present fair saleable value (on a going concern basis) greater than the amount required to pay their debts and other liabilities (including a reasonable estimate of the amount of all contingent liabilities), and (iii) will not be engaged in, and are not about to engage in, business for which they have unreasonably small capital (the foregoing clauses (i), (ii) and (iii), "**Solvent**"). No transfer of property is being made (or is contemplated being made), and no obligation is being incurred (or is contemplated being incurred), by Parent, Merger Sub, the Surviving Corporation or their respective Affiliates in connection with the transactions contemplated hereby (or any series of related transactions or any other transactions in close proximity with the transactions contemplated by this Agreement) (a) with the intent to hinder, delay or defraud either present or future creditors of Parent, Merger Sub, the Surviving

Corporation, any of the their respective Subsidiaries, or the Acquired Companies, (b) that could render Parent, Merger Sub, the Surviving Corporation, their respective Affiliates, or the Acquired Companies not Solvent (or in the zone of insolvency) or (c) could have a material adverse effect on the long term financial sustainability or operability of Parent, Merger Sub, the Surviving Corporation, their respective Affiliates, or the Acquired Companies.

ARTICLE 6
COVENANTS

Section 6.1. Conduct of the Company.

(a) The Company agrees that, during the period from the date hereof through the earlier of the Acceptance Time or the date of termination of this Agreement, except for matters (i) undertaken with the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed and shall be deemed given if Parent provides no written response within five (5) Business Days after a written request by the Company for such consent), (ii) as set forth in Section 6.1 of the Company Disclosure Schedule, (iii) as required by this Agreement, (iv) as required to consummate the Transactions, (v) as required to comply with any Law, Order or Contract, or (vi) as required by the rules or regulations of Nasdaq, the Company shall, and shall cause its Subsidiaries to, use commercially reasonable efforts to conduct its business in the ordinary course in all material respects; *provided* that the parties agree that the Acquired Companies may continue any changes in their respective business practices adopted prior to the date hereof to address and adapt to COVID-19 and any COVID-19 Measures, and the Company may take such further actions as it deems advisable or necessary to address and adapt to COVID-19 and any COVID-19 Measures; and *provided, further*, that the Acquired Companies' preclinical and clinical development activities, commercial activities and regulatory activities as planned and disclosed to Parent prior to the date hereof shall be deemed to be in compliance with the provisions of this Section 6.1 unless and to the extent such activities are not conducted in the manner planned and disclosed to Parent in all material respects and such inconsistency would otherwise contravene a provision of this Section 6.1.

(b) Between the date of this Agreement and the earlier of the Acceptance Time and the date of termination of this Agreement, except for matters (i) undertaken with the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed (other than with respect to clauses (i), (ii), (iii), (iv), (v), (vi), (xiii), and (xiv), which consent shall be at Parent's sole discretion) and shall be deemed given if Parent provides no written response within five (5) Business Days after a written request by the Company for such consent), (ii) as set forth in Section 6.1 of the Company Disclosure Schedule, (iii) as required by this Agreement, (iv) as required to consummate the Transactions, (v) as required to comply with any Law, Order or Contract, or (vi) as required by the rules or regulations of Nasdaq, the Company shall not, nor shall it permit any of its Subsidiaries to, do any of the following:

(i) amend the Company Certificate of Incorporation or the Company Bylaws, or amend any Organizational Documents of the Company's Subsidiaries;

(ii) (A) establish a record date for, declare, set aside or pay any dividends on, or make any other distributions (whether in cash, stock, property or otherwise) in respect of, any capital stock of any Acquired Company, other than dividends and distributions by a direct or indirect wholly owned Subsidiary of the Company to its parent, (B) split, combine or reclassify any capital stock of the Acquired Companies, or (C) purchase, redeem or otherwise acquire any Company securities, except (x) as required pursuant to the terms of the Company Warrants, Company Compensatory Awards or Company ESPP or (y) the net settlement of Company Warrants or Company Compensatory Awards or acquisitions of shares of Company Common Stock by the Company, in each case, in satisfaction by holders of Company Warrants or Company Compensatory Awards of the applicable exercise price or withholding taxes;

(iii) (A) issue, deliver, sell, grant, pledge, transfer, subject to any Encumbrance (other than Permitted Encumbrances or transfer restrictions arising under applicable Law) or dispose of any Company securities, other than (w) grants of Company Compensatory Awards made in the ordinary course of business in connection with new hires, performance recognition and/or promotions up to the aggregate amount set forth in Section 6.1(b)(iii) of the Company Disclosure Schedule, (x) the issuance of shares of Company Common Stock upon the exercise of Company Warrants that are outstanding on the date hereof, in accordance with the terms of the Company Warrants as in effect on the date hereof, (y) the issuance of shares of Company Common Stock upon the exercise or settlement of Company Compensatory Awards that are outstanding on the date hereof or granted after the date hereof not in violation of this Agreement in accordance with the terms of such Company Compensatory Award, or (z) subject to Section 3.7(d), the issuance of shares of Company Common Stock in accordance with the Company ESPP, or (B) amend any term of any security of the Acquired Companies;

(iv) adopt a plan or agreement of complete or partial liquidation, dissolution, restructuring, recapitalization or other reorganization, each with respect to the Acquired Companies;

(v) (A) increase the salary, wages, benefits, bonuses or other compensation payable or to become payable to the Company's current or former directors, officers or employees (at the level of direct report to Vice President or higher), except, in each case, for (x) increases required to be made pursuant to the terms of Company Benefit Plans in effect as of the date hereof, or (y) increases made in the ordinary course of business, including annual and mid-cycle merit and market adjustment increases in salary and target bonus opportunities for employees, (B) enter into any employment, consulting, change in control, severance or similar agreement with the Company's employees (at the level of direct report to Vice President or higher), (C) hire any employee (at the level of direct report to Vice President or higher) (other than to fill vacancies), (D) terminate the employment of any employee (at the level of direct report to Vice President or higher) other than for cause, or (E) enter into, modify, or terminate any Collective Bargaining Agreement;

(vi) adopt, terminate or materially amend any material Company Benefit Plan, except (A) as required under the terms of any Company Benefit Plan as in effect on the date hereof or adopted, amended or modified not in violation of this Agreement, (B) for changes made in the ordinary course of business that do not materially increase the costs related to a Company Benefit Plan, or (C) for annual renewals undertaken in the ordinary course of business;

(vii) acquire any business, assets or capital stock of any Person or division thereof, whether in whole or in part (and whether by purchase of stock, purchase of assets, merger, consolidation, or otherwise), other than one or more acquisitions in the ordinary course of business that, individually or in the aggregate, involve a purchase price of not more than $2,000,000 individually or $4,000,000 in the aggregate;

(viii) sell, lease, license, pledge, transfer, subject to any Encumbrance or otherwise dispose of any material Company Intellectual Property, material assets or material properties except (A) pursuant to Contracts or commitments existing as of the date hereof, (B) non-exclusive licenses of Intellectual Property assets to customers, contractors, partners, academic partners or suppliers in the ordinary course of business consistent with past practices, (C) sales of QINLOCK in the ordinary course of business, (D) sales of inventory or used equipment in the ordinary course of business consistent with past practices, or (E) Permitted Encumbrances;

(ix) change any of the accounting methods used by the Company materially affecting its assets, liabilities or business, except for such changes that are required by GAAP or Regulation S-X promulgated under the Exchange Act or as otherwise specifically disclosed in the Company SEC Documents filed or furnished to the SEC prior to the date of this Agreement;

(x) (A) except for intercompany loans between the Company and any of its wholly owned Subsidiaries or between any wholly owned Subsidiaries of the Company, incur or assume any indebtedness for borrowed money (other than short term borrowings incurred in the ordinary course of business), or (B) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for indebtedness for borrowed money of any other Person (other than any other Acquired Company);

(xi) except in the ordinary course of business, enter into, modify in any material respect, amend in any material respect or voluntarily terminate any Material Contract;

(xii) incur any capital expenditures in an amount in excess of $4,000,000 in the aggregate;

(xiii) except as is otherwise required by GAAP, (A) make or change any material Tax election, (B) change any annual Tax accounting period that has a material effect on Taxes, (C) change any material method of Tax accounting that has a material effect on Taxes, (D) enter into any closing agreement with respect to material Taxes, (E) file any material amended Tax Return, (F) settle or surrender any material Tax claim, audit or assessment or surrender any right to claim a Tax refund, offset or other reduction in Tax liability, (G) waive or extend the statute of limitations with respect to any material Tax or material Tax Return or (H) take any other similar action outside of the ordinary course of

business relating to the filing of any Tax Return or the payment of any Tax, if, in each case, such election, adoption, change, amendment, agreement, settlement, surrender, consent or other action would reasonably be expected to have the effect of materially increasing the Tax liability of an Acquired Company for any period ending after the Closing Date or materially decreasing any Tax attribute of any Acquired Company existing on the Closing Date;

(xiv) settle any Legal Proceeding other than a settlement solely for monetary damages of no more than $2,000,000 individually or $4,000,000 in the aggregate (excluding monetary obligations that are funded by an indemnity obligation to, or an insurance policy of, the Acquired Companies); *provided* that the settlement, release, waiver or compromise of any Transaction Litigation shall be subject to Section 6.11;

(xv) commence preclinical or clinical development, study, trial or test with respect to any products or product candidates that is not a product or product candidate of the Company as of the date hereof; or

(xvi) authorize, commit or agree to take any of the foregoing actions.

Notwithstanding the foregoing, nothing contained in this Agreement shall give to Parent or Merger Sub, directly or indirectly, rights to control or direct the operations of the Acquired Companies prior to the Effective Time. In addition, notwithstanding the foregoing, (x) nothing in this Section 6.1 shall restrict the Acquired Companies from, or require the consent of Parent prior to, engaging in any transaction or entering into any agreement exclusively among the Acquired Companies, (y) no action or inaction by any Acquired Company with respect to matters specifically addressed by any provision of this Section 6.1(b) may be deemed a breach of Section 6.1(a) unless such action constitutes a breach of such provision of Section 6.1(b), and (z) if the Company seeks the consent of Parent to take any action prohibited by this Section 6.1(b) and such consent is withheld by Parent, the failure to take such action will not be deemed to be a breach of Section 6.1(a).

Section 6.2. No Solicitation.

(a) The Company shall not, and shall cause its Subsidiaries not to, and shall not authorize its representatives to:

(i) solicit, initiate, or knowingly encourage the submission or announcement of any Acquisition Proposal or Acquisition Inquiry;

(ii) furnish any non-public information regarding the Company to any Person for the purpose of encouraging, or in response to, an Acquisition Proposal or Acquisition Inquiry;

(iii) engage in discussions or negotiations with any Person with respect to any Acquisition Proposal or Acquisition Inquiry; or

(iv) waive or release any Person from, forebear in the enforcement of, or amend any standstill agreement or any standstill provisions of any other Contract, unless the Company Board (or a committee thereof) determines in good faith, after consultation with the Company's outside legal counsel, that the failure to take such action would be inconsistent with the Company Board's fiduciary obligations to the Company's stockholders under applicable Law;

provided, however, that, notwithstanding anything to the contrary contained in this Agreement, the Company and its Subsidiaries and representatives may engage in any such discussions or negotiations with, and provide any such information to, any Third Party (and its representatives and financing sources) in response to an unsolicited *bona fide* written Acquisition Proposal (that did not result from a material breach of this Section 6.2(a)) if: (A) prior to providing any non-public information regarding the Company to any Third Party in response to an Acquisition Proposal, the Company enters into (or there is then in effect) an Acceptable Confidentiality Agreement with such Third Party; and (B) the Company Board (or a committee thereof) determines in good faith, after consultation with the Company's outside legal counsel and financial advisor, that such Acquisition Proposal either constitutes a Superior Proposal or could reasonably be expected to lead to a Superior Proposal. Prior to or concurrent with providing any non-public information to such Third Party, the Company shall make such non-public information available to Parent (to the extent such non-public information has not been previously made available by the Company to Parent or Parent's representatives).

(b) The Company shall, and shall direct its representatives to, immediately cease and cause to be terminated any existing solicitation of, or discussions or negotiations with, any Third Party relating to any Acquisition Proposal or Acquisition Inquiry; *provided, however*, that the foregoing shall not in any way limit or modify any of the Company's rights under the other provisions of this Section 6.2 or Section 2.3(d). Except to the extent that the Company is prohibited from giving Parent such notice by any confidentiality agreement in effect as of the date hereof, if the Company receives an Acquisition Proposal after the date hereof, then the Company shall promptly (and in no event later than twenty-four (24) hours after receipt of such Acquisition Proposal) notify Parent in writing of such Acquisition Proposal (which notification shall include the material terms and conditions thereof), and shall thereafter keep Parent reasonably informed of any material change to the terms of such Acquisition Proposal (and in no event later than twenty-four (24) hours after such material change to the terms of such Acquisition Proposal).

(c) Nothing contained in this Section 6.2 or elsewhere in this Agreement shall prohibit the Company, the Company Board (or any committee thereof) or their representatives from: (i) taking and disclosing to the stockholders of the Company a position contemplated by Rule 14e-2(a) promulgated under the Exchange Act or making a statement contemplated by Item 1012(a) of Regulation M-A or Rule 14d-9(f) promulgated under the Exchange Act, or from issuing a customary "stop, look and listen" statement pending disclosure of its position thereunder (or any substantially similar communication) (and no such disclosure shall, taken by itself, be deemed to be a Change in Recommendation); (ii) disclosing to the Company's stockholders any factual information regarding the business, financial condition or results of operations of the Company or the fact that an Acquisition Proposal has been made, the identity of the party making such Acquisition Proposal or the material terms of such Acquisition Proposal (and no such disclosure shall, taken by itself, be deemed to be a Change in Recommendation); or (iii) communicating with any Person (or the representatives of such

Person) that makes any Acquisition Proposal or Acquisition Inquiry to the extent necessary to direct such Person to the provisions of this Section 6.2 and/or to clarify and understand the terms and conditions of an Acquisition Proposal made by such Person; *provided, however*, that the Company Board shall not make any Change in Recommendation except in accordance with Section 2.3(d).

Section 6.3. Filings; Further Actions; Reasonable Best Efforts.

(a) Each of the Company, Parent and Merger Sub (and their respective Affiliates, if applicable) shall: (i) promptly (and in no event later than the date that is seven (7) Business Days after the date hereof) make and effect all filings required to be made or effected by it or otherwise advisable pursuant to the HSR Act; (ii) use commercially reasonable efforts to obtain all other consents and approvals required from Third Parties in connection with the Transactions; and (iii) use reasonable best efforts to promptly take, or cause to be taken, all actions and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary or advisable under applicable Law to consummate the Transactions contemplated by this Agreement as promptly as practicable after the date hereof and in no event later than the End Date; *provided, however*, that in no event shall the Company be required to pay, prior to the Effective Time, any fee, penalty or other consideration to any Person for any consent or approval required for the consummation of any of the Transactions. Notwithstanding the foregoing, nothing in this Section 6.3 or otherwise in this Agreement shall require Parent or any Affiliate of Parent to (A) propose, negotiate, effect or agree to, the sale, divestiture, license or other disposition of any asset or business of Parent or any Parent Affiliate (including the Acquired Companies) or (B) otherwise take any action that limits the freedom of action with respect to, or its ability to retain any of the businesses, product lines or assets of Parent or any Affiliate of Parent (including the Acquired Companies), in the case of each of clauses (A) and (B), in a manner that would, individually or in the aggregate, materially impair the anticipated benefits of the Transactions, taken as a whole, to Parent (it being understood that the foregoing shall take into consideration, but not be limited to, any potential impairment to Parent and its Subsidiaries if such action would be taken). Nothing in this Agreement shall require any of the Acquired Companies to enter into any agreement or consent decree with any Governmental Entity that is not conditioned upon the Closing.

(b) Without limiting the generality of anything contained in Section 6.3(a), subject to applicable Law, each party hereto shall use reasonable best efforts to: (i) give the other parties prompt written notice of the making or commencement of any request, inquiry, investigation, action or Legal Proceeding by or before any Governmental Entity with respect to the Offer or the Merger or any of the other Transactions; (ii) keep the other parties informed as to the status of any such request, inquiry, investigation, action or Legal Proceeding; and (iii) promptly inform the other parties of any communication to or from the U.S. Federal Trade Commission, the U.S. Department of Justice or any other Governmental Entity regarding the Offer or the Merger. Each party hereto will consult and cooperate with the other parties and will consider in good faith the views of the other parties in connection with any analysis, appearance, presentation, memorandum, brief, argument, opinion or proposal made or submitted in connection with any such request, inquiry, investigation, action or Legal Proceeding. In addition, except as may be prohibited by any Governmental Entity or by any Law, in connection with any such request, inquiry, investigation, action or Legal Proceeding,

each party hereto will permit authorized representatives of the other parties to be present at each meeting or conference relating to such request, inquiry, investigation, action or Legal Proceeding and to have access to and be consulted in connection with any document, opinion or proposal made or submitted to any Governmental Entity in connection with such request, inquiry, investigation, action or Legal Proceeding.

(c) Subject to the timing deadlines referenced above in Section 6.3(a), in the event that any litigation or other administrative or judicial action or Legal Proceeding is commenced challenging the Offer or the Merger or any of the other Transactions and such litigation, action or Legal Proceeding seeks, or would reasonably be expected to seek, to prevent the consummation of the Offer or the Merger or the other Transactions, Parent and Merger Sub shall take any and all action to promptly resolve any such litigation, action or Legal Proceeding and each of the Company, Parent and Merger Sub shall cooperate with each other and use its respective best efforts to contest any such litigation, action or Legal Proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other Order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the Offer or the Merger or the other Transactions.

(d) Parent and Merger Sub shall not, and shall cause their respective Subsidiaries or Affiliates not to, acquire or agree to acquire any rights, interests, assets, business, Person or division thereof (through acquisition, license, joint venture, collaboration or otherwise) or take any other actions, if such acquisition or action would reasonably be expected to (i) prevent, materially delay or materially impede the obtaining of, or adversely affect in any material respect the ability of Parent and its Affiliates to procure, any clearances, approvals, waivers, actions, non-actions, authorizations, consents, orders, or declarations or approvals of any Governmental Entity or the expiration or termination of any applicable waiting period necessary to consummate the Offer, the Merger or the other Transactions by the End Date, (ii) materially increase the risk of any Governmental Entity entering an Order prohibiting the consummation of the Offer, the Merger or the other Transactions, or (iii) cause Parent, Merger Sub or the Company to be required to obtain any additional clearances, consents, approvals, waivers, waiting period expirations or terminations, non-actions or other authorizations under any Laws with respect to the Offer, the Merger or the other Transactions.

(e) Each of the Company, Parent and Merger Sub (and their respective Affiliates, if applicable) have mutually determined that they will not submit a filing or declaration to CFIUS under Section 721 of the United States Defense Production Act of 1950, as amended, and implementing regulations at 31 C.F.R. Part 800, 31 C.F.R. Part 801, and 31 C.F.R. Part 802, as amended, based on their mutual agreement that no such filing or declaration is necessary with respect to the Transactions. In the event that CFIUS directs the Company, Parent or Merger Sub (or their respective Affiliates, if applicable) to submit a filing, the Company, Parent and Merger Sub (and their respective Affiliates, if applicable) agree to, as promptly as practicable, supply any additional information and documentary material that may be requested by CFIUS in the form of a formal filing and any subsequent requests for information, and to take all other reasonably necessary, proper or advisable steps to obtain expeditious conclusion of such CFIUS review process.

Section 6.4. Access; Confidentiality.

(a) Upon reasonable advance written notice, subject to applicable logistical restrictions or limitations as a result of COVID-19 or any COVID-19 Measures, the Company shall afford Parent's representatives reasonable access, during normal business hours between the date of this Agreement and the earlier of the Acceptance Time and the date of termination of this Agreement, to the Acquired Companies' books and records and, during such period, the Company shall furnish promptly to Parent all readily available information concerning its business as Parent may reasonably request; *provided, however*, that the Acquired Companies shall not be required to permit any inspection or other access, or to disclose any information to the extent: (i) such disclosure in the reasonable judgment of the Company could: (a) result in the disclosure of any trade secrets of Third Parties; (b) violate any obligation of the Acquired Companies with respect to confidentiality, non-disclosure or privacy; (c) jeopardize protections afforded to any of the Acquired Companies under the attorney-client privilege or the attorney work product doctrine; (d) violate any Law; or (e) materially interfere with the conduct of the Acquired Companies' business; or (ii) any such information relates to an Acquisition Proposal, or is included in the minutes of the meetings of the Company Board or its committees and relates to the discussion by the Company Board or any applicable committee of the Transactions or any similar transaction between the Company and any other Person (including any presentations or other materials prepared by or for the Company Board, whether in connection with a specific meeting, or otherwise relating to such subject matter); and *provided further* that any such access shall be afforded and any such information shall be furnished solely at Parent's expense. Any access to the properties of the Acquired Companies shall be subject to their reasonable security measures and insurance requirements and will not include the right to perform invasive testing. Nothing in this Section 6.4 shall be construed to require any Acquired Company to (x) prepare any financial statements, projections, reports, analyses, appraisals or opinions that are not readily available or prepared by the Acquired Companies in the ordinary course of business or (y) disclose any personnel records of such Acquired Company relating to individual performance or evaluation records, medical histories or other personal information if such disclosure would violate applicable Law or subject such Acquired Company to liability. No investigation pursuant to this Section 6.4(a) shall affect any representation or warranty in this Agreement of any party hereto or any condition to the obligations of the parties. All requests for access pursuant to this Section 6.4(a) must be directed to the General Counsel of the Company or another person designated in writing by the Company. Notwithstanding anything herein to the contrary, Parent and Merger Sub shall not, and shall cause their respective representatives not to, contact any employee of the Company or any of its Subsidiaries not involved in the negotiation of the Transactions, nor any partner, licensor, licensee, patient, customer, vendor, research organization, manufacturer or supplier of the Company (nor, except as expressly provided in Section 6.3, any regulatory agency), in connection with the Offer, the Merger or any of the other Transactions without the Company's prior written consent, and Parent and Merger Sub acknowledge and agree that any such contact shall be arranged by and with a representative of the Company participating.

(b) Each of Parent and Merger Sub agrees that it will not, and will cause its representatives not to, use any information obtained pursuant to this Section 6.4 (or otherwise pursuant to this Agreement) for any competitive or other purpose unrelated to the Transactions contemplated by this Agreement.

(c) Parent and the Company hereby acknowledge and agree to continue to be bound by the Confidentiality Agreement. All information provided by or on behalf of the Acquired Companies pursuant to this Agreement or obtained by Parent and its representatives pursuant to Section 6.4(a) shall be treated as confidential information of the Acquired Companies for purposes of the Confidentiality Agreement.

Section 6.5. Interim Operations of Merger Sub. During the period from the date hereof through the earlier of the Effective Time or the date of termination of this Agreement, Merger Sub shall not engage in any activities of any nature except as provided in or contemplated by this Agreement.

Section 6.6. Publicity. The initial press releases relating to this Agreement shall be reasonably agreed upon by the Company and Parent, and thereafter the Company and Parent shall consult with each other before issuing any press release or otherwise making any public statements with respect to this Agreement or any of the transactions contemplated by the Transaction Documents and shall not issue any such press release or make any such public statement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; *provided* that (i) a party hereto may, without the prior consent of the other party, issue such press release or make such public statement as may be required by Law or Order or the applicable rules or requirements of Nasdaq if it has used its commercially reasonable efforts to consult with the other party and to obtain such party's consent but has been unable to do so prior to the time such press release or public statement is so required to be issued or made, and (ii) the Company shall not be obligated to engage in such consultation with respect to communications that are (A) principally directed to employees, partners, licensors, licensees, patients, customers, vendors, research organizations, manufacturers or suppliers so long as such communications are consistent with previous releases, public disclosures or public statements made jointly by the parties (or individually, if approved by the other party) or (B) related to an Acquisition Proposal, Superior Proposal, Change in Recommendation or "stop-look-and-listen" communication or similar communication of the type contemplated by Rule 14d-9(f) under the Exchange Act.

Section 6.7. Other Employee Benefits.

(a) For a period of not less than twelve (12) months after the Closing Date, Parent shall, or shall cause the Surviving Corporation to, provide to each employee of the Acquired Companies who is employed as of immediately prior to the Effective Time (each, a "**Continuing Employee**") with (i) (A) base salary or base hourly wage rate (as applicable), (B) cash incentive compensation opportunity (including bonuses and commissions), and (C) equity incentive compensation (it being agreed that Parent or the Surviving Corporation, in its discretion, may provide such compensation in the form of cash in lieu of equity), in each case in an amount at least equal to the level that was provided to each such Continuing Employee as of immediately prior to the Effective Time, (ii) employee benefits (excluding equity compensation, defined benefit pension, deferred compensation, and post-retirement health and welfare benefits) that are substantially similar in the aggregate to those provided to each such Continuing Employee as of immediately prior to the Effective Time, and (iii) severance and outplacement benefits equal to the benefits provided under the severance policy of the Acquired Companies set forth in Section 6.7(a) of the Company Disclosure Schedule.

(b) From and after the Effective Time, Parent shall, or shall cause the Surviving Corporation to, ensure that, each Continuing Employee receives full credit (for all purposes, including eligibility to participate, vesting, benefit accrual, vacation entitlement and severance benefits) for service with the Acquired Companies (or predecessor employers to the extent the Company provides such past service credit) under the comparable employee benefit plans, programs and policies of Parent or the Surviving Corporation, as applicable, in which such employees become participants; *provided*, *however*, that the foregoing shall not apply with respect to benefit accrual under any defined benefit pension plan or to the extent that its application would result in a duplication of benefits. As of the Effective Time, Parent shall, or shall cause the Surviving Corporation to, credit to Continuing Employees the amount of vacation time that such employees had accrued under any applicable Company Benefit Plan as of the Effective Time, which shall not be subject to accrual limits or forfeiture.

(c) From and after the Effective Time, with respect to each benefit plan maintained by Parent or the Surviving Corporation that is an "employee welfare benefit plan" as defined in Section 3(1) of ERISA (each, a "**Parent Welfare Plan**") in which any Continuing Employee is or becomes eligible to participate, Parent shall use commercially reasonable efforts to cause each such Parent Welfare Plan to (i) waive all limitations as to pre-existing conditions, waiting periods, required physical examinations and exclusions with respect to participation and coverage requirements applicable under such Parent Welfare Plan for such Continuing Employees and their eligible dependents to the same extent that such pre-existing conditions, waiting periods, required physical examinations and exclusions would not have applied or would have been waived under the corresponding Company Benefit Plan in which such Continuing Employee was a participant immediately prior to his or her commencement of participation in such Parent Welfare Plan but, with respect to long-term disability and life insurance benefits and coverage, solely to the extent permitted under the terms and conditions of Parent's applicable insurance contracts in effect as of the Effective Time; *provided, however*, that for purposes of clarity, to the extent such benefit coverage includes eligibility conditions based on periods of employment, Section 6.7(b) shall control; and (ii) provide each Continuing Employee and their eligible dependents with credit for any co-payments and deductibles paid in the calendar year that, and prior to the date that, such Continuing Employee commences participation in such Parent Welfare Plan in satisfying any applicable co-payment or deductible requirements under such Parent Welfare Plan for the applicable calendar year, to the extent that such expenses were recognized for such purposes under the comparable Company Benefit Plan.

(d) The Surviving Corporation shall, and Parent shall cause the Surviving Corporation to, honor in accordance with their terms all severance, change in control and separation pay plans, agreements and arrangements, and all written employment, severance, retention, incentive, change in control and termination agreements (including any change in control provisions therein) applicable to employees of the Acquired Companies and listed in Section 4.12(a) of the Company Disclosure Schedule. Parent hereby acknowledges that the consummation of the Offer constitutes a "change of control", a "change in control" or a "sale event" (or a term of similar import) for purposes of any Company Benefit Plan that contains a definition of "change of control", a "change in control" or a "sale event" (or a term of similar import), as applicable. Annual cash incentive bonuses for the calendar year which includes the Effective Time shall be treated as set forth in Section 6.7(d) of the Company Disclosure Schedule.

(e) Nothing in this Section 6.7 or elsewhere in this Agreement is intended nor shall be construed to (i) be treated as an amendment to any particular Company Benefit Plan, (ii) prevent Parent from amending or terminating any of its benefit plans in accordance with their terms, (iii) create a right in any employee to employment with Parent, the Surviving Corporation or any Acquired Company, or (iv) create any third-party beneficiary rights in any Person with respect to the compensation, terms and conditions of employment and/or benefits that may be provided to any Continuing Employee by Parent, the Surviving Corporation or any Acquired Company or under any benefit plan which Parent, any Acquired Company or the Surviving Corporation may maintain.

Section 6.8. Compensation Arrangements. Prior to the Acceptance Time, the compensation committee of the Company Board (the "**Compensation Committee**") will cause each Company Benefit Plan and Company employment agreement pursuant to which consideration is payable to any officer, director or employee who is a holder of any security of the Company to be approved by the Compensation Committee (comprised solely of "independent directors") in accordance with the requirements of Rule 14d-10(d)(2) under the Exchange Act and the instructions thereto as an "employment compensation, severance or other employee benefit arrangement" within the meaning of Rule 14d-10(d)(2) under the Exchange Act and satisfy the requirements of the non-exclusive safe harbor set forth in Rule 14d-10(d) of the Exchange Act.

Section 6.9. Director and Officer Indemnification, Exculpation and Insurance.

(a) For six (6) years after the Effective Time, Parent shall, and shall cause the Surviving Corporation to, maintain directors' and officers' liability insurance, fiduciary liability insurance and employment practices liability insurance in respect of any acts, errors, omissions, facts or events occurring on or before the Effective Time, including in respect of this Agreement and the Transactions, covering each such person currently covered by the Company's directors' and officers' liability insurance, fiduciary liability insurance and employment liability insurance policies on terms with respect to coverage and amount no less favorable than those of such policies in effect on the date hereof; *provided, however*, that in satisfying its obligation under this Section 6.9(a), neither Parent nor the Surviving Corporation shall be obligated to pay annual premiums in excess of 350% of the annual premium most recently paid by the Company prior to the date of this Agreement for such insurance (the "**Current Premium**") and if such premiums for such insurance would at any time exceed 350% of the Current Premium, then Parent shall, and shall cause the Surviving Corporation to, maintain policies of insurance that, in Parent's and the Surviving Corporation's good faith judgment, provide the maximum coverage available at an annual premium equal to 350% of the Current Premium. The provisions of the immediately preceding sentence shall be deemed to have been satisfied if prepaid "tail" or "runoff" policies have been obtained by the Company in its discretion, in consultation with Parent, prior to the Effective Time, which policies provide such persons currently covered by such policies with coverage for an aggregate period of six (6) years from and after the Effective Time with respect to claims arising from any acts, errors, omissions, facts or events that occurred on or before the Effective Time (including matters that continue after the Effective Time that are interrelated to claims arising on or before the Effective Time), including in respect of this Agreement and the Transactions; *provided, however*, that the amount paid for such prepaid policies does not exceed 350% of the Current Premium. Nothing in this Agreement shall restrict the Company from obtaining such policies in accordance with

this Section 6.9. If any such prepaid policies described in this Section 6.9(a) have been obtained prior to the Effective Time, the Surviving Corporation shall (and Parent shall cause the Surviving Corporation to) maintain any and all such policies in full force and effect for their full term, and continue to honor the obligations thereunder.

(b) For a period of six (6) years after the Effective Time, each of Parent and the Surviving Corporation shall: (i) indemnify and hold harmless each individual who at the Effective Time is, or at any time prior to the Effective Time was, a director or officer of the Company or of a Subsidiary of the Company (each an "**Indemnified Party**") for any and all costs and expenses (including fees and expenses of legal counsel, which shall be advanced as they are incurred), judgments, damages, losses, fines, penalties or liabilities (including amounts paid in settlement or compromise) imposed upon or reasonably incurred by such Indemnified Party in connection with or arising out of any demand, action, suit or other Legal Proceeding (whether civil, administrative, investigative or criminal) in which such Indemnified Party may be involved or with which he or she may be threatened (regardless of whether as a named party or as a participant other than as a named party, including as a witness, and regardless of whether such Legal Proceeding is brought before, at or after the Effective Time) (an "**Indemnified Party Proceeding**") (A) by reason of such Indemnified Party's being or having been such director, officer, employee, agent or representative of the Company or any Subsidiary of the Company or otherwise in connection with any action taken or not taken at the request of the Company or any Subsidiary of the Company or (B) arising out of such Indemnified Party's service in connection with any other corporation or organization for which he or she serves or has served as a director, officer, employee, agent, trustee or fiduciary at the request of the Company (including in any capacity with respect to any employee benefit plan), in each of (A) or (B), whether or not the Indemnified Party continues in such position at the time such Indemnified Party Proceeding is brought or threatened (including any Indemnified Party Proceeding relating in whole or in part to this Agreement and the Transactions or relating to the enforcement of this provision or any other indemnification or advancement right of any Indemnified Party), to the fullest extent permitted under applicable Law; and (ii) fulfill and honor in all respects the obligations of the Company pursuant to: (x) each indemnification agreement in effect as of the date hereof between any Acquired Company and any Indemnified Party; and (y) any indemnification provision (including advancement of expenses) and any exculpation provision set forth in the Organizational Documents of any Acquired Company as in effect as of immediately prior to the Acceptance Time. Parent's and the Surviving Corporation's obligations under the foregoing clauses (i) and (ii) shall continue in full force and effect for a period of six (6) years from the Effective Time; *provided*, *however*, that all rights to indemnification, exculpation and advancement of expenses in respect of any claim asserted or made within such period shall continue until the final disposition of such claim. If Parent or the Surviving Corporation fails to comply with its obligations in this Section 6.9(b) and an Indemnified Party commences a suit which results in a determination that Parent or the Surviving Corporation failed to comply with such obligation, Parent shall pay such Indemnified Party his or her costs and expenses (including reasonable fees and expenses of legal counsel) in connection with such suit, together with interest thereon at the "prime rate" as published in *The Wall Street Journal*, Eastern Edition, in effect on the date such payment was required to be made through the date of payment (calculated daily on the basis of a year of 365 days and the actual number of days elapsed, without compounding).

(c) If Parent, the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or Entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case proper provision shall be made so that the successors and assigns of Parent or the Surviving Corporation, as the case may be, shall assume the obligations set forth in this Section 6.9.

(d) The provisions of this Section 6.9 are (i) intended to be for the benefit of, and shall be enforceable by, each Indemnified Party, his or her heirs and his or her representatives and (ii) in addition to, and not in substitution for, any other rights to indemnification, exculpation, advancement or contribution that any such individual may have under any certificate of incorporation or bylaws, by contract or otherwise. The obligations of Parent and the Surviving Corporation under this Section 6.9 shall not be terminated or modified in such a manner as to adversely affect the rights of any Indemnified Party unless (x) such termination or modification is required by applicable Law or (y) the affected Indemnified Party shall have consented in writing to such termination or modification (it being expressly agreed that the Indemnified Parties shall be third-party beneficiaries of this Section 6.9). Parent and the Surviving Corporation jointly and severally agree to pay or advance, upon written request of an Indemnified Party, all costs, fees and expenses, including attorneys' fees, that may be incurred by the Indemnified Parties in enforcing their indemnity rights and other rights provided in this Section 6.9.

Section 6.10. Section 16 Matters. Prior to the Effective Time, the Company shall, and shall be permitted to, take all such steps as may reasonably be necessary to cause the Transactions, including any dispositions of shares of Company Common Stock (including any Company Compensatory Awards) by each Person who is or will be subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to the Company, to be exempt under Rule 16b-3 under the Exchange Act.

Section 6.11. Transaction Litigation. The Company shall as promptly as reasonably practicable notify Parent in writing of, and shall give Parent the opportunity to participate in the defense and settlement of, any Transaction Litigation and shall keep Parent informed regarding such Transaction Litigation; *provided*, *however*, that the Company shall control such defense and this Section 6.11 shall not give Parent the right to direct such defense. The Company shall keep Parent reasonably apprised of the proposed strategy and other significant decisions with respect to any Transaction Litigation (to the extent that the attorney-client privilege is not undermined or otherwise adversely affected), and Parent may offer comments or suggestions with respect to such Transaction Litigation which the Company shall consider in good faith. No Acquired Company shall settle or offer, compromise or agree to settle or compromise, or take any other action to settle, compromise or moot, any Transaction Litigation without Parent's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed). Without otherwise limiting the Indemnified Parties' rights with regard to the right to counsel, following the Effective Time, the Indemnified Parties shall be entitled to continue to retain Goodwin Procter LLP or such other counsel selected by such Indemnified Parties to defend any Transaction Litigation.

Section 6.12. Delisting of Company Common Stock. The Surviving Corporation shall cause the Company Common Stock to be de-listed from Nasdaq and de-registered under the Exchange Act as promptly as practicable following the Effective Time. Prior to the Effective Time, the Company shall cooperate with Parent and use its reasonable best efforts to take, or cause to be taken, all actions, and do or cause to be done all things, reasonably necessary, proper or advisable on its part under applicable Laws and rules and policies of Nasdaq to enable the delisting by the Surviving Corporation of the shares of Company Common Stock from Nasdaq and the deregistration of the shares of Company Common Stock under the Exchange Act.

Section 6.13. Takeover Laws. If any "moratorium," "control share acquisition," "fair price," "supermajority," "affiliate transactions," or "business combination statute or regulation" or other similar state anti-takeover Laws or regulations may become, or may purport to be, applicable to the Transactions, each of Parent, Merger Sub and the Company and the members of their respective boards of directors shall use their respective reasonable best efforts to grant such approvals and take such actions as are necessary so that the Transactions may be consummated as promptly as practicable on the terms and conditions contemplated hereby and otherwise act to lawfully eliminate the effect of any such Laws or regulations on any of the Transactions.

Section 6.14. Financing.

(a) Parent and Merger Sub shall not permit any amendment, restatement, supplement or modification to be made to, or any waiver of (or consent to) any provision or remedy under, or replace, the Debt Commitment Letter or Fee Letter if such amendment, restatement, supplement, modification, waiver, consent or replacement (w) reduces (or could be reasonably expected to reduce) the aggregate amount of the Debt Financing (including by increasing (or adding new additional) fees or other amounts to be paid or original issue discount) available to Parent and Merger Sub on the Closing Date to an amount, when aggregated with the amount of Parent Readily Available Funds, less than the Necessary Funds Amount, (x) imposes new or additional conditions or otherwise expands, amends, restates, supplements, increases or modifies any of the conditions to the receipt of the Debt Financing, (y) could reasonably be expected to prevent, impede or delay the consummation of the Debt Financing or the other transactions contemplated by this Agreement or the Debt Commitment Letter, or (z) materially adversely impacts (I) the ability of Parent or Merger Sub (or any of their respective Affiliates that are a party to the Debt Commitment Letter) to (A) enforce its rights against the other parties to the Debt Commitment Letter, the Fee Letter or such definitive agreements for the Debt Financing in connection therewith, or (B) the ability of Parent or Merger Sub to consummate the Transactions when and as required by this Agreement or (II) the likelihood of consummation of the Transactions when and as required by this Agreement (the components of clauses (w) through (z), each an "**Adverse Effect on Financing**") and shall use reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable (in each case, to the extent within the control of Parent, Merger Sub or any of their respective Affiliates) to arrange and obtain the Debt Financing (and any Alternative Financing, if applicable) on the terms described in the Debt Commitment Letter and the Fee Letter, including any "market flex" provisions in the Fee Letter (*provided* that, (i) Parent and Merger Sub may amend or replace the Debt Commitment Letter to add lenders, lead arrangers, bookrunners, syndication agents or similar Entities who had not executed the Debt Commitment Letter or Fee Letter as of the date hereof, in each case of this clause (i), in a manner that does not have an Adverse Effect on Financing and to the extent it would not violate this Section 6.14, and (ii) Parent and Merger Sub may otherwise amend or

replace the Debt Commitment Letter in a manner that does not have an Adverse Effect on Financing and to the extent not prohibited by the first sentence of this Section 6.14), including using reasonable best efforts to (1) maintain in effect the Debt Commitment Letter and Fee Letter (each on the terms and conditions set forth therein, and each as amended or replaced in accordance and compliance with the foregoing or elsewhere in this Agreement), (2) satisfy (or obtaining a waiver thereof) and cause to be satisfied (and cause their respective Affiliates and Subsidiaries to satisfy, if applicable) on a timely basis all conditions applicable to, and within the control of, Parent, Merger Sub and any of their respective Affiliates (and any of their applicable respective Affiliates) to obtaining the Debt Financing at the Acceptance Time, (3) enter into and deliver definitive agreements with respect thereto on the terms and conditions (including the flex provisions) contemplated by the Debt Commitment Letter prior to or at the Acceptance Time, (4) consummate the Debt Financing in accordance with the terms and conditions of the Debt Commitment Letter at the Acceptance Time (*provided*, that, in no event shall Parent or Merger Sub be required to commence or bring any litigation or other proceeding against any Debt Financing Sources in connection therewith), (5) enforce their rights under the Debt Commitment Letter and Fee Letter (*provided*, that, in no event shall Parent or Merger Sub be required to commence or bring any litigation or other proceeding against any Debt Financing Sources in connection therewith), (6) comply with their obligations under the Debt Commitment Letter and Fee Letter and any definitive agreements related to the Debt Financing and (7) in the event that all conditions in the Debt Commitment Letter and Fee Letter have been satisfied or waived, cause the lenders, Debt Financing Sources and other Persons providing Debt Financing to fund on the Closing Date the Debt Financing required to consummate the Transactions (*provided*, that, in no event shall Parent or Merger Sub be required to commence or bring any litigation or other proceeding against any Debt Financing Sources in connection therewith). Parent and Merger Sub shall give the Company prompt written notice upon becoming aware of any material breach by any party of the Debt Commitment Letter or any termination of the Debt Commitment Letter. Upon any amendment, restatement, replacement, supplement, modification, consent or waiver of or relating to the Debt Commitment Letter or the Fee Letter as permitted by this Section 6.14(a), Parent shall promptly (and, in any event, within two (2) Business Days) provide a copy thereof (and in the case of a Fee Letter, which may be redacted as to fee amounts, economic terms and the "market flex" fee amounts therein so long as such redaction is customary and no redaction covers terms that would have an Adverse Effect on Financing) to the Company. Prior to the consummation of the Closing, Parent and Merger Sub shall keep the Company reasonably informed on a prompt basis and in reasonable detail of the status of its efforts to arrange the Debt Financing (or Alternative Financing). Prior to the consummation of the Closing, neither Parent nor Merger Sub shall release or consent to the termination of obligations of the Debt Financing Sources, any lender or other financing source under the Debt Commitment Letter (or the Fee Letter, as applicable) or the definitive financing agreements except solely in connection with (x) the addition of banks, lead arrangers, bookrunners, syndication agents or other similar entities who had not executed the Debt Commitment Letter as of the date of this Agreement as permitted under this clause (a) and that would not have an Adverse Effect on Financing, and/or (y) the entry into a replacement Debt Commitment Letter as permitted under Section 6.14(b) that would not have an Adverse Effect on Financing.

(b) If Parent, Merger Sub or any of their respective Affiliates receives any notice or communication, whether oral or written, from any Debt Financing Source or other Person party to the Debt Commitment Letter, that one or more Debt Financing Sources or other Persons party to the Debt Commitment Letter plans to, intends to or will make any portion of the Debt Financing unavailable, or if any portion of the Debt Financing becomes unavailable, on the terms and conditions (including any flex provisions applicable thereto) contemplated in the Debt Commitment Letter or Fee Letter for any reason, Parent and Merger Sub shall promptly notify the Company in writing (and in any event within three (3) Business Days thereafter) and shall use and shall cause their respective Affiliates to use their respective reasonable best efforts to arrange to obtain in replacement thereof, and negotiate and enter into commitment letters and definitive agreements with respect thereto, as promptly as practicable following the occurrence of such event but in no event later than prior to the Acceptance Time on the Closing Date, alternative debt financing (the "**Alternative Financing**") from alternative debt sources (i) on terms and conditions no less favorable to Parent and Merger Sub (*provided* that, for the avoidance of doubt, any financing that has higher pricing, interest rates, fees or other yield than as set forth in the Debt Commitment Letter shall be deemed less favorable to Parent and Merger Sub) than as set forth in the Debt Commitment Letter (including, to the extent required by the related "market flex" provisions) but solely to the extent, even after taking into account any such increased or additional fees and other amounts, Parent and Merger Sub will have at least the Necessary Funds Amount, (ii) not involving any additional conditions to funding the Debt Financing that are not contained in the Debt Commitment Letter or Fee Letter in the form delivered to the Company as of the date hereof (and not otherwise expanding any existing condition to the funding of the Debt Financing set forth in the Debt Commitment Letter or Fee Letter in the form delivered to the Company as of the date hereof), (iii) not reasonably expected to prevent, impede or delay the Debt Financing or the consummation of the other transactions contemplated by this Agreement or the definitive agreements related to the Debt Financing or such other transactions, (iv) not involving terms or conditions that would cause an Adverse Effect on Financing, or (v) violate Section 6.14(a). Parent and Merger Sub shall promptly deliver to the Company true and complete copies of all agreements (or similar agreement) pursuant to which any such alternative source shall have committed to provide Parent and Merger Sub with any portion of the Debt Financing (the "**Alternative Financing Commitment Letter**"). Without limiting the generality of the foregoing, Parent shall promptly (and in any event within two (2) Business Days) notify the Company in writing upon becoming aware of, or receiving notice or other communication with respect to, the following: (A) any breach of, default under or amendment, restatement, replacement, supplement, modification, consent or waiver by, any party to the Debt Commitment Letter or Fee Letter (or commitments for any Alternative Financing, if any) or any event or circumstance that (with or without notice, lapse of time or both) could reasonably be expected to give rise to any breach of or default under the Debt Commitment Letter or Fee Letter or any definitive agreements related to the Debt Financing, or any purported or actual termination, withdrawal or rescission of the Debt Commitment Letter or Fee Letter (or commitments for any Alternative Financing, if any) or any definitive agreements related to the Debt Financing, (B) any Person party to the Debt Commitment Letter or Fee Letter (or providing commitments under any Alternative Financing) indicates in writing that it will not provide, or it refuses to provide, all or any portion of the Debt Financing contemplated by the Debt Commitment Letter or Fee Letter on the terms and subject only to the conditions expressly stated therein, (c) Parent, Merger Sub or any of their respective Affiliates receives any written notice or other communication with respect to any material dispute or disagreement with respect to the obligation to fund the Debt Financing at the

Acceptance Time on the Closing Date between or among any Persons party to the Debt Commitment Letter or Fee Letter (or providing commitments for any Alternative Financing), or (D) if at any time for any reason Parent or Merger Sub no longer believes in good faith that it will be able to obtain on a timely basis and in any event no later than at the Acceptance Time on the Closing Date all or a portion of the Debt Financing. As soon as reasonably practicable (and in any event within two (2) Business Days), Parent and Merger Sub shall provide any information reasonably requested by the Company relating to any circumstance referred to in clause (A), (B), (C) or (D) of the immediately preceding sentence. To the extent any amendment, restatement, replacement, supplement, modification, consent or waiver has been made in compliance with Sections 6.14(a) and (b), the term "Debt Commitment Letter" and "Fee Letter" shall, respectively, mean the Debt Commitment Letter and Fee Letter as so amended, restated, replaced, supplemented, modified, consented to or waived, including any Alternative Financing. For purposes of this Agreement, references to the "Debt Financing Sources" shall include each Person that has not executed the Debt Commitment Letter as of the date hereof but becomes a loan commitment party thereto after the date hereof in accordance with the terms thereof and this Section 6.14, and, references to "Debt Financing" shall include the financing contemplated by the Debt Commitment Letter as permitted by this Section 6.14 to be amended, restated, supplemented, modified or replaced.

(c) Parent and Merger Sub shall not, and shall not permit any of their Affiliates that are entities to, without the prior written consent of the Company, take any action or enter into any transaction that, individually or in the aggregate, would reasonably be expected to materially prevent, delay or impede the satisfaction of the conditions precedent to the funding of the Debt Financing on the Closing Date expressly set forth in the Debt Commitment Letter.

(d) Parent and Merger Sub shall promptly (and, in any event, within five (5) Business Days of any request by the Company) reimburse the Acquired Companies and their respective Affiliates, directors, officers, employees, agents and representatives for all reasonable and documented out-of-pocket fees, costs and expenses (including reasonable and documented attorneys' and accountants' fees) incurred by any of the Acquired Companies and their respective Affiliates, directors, officers, employees, agents and representatives (including attorneys and accountants) directly as a result of any cooperation or other actions required to be provided by Section 6.15; *provided* that after the Effective Time, with respect to any reimbursable amounts, Parent and Merger Sub shall pay such amounts (and such amounts may instead be requested by) a representative or advisor of an Acquired Company that was such a representative or advisor thereto at or prior to the Effective Time. Notwithstanding anything to the contrary in this Agreement, this Section 6.14(d) shall survive the termination of this Agreement.

Section 6.15. Company Cooperation with Financing.

(a) From the date hereof until the earlier of the Closing Date or the termination of this Agreement pursuant to Article 8, subject to the limitations set forth in this Section 6.15, solely to the extent as is reasonably necessary and customary and reasonably requested in writing by Parent and subject to the limitations set forth in Section 6.15(b) below, the Company agrees to use reasonable best efforts to provide (except to the extent it would be reasonably expected to unreasonably interfere with the ongoing operations of the Acquired

Companies), at Parent's and Merger Sub's sole cost and expense, such commercially reasonable cooperation reasonably requested by Parent in writing (which may be by email) that is customary for debt financings of this type in connection with the Debt Financing or any Alternative Financing (in accordance with Section 6.14(b)), including, to the extent reasonably customary and reasonably requested in writing (which may be by email) by Parent and at Parent's and Merger Sub's sole cost and expense, using reasonable best efforts to:

(i) upon reasonable advance written (which may be by email) notice by Parent and at reasonable times, participate in a customarily reasonable number of meetings, presentations, (electronic) road shows (but solely to the extent the Debt Financing is broadly syndicated), and due diligence sessions (it being understood that any such meetings or presentations may take place virtually at the sole option of the Company), including arranging for reasonable and customary direct contact between senior management of the Company and the other Acquired Companies with representatives of Parent and the Debt Financing Sources in connection with the Debt Financing to the extent customary for similar types of debt financings;

(ii) reasonably assist in the preparation of, and execution and delivery (effective only upon the occurrence of the Effective Time) by the Company and the other Acquired Companies of, definitive documents for the Debt Financing on the terms contemplated by the Debt Commitment Letter upon the reasonable written (which may be by email) request of Parent, including guarantee and collateral documents and customary closing certificates, as may be required by the conditions precedent expressly set forth in the Debt Commitment Letter (*provided* that (A) none of the documents or certificates shall be executed and/or delivered except in connection with the Closing (and such documents and certificates may be delivered on a customary post-Closing basis), (B) the effectiveness thereof shall be conditioned upon, or become operative after, the Effective Time, (C) no officer, employee or director (or comparable person) shall be required to execute or deliver such document or certificate unless such officer, employee or director (or comparable person) will remain in his, her or their same job and position after Closing with the applicable Acquired Company, and (D) no liability shall be imposed on the Acquired Companies or any of their respective officers, employees or directors (or comparable person) involved);

(iii) otherwise reasonably facilitating the pledging of collateral and perfection of security interests on the terms contemplated by the Debt Commitment Letter, if applicable, and only to the extent such action is a condition precedent expressly set forth in the Debt Commitment Letter upon the reasonable written (which may be by email) request of Parent (in each case subject to and effective only after the Effective Time) under the definitive documentation for the Debt Financing with respect to the Company and the other Acquired Companies (*provided* that (A) none of the documents shall be executed and/or delivered except in connection with Closing (and such documents may be delivered on a customary post-Closing basis), (B) the effectiveness thereof shall be conditioned upon, or become operative after, the Effective Time, (C) no officer, employee or director (or comparable person) shall be required to execute or deliver such document unless such officer, employee or director (or comparable person) will remain in his, her or their same job and position after Closing with the applicable Acquired Company, and (D) no liability shall be imposed on the Acquired Companies or any of their respective officers, employees or directors (or comparable person) involved);

(iv) assisting in obtaining customary payoff letters, lien and guarantee releases and termination documentation that are not related to a Permitted Encumbrance or indebtedness that will remain after Closing (*provided* that the lien and guarantee release and termination documentation shall be conditioned upon, or become operative after, the applicable indebtedness has been completely paid off and may be delivered on a customary post-Closing basis) and timely delivering any applicable prepayment notices (which, at the option of the Company, may be conditioned on the consummation of the Closing within a certain stated amount of days after the delivery thereof), in each case, with respect to indebtedness of the Company and the other Acquired Companies required to be repaid at the Effective Time, if applicable; and

(v) provide, at least three (3) Business Days prior to the Effective Time, all necessary documentation and other necessary information about the Company and the other Acquired Companies as is reasonably required under applicable "know your customer" and anti-money laundering rules and regulations including the USA PATRIOT Act, in each case to the extent requested in writing at least ten (10) Business Days prior to the Effective Time.

(b) Notwithstanding anything in Section 6.15(a) to the contrary, (i) such requested cooperation shall not unreasonably disrupt or interfere with the business or the operations of the Acquired Companies (in the reasonable judgment of the Company), (ii) nothing in Section 6.15(a) shall require cooperation to the extent that it would (A) subject any of the Acquired Companies' respective directors (or comparable person), managers, officers or employees to any actual or potential personal liability, (B) conflict with, or violate (or would reasonably be expected to result in a violation or breach of, or a default under), any of the Acquired Companies' Organizational Documents or any applicable Law or any other Contract to which the Acquired Companies any of their respective Affiliates is a party, (C) cause any condition to the Acceptance Time to not be satisfied or delay, impede or prevent Closing, or (D) cause any breach of this Agreement or reasonably be expected to conflict with anything in this Agreement, (iii) the Acquired Companies shall not be required to (A) pay any commitment or other fee or amount or incur or assume any liability or other obligation in connection with the financing contemplated by the Debt Commitment Letter, the Fee Letter, or the Debt Financing prior to the Effective Time or be required to take any action that could reasonably be expected to subject it to actual or potential liability that is effective prior to the Effective Time, to bear any cost or expense or to make any other payment or agree to provide any indemnity, in each case, that is effective prior to Closing in connection with the Debt Commitment Letter, the Debt Financing or any information utilized in connection therewith, in each case, that would not be reimbursed by Parent or (B) deliver or obtain opinions of internal or external counsel or provide any information or access to any information that is, in the Company's good faith opinion, attorney work product, or would, in the Company's good faith opinion, result in a violation of applicable Law or loss of attorney-client privilege, accountant-client privilege or conflict with any confidentiality obligations or any other obligations or agreements binding on, the Acquired Companies or any of their Affiliates, (iv) none of the directors (or comparable persons), officers or employees of the Acquired Company (except solely to the extent

continuing in such capacity following the Effective Time with respect to resolutions or consents that do not become effective until the Effective Time and not in any personal or individual capacity), shall be required to execute, deliver or enter into or perform any agreement, document or instrument, including any definitive financing agreement, with respect to the Debt Financing or adopt or consent to any resolutions or take any other actions approving the agreements, documents and instruments pursuant to which the Debt Financing is obtained, including any definitive financing agreement, or to waive or amend, restate, supplement or modify any terms of this Agreement, (v) none of the Acquired Companies or their respective directors (or comparable persons), officers or employees shall be required to execute, deliver or enter into, or perform any agreement, document or instrument, including any definitive financing agreement, with respect to the Debt Financing (other than customary representation letters and authorization letters referred to above) that is not contingent upon the Effective Time or that would be effective prior to the Effective Time and the directors, members and managers of the Company's Subsidiaries, to the extent not continuing in such capacity following the Effective Time, shall not be required to adopt resolutions approving the agreements, documents and instruments pursuant to which the Debt Financing is obtained prior to the Effective Time unless such directors, members and managers have agreed to remain as directors, members and managers of the Company's Subsidiaries on and after the Effective Time and such resolutions are contingent upon the occurrence of, or only effective as of, the Effective Time, (vi) nothing shall obligate the Acquired Companies to provide any information that would violate any obligations of confidentiality or result in a violation of Law or loss of any privilege, (vii) none of the Acquired Companies shall be required to deliver any financial statements or any other financial information for any period that is not otherwise specifically required hereunder or not readily available to the Company with respect to such period or deliver accountants' comfort letters or reliance letters, (viii) none of the Acquired Companies shall be required to provide or prepare any pro forma financial statements or information, projections, budgets or similar forward-looking information, (ix) none of the Acquired Companies (and none of the directors (or comparable person), officers and employees of the Acquired Companies) shall be required to deliver any certificate that it reasonably believes in good faith contains any untrue certifications, representations or warranties or to which it has no knowledge of all or certain contents therein or is outside the scope of their position, (x) none of the Acquired Companies shall be required to waive or amend, restate, replace, supplement, terminate or modify any term of this Agreement, (xi) none of the Acquired Companies shall be required to provide cooperation that causes any covenant, representation, warranty or other provision in this Agreement to be breached or otherwise provide a right of termination under this Agreement to Parent or Merger Sub, (xii) none of the Acquired Companies shall be required to provide cooperation that would cause material competitive harm to the Acquired Companies if the transactions contemplated by this Agreement are not consummated, (xiii) none of the Acquired Companies shall be required to encumber any of the assets of the Acquired Companies or otherwise be an issuer, borrower, guarantor or other obligor with respect to the Debt Financing prior to the Effective Time (or provide a pre-filing Uniform Commercial Code financing statement authorization letter or agreement or otherwise authorize or permit any Encumbrance or security filings or recordings prior to the Effective Time), and (xiv) none of the Acquired Companies shall be required to make any third party or unaffiliated Person take any action under this Section 6.15 or to make them available. All non-public or other confidential information provided by the Company or any of its representatives pursuant to this Section 6.15(v) shall be

kept confidential in accordance with the Confidentiality Agreement. The parties agree that Parent or Merger Sub's execution or delivery of an Alternative Financing Commitment Letter or related documents shall not expand the scope of the assistance required under Section 6.15 as compared to the assistance that would be required or expected to be required in connection with the Debt Commitment Letter in effect on the date of this Agreement and the related Debt Financing. The Company, on behalf of each of the Acquired Companies, hereby consents to the reasonable and customary use of the logos of the Acquired Companies in connection with the Debt Financing; *provided*, *however*, that such logos are used solely in a manner that is not intended, or would not reasonably be expected, to harm or disparage the Acquired Companies or the reputation, goodwill or value of the Acquired Companies or any of their respective intellectual property rights or otherwise adversely affect the Affiliated Companies or any of their Affiliates or infringe on the logos or intellectual property of any Person. Upon reasonable request by the Company, Parent and Merger Sub shall promptly (and, in any event, within two (2) Business Days) provide copies of then-current drafts of the specific Debt Financing documentation with respect to which Parent or Merger Sub request any of the efforts or actions set forth in this Section 6.15.

(c) Parent and Merger Sub (i) acknowledge and agree that, except for obligations from and after the Effective Time that arise under the definitive agreements governing the Debt Financing or closing certificates relating to the Debt Financing, the Acquired Companies and their respective Affiliates, directors (and comparable persons), officers, employees, accountants, consultants, legal counsel, agents and other representatives shall not have any responsibility for, or incur any liability to, any Person under any arrangement with respect to the Debt Financing that Parent or Merger Sub may request in connection with the transactions contemplated by this Agreement and (ii) shall indemnify and hold harmless each of the Acquired Companies and their respective Affiliates, directors (and comparable persons), officers, employees, agents, accountants, consultants, legal counsel and representatives (each such Person, an "**Indemnitee**") from and against any and all losses and other liabilities suffered or incurred by any of them of any type in connection with the arrangement of the Debt Financing and the performance of their respective obligations under this Section 6.15 (including any action taken in accordance with this Section 6.15) and any information utilized in connection therewith, in each case, except to the extent such losses or other liabilities are caused by or result from (A) the gross negligence, willful misconduct or bad faith of such Indemnitee (which, for the avoidance of doubt, shall not negate or disqualify the indemnification of any other Indemnitee for the gross negligence, willful misconduct or bad faith of such Indemnitee), as determined by a final, non-appealable judgment of a court of competent jurisdiction in a jurisdiction permitted by Section 9.5, or (B) any material breach or violation of any representation, warranty or covenant of the Company hereunder that has not been cured (which, for the avoidance of doubt, shall not negate or disqualify the indemnification of any other Indemnitee other than any such other Indemnitee whose gross negligence, willful misconduct, bad faith or intentional act caused or resulted in such breach), as determined by a final, non-appealable judgment of a court of competent jurisdiction in a jurisdiction permitted by Section 9.5. The Acquired Companies and their respective Affiliates, directors (and comparable persons), officers, employees, accountants, consultants, legal counsel, agents and other representatives shall have no liability whatsoever to Parent or Merger Sub in respect of any financial information or data or other information provided pursuant to Section 6.15. All information provided by any of the Acquired Companies and their respective Affiliates,

directors, officers, employees, accountants, consultants, legal counsel, agents and other representatives pursuant to Section 6.15 shall be kept confidential in accordance with the Confidentiality Agreement. Notwithstanding anything to the contrary in this Agreement, (A) this Section 6.15(c) shall survive the termination of this Agreement, (B) Parent and Merger Sub acknowledge and agree that receipt of financing (including any Debt Financing) is not a condition to the obligation of Parent and Merger Sub to consummate the Transactions, (C) the parties hereto acknowledge and agree that the provisions contained in Section 6.15(a) represent the sole obligation of the Acquired Companies and their respective Affiliates with respect to cooperation in connection with the Debt Financing and (D) no condition shall be deemed to not be satisfied, no termination right shall be deemed to exist and no breach or default of this Agreement shall be deemed to exist pursuant to any obligations of any Acquired Company under Section 6.15(a) unless the entire Debt Financing (or any material portion thereof) has not been obtained as a primary result of the Company's intentional, willful and knowing breach of its material obligations under Section 6.15(a) as determined by a final, non-appealable judgment of a court of competent jurisdiction in a jurisdiction permitted by Section 9.5.

Section 6.16. FIRPTA Certificate. Prior to the Closing, the Company shall deliver to Parent (a) a statement, in form and substance reasonably satisfactory to Parent, certifying that the Company is not, and has not been during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code, a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code, which statement shall satisfy the requirements of Sections 1.897-2(h) and 1.1445-2(c)(3) of the Treasury Regulations, together with (b) a notice prepared and executed in accordance with Section 1.897-2(h)(1) of Treasury Regulations to be mailed by Parent (with a copy of the statement described in clause (a)) to the IRS in accordance with Section 1.897-2(h)(2) of the Treasury Regulations; *provided*, *however*, that Parent's only recourse for the Company's failure to provide such certificate and notice or any defect in such certificate and notice shall be the ability to withhold Tax from the Offer Price or the Merger Consideration, as the case may be, as required by applicable Tax Law.

Section 6.17. No Recourse or Liability Against Debt Financing Sources.

(a) Notwithstanding anything that may be expressed or implied in this Agreement, the Company agrees and acknowledges, both for itself and its Affiliates, that no recourse under this Agreement or any documents or instruments delivered in connection with this Agreement shall be had by the Company or its Affiliates against any Debt Financing Source (in its capacity as such) whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, it being expressly agreed and acknowledged that no liability whatsoever shall attach to, be imposed on or otherwise be incurred by any Debt Financing Source (in its capacity as such) for any obligation of Parent or Merger Sub under this Agreement or any documents or instruments delivered in connection with this Agreement for any claim based on, in respect of or by reason of such obligations or their creation.

(b) In no event shall any party hereto or any of its Affiliates, and the parties here agree not to, and to cause their respective Affiliates not to, seek to enforce this Agreement against, make any claims for breach of this Agreement against, or seek to recover monetary damages from, any Person not a party to this Agreement. Each party hereby (other than Parent, Merger Sub and any of their respective Affiliates, and, after the Effective Time, any of the Acquired Companies) waives any rights or claims against any Debt Financing Source in connection with this Agreement, the Debt Commitment Letter, the Debt Financing, the Alternative Financing, the definitive financing agreements for the Debt Financing or Alternative Financing, or in respect of any other document or theory of law or equity (whether in tort, contract or otherwise) or in respect of any oral or written representations made or alleged to be made in connection herewith or therewith (other than any breach of any confidentiality obligations with respect to information of any Acquired Company or any of its Affiliates or any of their respective assets) and each such party (other than Parent, Merger Sub and any of their respective Affiliates, or, after the Effective Time, any of the Acquired Companies) agrees not to commence any action or proceeding against any Debt Financing Source in connection with this Agreement, the Debt Commitment Letter, the Debt Financing, the Alternative Financing, the definitive financing agreements for the Debt Financing or Alternative Financing, or in respect of any other document or theory of law or equity (other than with respect to any breach of any confidentiality obligation with respect to information of any Acquired Company or any of its Affiliates or any of their respective assets) and agrees to cause any such action or proceeding asserted to be dismissed or otherwise terminated. In furtherance and not in limitation of the foregoing waiver, it is acknowledged and agreed that no Debt Financing Source shall have any liability for any claims or damages to any party (other than Parent, Merger Sub and any of their respective Affiliates, and, after the Effective Time, any of the Acquired Companies) and each of their successors or permitted assigns, in connection with this Agreement, the Debt Commitment Letter, the Debt Financing, the Alternative Financing, the definitive financing agreements for the Debt Financing or Alternative Financing, or the transactions contemplated hereby or thereby (other than with respect to any breach of any confidentiality obligation with respect to information of any Acquired Company or any of its Affiliates or any of their respective assets). Neither the foregoing nor anything else in this Agreement shall waive, limit or affect the rights and remedies of any party to the Debt Commitment Letter or the definitive Debt Financing agreements (including, following the Effective Time, the Acquired Companies) as set forth therein, and nothing in this Section 6.17 shall limit the liability or obligations of the Debt Financing Sources to the parties to the Debt Commitment Letter and their Affiliates, successors and permitted assigns (including the Acquired Companies, following the Effective Time). The Debt Financing Sources are express third party beneficiaries of this Section 6.17.

ARTICLE 7
CONDITIONS TO EACH PARTY'S OBLIGATION TO EFFECT THE MERGER

The obligation of each party to effect the Merger shall be subject to the satisfaction or waiver of the following conditions prior to the Effective Time:

Section 7.1. Consummation of the Offer. Merger Sub (or Parent on Merger Sub's behalf) shall have accepted for payment the shares of Company Common Stock validly tendered pursuant to the Offer and not withdrawn.

Section 7.2. No Restraints. No temporary restraining order, preliminary or permanent injunction or other Order preventing the consummation of the Merger shall have been issued by any Governmental Entity of competent and applicable jurisdiction and remain in effect, and there shall not be any Law enacted that makes consummation of the Merger illegal.

ARTICLE 8
TERMINATION

Section 8.1. Termination. This Agreement may be terminated and the Offer and the Merger may be abandoned:

(a) by mutual written agreement of the Company and Parent at any time prior to the Acceptance Time;

(b) by either Parent or the Company, upon written notice to the other party, at any time after January 29, 2025 (as such date may be extended pursuant to the following proviso, the "**End Date**") if the Acceptance Time shall not have occurred on or before the End Date; *provided* that the End Date shall automatically be extended to March 1, 2025 if the condition set forth in clause (1)(ii) of Annex I or clause 2(b) of Annex I (if the Order or Law relates to Antitrust Laws or Foreign Investment Laws) shall not have been satisfied as of the close of business on the date that is seven (7) Business Days prior to the End Date; *provided, further*, that the right to terminate this Agreement pursuant to this Section 8.1(b) shall not be available to any party (or any Affiliate of such party) whose breach of any provision of this Agreement has been the proximate cause of, or resulted in, the failure of the Acceptance Time to have occurred on or before the End Date;

(c) by either Parent or the Company, upon written notice to the other party, at any time prior to the Acceptance Time, if (i) there shall be any Law enacted after the date hereof and remaining in effect that makes consummation of the Offer or the Merger illegal, or (ii) any Governmental Entity of competent and applicable jurisdiction shall have issued a permanent injunction or other permanent Order having the effect of permanently restraining, enjoining or otherwise prohibiting the consummation of the Offer or the Merger, and such permanent injunction or other permanent Order shall have become final and non-appealable; *provided, however,* that the right to terminate this Agreement pursuant to this Section 8.1(c) shall not be available to any party (or any Affiliate of such party) whose breach of any provision of this Agreement has been the proximate cause of, or resulted in, the issuance, entry or continuing existence of any such Law or permanent Order;

(d) by either Parent or the Company, upon written notice to the other party, if the Offer (as it may have been extended pursuant to Section 2.1(e)) expires as a result of the non-satisfaction of one or more Offer Conditions, or is validly terminated or validly withdrawn prior to the Acceptance Time (to the extent permitted under the terms of this Agreement), without Merger Sub having accepted for payment any Company Common Stock tendered pursuant to the Offer; *provided, however*, that a party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(d) if the non-satisfaction of any Offer Condition or the termination or withdrawal of the Offer results from the failure of such party (or any Affiliate of such party) to perform any covenant or agreement required to be performed by such party (or any Affiliate of such party) at or prior to the Acceptance Time; *provided, further*, that, for the avoidance of doubt, Parent shall not be permitted to terminate this Agreement pursuant to this Section 8.1(d) for so long as Merger Sub is required to extend the Offer pursuant to Section 2.1(e);

(e) by Parent, upon written notice to the Company, at any time prior to the Acceptance Time, if the Company Board shall have effected a Change in Recommendation (*provided* that, any written notice, including pursuant to Section 2.3(d), of the Company's intention to make a Change in Recommendation in advance of making a Change in Recommendation shall not result in Parent having any termination rights pursuant to this Section 8.1(e) unless such written notice otherwise constitutes a Change in Recommendation); *provided, however*, that Parent shall not be permitted to terminate this Agreement pursuant to this Section 8.1(e) unless the notice of termination pursuant to this Section 8.1(e) is delivered by Parent to the Company within seven (7) Business Days following the date on which the Company notifies Parent in writing of the Change in Recommendation giving rise to Parent's right to terminate this Agreement pursuant to this Section 8.1(e);

(f) by the Company, upon written notice to Parent, at any time prior to the Acceptance Time, in connection with the Company Board making a Change in Recommendation in response to a Superior Proposal in order to enter into an Alternative Acquisition Agreement, if the Company and the Company Board shall have complied in all material respects with the notice, negotiation and other requirements set forth in Section 2.3(d)(i) with respect to such Superior Proposal; *provided, however*, no Acquired Company shall be in Willful and Material Breach of Section 6.2 in relation to such Superior Proposal;

(g) by Parent, upon written notice to the Company, at any time prior to the Acceptance Time, if (i) a breach of any representation or warranty in Article 4 or failure to perform any covenant or obligation contained in this Agreement on the part of the Company shall have occurred that would cause a failure of any of the conditions set forth in clauses 2(c), 2(d) or 2(e) of Annex I to exist, and (ii) such breach cannot be cured by the Company by the End Date, or if capable of being cured in such time period, shall not have been cured upon the earlier of the End Date and thirty (30) days following the date Parent gives the Company written notice of such breach or failure; *provided, however*, that Parent shall not be entitled to terminate this Agreement pursuant to this Section 8.1(g) if either Parent or Merger Sub is in breach of its representations, warranties, covenants or obligations under this Agreement such that the Company would be entitled to terminate this Agreement pursuant to Section 8.1(i);

(h) by Parent, upon written notice to the Company, at any time prior to the Acceptance Time, if (i) the Company Board shall have failed to include the Company Board Recommendation in the Schedule 14D-9 when mailed or (ii) in the case of a tender offer or exchange offer subject to Regulation 14D under the Exchange Act, other than the Offer, the Company Board fails to recommend, in a Solicitation/Recommendation Statement on Schedule 14D-9, rejection of such tender offer or exchange offer within ten (10) Business Days of the commencement (within the meaning of Rule 14d-2 under the Exchange Act) of such tender offer or exchange offer;

(i) by the Company, upon written notice to Parent, at any time prior to the Acceptance Time, if (i) a breach in any material respect of any representation or warranty in Article 5 or failure to perform in any material respect any covenant or obligation contained in this Agreement on the part of Parent or Merger Sub shall have occurred, in each case if such breach or failure prevents or would reasonably be expected to prevent Parent or Merger Sub

from consummating the Offer, the Merger or any other Transactions, and (ii) such breach cannot be cured by Parent by the End Date, or if capable of being cured in such time period, shall not have been cured upon the earlier of the End Date and thirty (30) days following the date the Company gives Parent written notice of such breach of failure; *provided*, *however*, that the Company shall not be entitled to terminate this Agreement pursuant to this Section 8.1(i) if the Company is in breach of its representations, warranties, covenants or obligations under this Agreement such that Parent would be entitled to terminate this Agreement pursuant to Section 8.1(g); or

(j) by the Company, upon written notice to Parent, if (i) Merger Sub fails to commence the Offer in accordance with Section 2.1 on or prior to the fifteenth (15th) Business Day following the date hereof, (ii) Merger Sub shall have terminated the Offer prior to the Expiration Time other than in accordance with the terms of this Agreement, or (iii) Merger Sub fails to consummate the Offer when required to do so in accordance with the terms of this Agreement; *provided*, *however*, that the right to terminate this Agreement pursuant to this Section 8.1(j) shall not be available to the Company if the Company is in breach of any provision of this Agreement that has been the proximate cause of, or resulted in, Merger Sub's failure to commence or consummate the Offer in accordance with the terms of this Agreement.

Section 8.2. Effect of Termination. In the event of the termination of this Agreement as provided in Section 8.1, this Agreement shall be of no further force or effect without liability of any party (or any representative of such party) to each other party hereto; *provided, however,* that: (a) this Section 8.2, Article 1 and the applicable definitions elsewhere in this Agreement, the last sentence of Section 2.1(g), the last two sentences of Section 2.3(e), Section 6.4(b), Section 6.4(c), Section 6.14(d), Section 6.15(c), Section 8.3 and Article 9 shall survive the termination of this Agreement and shall remain in full force and effect; and (b) the termination of this Agreement shall not relieve any party from any liabilities or damages, which the parties acknowledge and agree shall not be limited to reimbursement of expenses or out-of-pocket costs, and shall include, in the case of liabilities or damages payable by Parent or Merger Sub, the benefit of the bargain lost by the Company and its equity holders (taking into consideration relevant matters, including the aggregate amount of the Offer Price and the Merger Consideration, other combination opportunities, the time value of money, and the loss of market value or decline in stock price of the Company) arising out of its Willful and Material Breach of any provision of this Agreement or any other agreement delivered in connection herewith or any common law fraud (with scienter), subject only, with respect to any such liabilities of the Company, to Section 8.3(b) and Section 8.3(c). Without limiting the generality of the foregoing, Parent and Merger Sub acknowledge and agree that any failure of Parent or Merger Sub to satisfy its obligation to accept for payment or pay for shares of Company Common Stock or the Company Compensatory Awards following satisfaction of the Offer Conditions and any failure of Parent to cause the Merger to be effected following satisfaction of the conditions set forth in Article 7, in each case in accordance with this Agreement, will be deemed to constitute a Willful and Material Breach of a covenant of this Agreement. The parties' rights and remedies under the Confidentiality Agreement shall not be affected by a termination of this Agreement. Nothing shall limit or prevent any party from exercising any rights it may have under Section 9.11(a) in lieu of terminating this Agreement pursuant to Section 8.1.

Section 8.3. Expenses; Termination Fee.

(a) Except as set forth in Section 6.14, Section 6.15(c) or this Section 8.3, all fees and expenses incurred in connection with this Agreement and the Offer, the Merger and the other Transactions shall be paid by the party incurring such expenses, whether or not the Offer and Merger are consummated. In furtherance of the foregoing, (i) Parent shall pay all filing fees payable for filings required or otherwise made pursuant to the HSR Act or any other applicable Antitrust Laws in connection with the Offer, the Merger or the other Transactions, and (ii) except as provided in Section 3.6(e), all transfer, documentary, sales, use, stamp, registration, value-added and other similar Taxes and fees incurred in connection with the Offer, the Merger or the other Transactions shall be paid by Parent and Merger Sub when due.

(b) If:

(i) (A) this Agreement is validly terminated by Parent or the Company pursuant to Section 8.1(b) (*End Date*) or Section 8.1(d) (*Offer Termination*) or by Parent pursuant to Section 8.1(h) (*Failure to Include Company Board Recommendation in Schedule 14D-9*) (*provided* that (x) at the time of any such termination, the conditions to the Offer set forth in clauses 1(ii) and 2(b) of Annex I are satisfied and the Minimum Condition is not satisfied, and (y) with respect to any such termination by the Company, the right to terminate this Agreement pursuant to Section 8.1(b) or Section 8.1(d), as applicable, is then available to Parent), (B) following the date hereof and prior to the time of the termination of this Agreement, a *bona fide* Acquisition Proposal shall have been publicly announced (and such Acquisition Proposal shall not have been withdrawn prior to the time of the termination of this Agreement) and (C) the Company within twelve (12) months after such termination enters into a definitive agreement with respect to or recommends to its stockholders an Acquisition Proposal, which Acquisition Proposal is subsequently consummated (whether during or following such twelve (12) month period) with all references to "20%" and "80%" in the definition of Acquisition Proposal being treated as "50%" for purposes of this clause (i));

(ii) this Agreement is terminated by Parent pursuant to Section 8.1(e) (*Change in Company Board Recommendation*); or

(iii) this Agreement is terminated by the Company pursuant to Section 8.1(f) (*Superior Proposal*), then in the case of each of clauses (i) through (iii), the Company shall pay or cause to be paid to Parent, in cash at the time specified in the next sentence, a termination fee in the amount of $78,800,000 (the "**Company Termination Fee**").

Any Company Termination Fee shall be paid: (x) in the case of clause (i) of the preceding sentence of this Section 8.3(b), within two (2) Business Days after the consummation of the transactions contemplated by such Acquisition Proposal, (y) in the case of clause (ii) of the preceding sentence of this Section 8.3(a), within two (2) Business Days following termination of this Agreement and (z) in the case of clause (iii) of the preceding sentence of this Section 8.3(b), substantially concurrently with a termination of this Agreement under Section 8.1(f) (or no later than on the next Business Day if such termination occurs

on a day that is not a Business Day). Any Company Termination Fee due under this Section 8.3(b) shall be paid by wire transfer of immediately available funds to an account designated in writing by Parent. The Company Termination Fee shall be payable only once with respect to this Section 8.3(b) and not in duplication, even though the Company Termination Fee may be payable under one or more provisions hereof. In the event that Parent shall become entitled to payment of the Company Termination Fee, the receipt of the Company Termination Fee shall be deemed to be liquidated damages for any and all losses or damages suffered or incurred by Parent, Merger Sub or any of their respective Affiliates or any other Person in connection with this Agreement (and the termination hereof), the Transactions (and the abandonment thereof) or any matter forming the basis for such termination, and none of the Company, any of its Subsidiaries or any of their respective current, former or future directors, officers, employees, equityholders, agents or representatives or Affiliates (collectively, the "**Company Related Parties**") shall have any further liability, whether pursuant to a claim in Law or in equity, to Parent, Merger Sub or any of their respective Affiliates or any other Person, and none of Parent, Merger Sub or any of their respective Affiliates or any other Person shall be entitled to bring or maintain any claim, action or proceeding against the Company, any of its Subsidiaries or any of the Company Related Parties for damages or any equitable relief arising out of or in connection with this Agreement, any of the Transactions, or any matters forming the basis for such termination.

(c) The Company and Parent acknowledge and agree that the agreements contained in this Section 8.3 are an integral part of the Transactions, and that, without these agreements, the Company and Parent would not enter into this Agreement. In the event that the Company shall fail to pay the Company Termination Fee when due, Parent shall be entitled to receive interest on such unpaid Company Termination Fee, commencing on the date that the Company Termination Fee became due, at a rate equal to the "prime rate" as published in *The Wall Street Journal*, Eastern Edition, in effect on the date such payment was required to be made through the date of payment (calculated daily on the basis of a year of 365 days and the actual number of days elapsed, without compounding).

ARTICLE 9
MISCELLANEOUS PROVISIONS

Section 9.1. Amendment. Any provision of this Agreement may be amended, modified, supplemented or waived prior to the Effective Time if, but only if, such amendment, modification, supplement or waiver is in writing and is signed, in the case of an amendment, modification or supplement by each party to this Agreement (or their respective boards of directors, if required) or, in the case of a waiver, by each party against whom the waiver is to be effective (or its board of directors, if required); *provided, however*, that following the Acceptance Time, this Agreement may not be amended, modified or supplemented.

Section 9.2. Waiver. No failure on the part of any party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege

or remedy. No party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given. Except as otherwise expressly provided in this Agreement, the rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by applicable Law.

Section 9.3. No Survival of Representations, Warranties and Covenants. None of the representations, warranties and covenants of the Company contained in this Agreement, or contained in any certificate, schedule or document delivered pursuant to this Agreement or in connection with any of the Transactions, shall survive the Acceptance Time; *provided*, *however*, that this Section 9.3 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Acceptance Time. After the Acceptance Time, neither Parent nor Merger Sub shall be permitted to claim that any breach by the Company of any of its representations, warranties, covenants or obligations under this Agreement results in a failure of a condition to consummate the Merger or excuses performance by Parent or Merger Sub of any of its obligations hereunder.

Section 9.4. Entire Agreement; No Reliance. This Agreement, the Confidentiality Agreement, the Support Agreements, the exhibits and schedules to this Agreement, and the Company Disclosure Schedule, constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect thereto. Without limiting the generality of the foregoing: (a) Parent and Merger Sub acknowledge and agree that the Company has not made and is not making any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except as provided in Article 4 (including the Company Disclosure Schedule), that they are not relying and have not relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except as provided in Article 4 (including the Company Disclosure Schedule), and that no employee, agent, advisor or other representative of the Company has made or is making any representations or warranties whatsoever regarding the subject matter of this Agreement; (b) without limiting the foregoing, Parent and Merger Sub acknowledge and agree that neither the Company nor any of its representatives has made any representation or warranty, whether express or implied, as to the accuracy or completeness of any information regarding the Company or its Affiliates furnished or made available to Parent or Merger Sub and its representatives except as expressly set forth in this Agreement, and neither the Company nor any other Person shall be subject to any liability to Parent or Merger Sub or any other Person resulting from the Company's furnishing or making available to Parent or Merger Sub or Parent's or Merger Sub's use of such information, or any information, documents or material made available to Parent or Merger Sub in any due diligence materials provided to Parent or Merger Sub, including in the "data room," management presentations (formal or informal) or in any other form in connection with the Transactions; (c) without limiting the foregoing, Parent and Merger Sub acknowledge and agree that the Company has not made and is not making any representations or warranties whatsoever regarding any forecasts, projections, estimates or budgets discussed with, delivered to or made available to Parent, or otherwise regarding the future revenues, future expenses, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the

Company or the future business, operations or prospects of the Company; and (d) the Company acknowledges and agrees that Parent and Merger Sub have not made and are not making any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except as provided in Article 5, that it is not relying and has not relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except as provided in Article 5, and that no representative of Parent or Merger Sub has made or is making any representations or warranties whatsoever regarding the subject matter of this Agreement.

Section 9.5. Governing Law; Jurisdiction. This Agreement is made under, and shall be construed and enforced in accordance with, the Laws of the State of Delaware applicable to agreements made and to be performed solely therein, including its statute of limitations, without giving effect to principles of conflicts of Law. Each of the parties (a) consents to and submits to the exclusive personal jurisdiction of the Court of Chancery of the State of Delaware, New Castle County, or, if that court does not have jurisdiction, a federal court sitting in Wilmington, Delaware (the "**Delaware Courts**") in any action or proceeding arising out of or relating to this Agreement or any of the Transactions, (b) agrees that all claims in respect of such action or proceeding shall be heard and determined in any such court, (c) shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court and (d) shall not bring any action or proceeding arising out of or relating to this Agreement or any of the Transactions in any other court. Each of the parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other Person with respect thereto. Each party agrees that notice or the service of process in any action or proceeding arising out of or relating to this Agreement or the Transactions shall be properly served or delivered if delivered in the manner contemplated by Section 9.7 or in any other manner permitted by applicable Law. The parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law; *provided*, *however*, that nothing in the foregoing shall restrict any party's rights to seek any post-judgment relief regarding, or any appeal from, such final court judgment.

Section 9.6. Assignability; Parties in Interest. This Agreement shall be binding upon, and shall be enforceable by and inure to the benefit of, the parties and their respective successors and assigns. This Agreement shall not be assignable by any party without the express written consent of the other parties, and any attempt to make any such assignment without such consent shall be null and void; *provided* that nothing in this Section 9.6 shall restrict one or more transfers of the equity of Merger Sub to or among one or more of Parent's direct or indirect wholly owned Subsidiaries at any time; *provided further* that any such transfer shall not relieve Parent or Merger Sub of its obligations hereunder or otherwise alter or change any obligation of any other party hereto and no such transfer shall be permitted to the extent it would reasonably be expected to delay the Closing. Except for (i) the provisions of Article 2 (which, from and after the Acceptance Time, shall be for the benefit of, and enforceable by, Persons that are holders of shares of Company Common Stock who have tendered pursuant to the Offer (and not validly withdrawn) shares of Company Common Stock), (ii) the provisions of Article 3 (which, from and after the Effective Time, shall be for the benefit of, and enforceable by, Persons who are holders of shares of Company Common Stock, Company Warrants and Company Compensatory Awards immediately prior to the Effective Time), (iii) the provisions of this Agreement applicable to the Indemnified

Parties (which, from and after the Acceptance Time, shall be for the benefit of, and enforceable by, the Indemnified Parties), (iv) the provisions of Section 6.14(d) and Section 6.15(c) with respect to the Indemnitees and the other Persons referenced therein, and (v) the limitations on liability of the Company Related Parties set forth in Section 8.3(b) (which shall be for the benefit of, and enforceable by, the Company Related Parties), nothing in this Agreement, express or implied, is intended to or shall confer upon any Person, other than the parties, any right, benefit or remedy of any nature; *provided*, *however*, that, to the fullest extent permitted by Law, the Company shall be entitled and have the right, in its sole and absolute discretion, to pursue any remedy and recover damages (including monetary damages based on a lost premium or loss of the economic benefit of the Transactions contemplated by this Agreement) in the name of and on behalf of holders of shares of Company Common Stock (who are third party beneficiaries hereunder to the extent necessary for this provision to be enforceable), as agent for such holders (it being understood and agreed that any and all interests in the recovery of any such losses or any such claim shall attach to the shares of Company Common Stock and subsequently be transferred therewith), in the event of any breach by Parent or Merger Sub of this Agreement or in the event of fraud, which is hereby acknowledged and agreed to by Parent and Merger Sub.

Section 9.7. Notices. Any notices or other communications required or permitted under, or otherwise given in connection with, this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date delivered or sent if delivered in person or sent by email (to the extent that no "bounce back" or similar message indicating non-delivery is received with respect thereto), (b) on the third (3rd) Business Day after dispatch by registered or certified mail or (c) on the next Business Day if transmitted by nationally recognized overnight courier, in each case as follows:

if to Parent, Merger Sub or the Surviving Corporation, to:

Ono Pharmaceutical Co., Ltd.
8-2, Kyutaromachi 1-chome
Chuo-ku, Osaka 541-8564
Attention: [Omitted]
Email: [Omitted]

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

Greenberg Traurig, LLP
One Vanderbilt Avenue
New York, New York 10017
Attention: Michael D. Helsel
Email: helselm@gtlaw.com

and

Greenberg Traurig, LLP
2101 L Street, N.W.
Suite 1000
Washington, D.C. 20037
Attention: Chia-Feng Lu
Email: chiafeng.lu@gtlaw.com

if to the Company, to:

Deciphera Pharmaceuticals, Inc.
200 Smith Street
Waltham, MA 02451
Attention: [Omitted]
Email: [Omitted]

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

Goodwin Procter LLP
100 Northern Avenue
Boston, MA 02210
Attention: Stuart M. Cable
Lisa R. Haddad
James Ding
Email: scable@goodwinlaw.com
lhaddad@goodwinlaw.com
jding@goodwinlaw.com

Section 9.8. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.

Section 9.9. Counterparts; Effectiveness. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart. The parties hereto agree that electronic signatures will have the same legal effect as original signatures. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic transmission, including by e-mail attachment, shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 9.10. Obligation of Parent. Parent shall cause Merger Sub to comply in all respects with each of the representations, warranties, covenants, obligations, agreements and undertakings made or required to be performed by Merger Sub in accordance with the terms of this Agreement, the Offer, the Merger, and the other Transactions. As a material inducement to the Company's willingness to enter into this Agreement and perform its obligations hereunder, Parent hereby unconditionally guarantees full performance and payment by Merger Sub of each of the covenants, obligations and undertakings required to be performed by Merger Sub under this Agreement and the Transactions, subject to all terms, conditions and limitations contained in this Agreement, and hereby represents, acknowledges and agrees that any such breach of any such representation and warranty or default in the performance of any such covenant, obligation, agreement or undertaking of Merger Sub shall also be deemed to be a breach or default of Parent, and the Company shall have the right, exercisable in its sole discretion, to pursue any and all available remedies it may have arising out of any such breach or nonperformance directly against either or both of Parent and Merger Sub in the first instance. As applicable, references in this Section 9.10 to "Merger Sub" shall also include the Surviving Corporation following the Effective Time.

Section 9.11. Specific Performance; Waiver of Jury Trial.

(a) The parties agree that irreparable damage would occur and that the parties would not have any adequate remedy at Law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, except as expressly provided in the following sentence. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the Delaware Courts and, in any action for specific performance, each party waives the defense of adequacy of a remedy at Law and waives any requirement for the securing or posting of any bond in connection with such remedy, this being in addition to any other remedy to which they are entitled at Law or in equity (subject to the limitations set forth in this Agreement). The right to specific performance shall include the right of the Company to cause Parent and Merger Sub to cause the Offer, the Merger and the other Transactions to be consummated on the terms and subject to the conditions set forth in this Agreement. Each of the parties acknowledges and agrees that the right of specific performance is an integral part of the Transactions contemplated by this Agreement and without such right, none of the parties would have entered into this Agreement. The parties further agree that (i) by seeking the remedies provided for in this Section 9.11, a party shall not in any respect waive its right to seek any other form of remedy or relief that may be available to a party under this Agreement (including monetary damages) for breach of any of the provisions of this Agreement or in the event that this Agreement has been terminated or in the event that the remedies provided for in this Section 9.11 are not available or otherwise are not granted, and (ii) nothing set forth in this Section 9.11 shall require any party to institute any proceeding for (or limit any party's right to

institute any proceeding for) specific performance under this Section 9.11 prior or as a condition to exercising any termination right under Article 8 (and pursuing damages after such termination), nor shall the commencement of any Legal Proceeding pursuant to this Section 9.11 or anything set forth in this Section 9.11 restrict or limit any party's right to terminate this Agreement in accordance with the terms of Article 8 or pursue any other remedies under this Agreement that may be available at any time. For the avoidance of doubt, the Company may concurrently seek specific performance or other equitable relief and other monetary damages, remedies or awards.

(b) EACH OF THE PARTIES TO THIS AGREEMENT 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 HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 9.12. Construction.

(a) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include masculine and feminine genders.

(b) The parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation," whether or not they are in fact followed by those words or words of like import. The word "or" is not exclusive. The words "hereof," "herein," "hereby," "herewith" and words of similar import shall unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "extent" and the phrase "to the extent" means the degree to which a subject or other thing extends, and such word or phrase shall not simply mean "if." The word "will" shall be construed to have the same meaning as the word "shall".

(d) Except as otherwise indicated, all references in this Agreement to "Sections," "Exhibits," "Annexes" and "Schedules" are intended to refer to Sections of this Agreement and Exhibits, Annexes and Schedules to this Agreement.

(e) All references in this Agreement to "$" and "dollars" are intended to refer to U.S. dollars.

(f) Unless the context requires otherwise, any definition of or reference to any Contract, instrument or other document or any Law in this Agreement shall be construed as referring to such Contract, instrument or other document or Law as from time to time amended, supplemented or otherwise modified, including comparable successor Law and any rules or regulations promulgated thereunder.

(g) Unless indicated otherwise, (i) any action required to be taken by or on a day or Business Day may be taken until 11:59 p.m., Eastern Time, on such day or Business Day, (ii) all references to "days" shall be to calendar days unless otherwise indicated as a "Business Day", (iii) all days, Business Days, times and time periods contemplated by this Agreement will be determined by reference to Eastern Time, and (iv) whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day.

(h) As used in this Agreement, "writing," "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form.

(i) The table of contents and headings set forth in this Agreement are for convenience of reference purposes only and shall not affect or be deemed to affect in any way the meaning or interpretation of this Agreement or any term or provision hereof.

[*Remainder of page intentionally left blank*]

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

ONO PHARMACEUTICAL CO., LTD.
a Japanese company
(kabushiki kaisha)

By: /s/ Gyo Sagara
Name: Gyo Sagara
Title: Representative Director, Chairperson of the Board and Chief Executive Officer

TOPAZ MERGER SUB, INC.
a Delaware corporation

By: /s/ Masayuki Tanigawa
Name: Masayuki Tanigawa
Title: President

DECIPHERA PHARMACEUTICALS, INC.
a Delaware corporation

By: /s/ Steven L. Hoerter
Name: Steven L. Hoerter
Title: President and Chief Executive Officer

ANNEX I

CONDITIONS OF THE OFFER

Capitalized terms used in this Annex I and not otherwise defined herein will have the meanings assigned to them in the Agreement and Plan of Merger to which it is attached (the "Agreement").

(1) Notwithstanding any other terms or provisions of the Offer or the Agreement, Merger Sub shall not be obligated to irrevocably accept for payment, or, subject to the rules and regulations of the SEC, including Rule 14e-1(c) under the Exchange Act (relating to Merger Sub's obligation to purchase or return the tendered shares of Company Common Stock promptly after termination or withdrawal of the Offer), purchase any shares of Company Common Stock validly tendered (and not validly withdrawn prior to the Expiration Time) pursuant to the Offer (and not theretofore accepted for payment or paid for), unless (i) there shall have been validly tendered and not validly withdrawn at or prior to the Expiration Time that number of shares of Company Common Stock that, considered together with all other shares of Company Common Stock (if any) beneficially owned by Parent and its controlled Affiliates (excluding any shares of Company Common Stock tendered pursuant to guaranteed delivery procedures that have not yet been "received" (as such term is defined in Section 251(h)(6)(f) of the DGCL)), represent one more than 50% of the total number of shares of Company Common Stock outstanding at the Expiration Time (such condition, the "**Minimum Condition**") and (ii) the waiting period (and any extension thereof) applicable to the consummation of the Offer and the Merger under the HSR Act shall have expired or been terminated.

(2) In addition and notwithstanding any other provisions of the Offer, but subject to the terms and conditions set forth in the Agreement, Merger Sub shall not be required to irrevocably accept for payment or, subject to any applicable rules and regulations of the SEC, including Rule 14e-1(c) under the Exchange Act (relating to Merger Sub's obligation to pay for or return tendered shares of Company Common Stock promptly after termination or withdrawal of the Offer), purchase any shares of Company Common Stock validly tendered (and not validly withdrawn prior to the Expiration Time) pursuant to the Offer (and not theretofore accepted for payment) if, at any time prior the Expiration Time, any of the following conditions exist and are continuing at the Expiration Time:

(a) the Agreement shall have been validly terminated in accordance with its terms (such condition, the "**Termination Condition**");

(b) any Governmental Entity of competent and applicable jurisdiction shall have enacted, issued, promulgated, enforced or entered any Order or Law that is in effect and restrains, enjoins or otherwise prohibits or makes illegal consummation of the Offer or the Merger;

(c) (i) the representations and warranties of the Company set forth in Sections 4.3(a) and (e) (*Capitalization*) of the Agreement shall not be accurate except for any *de minimis* inaccuracies as of the date of the Agreement and at and as of the Expiration Time as though made on and as of such date and time (except to the extent any such representation or warranty expressly relates to an earlier date or period, in which case as of such date or period); (ii) the representations and warranties of the Company set forth in Section 4.1(a)(i) (*Organization and Good Standing; Subsidiaries*) and Section 4.20 (*Authority; Binding Nature of Agreement*) shall not be true and correct (disregarding for this purpose all "Company Material Adverse Effect," "materiality" or similar qualifications contained in such representations and warranties) in all material respects as of the Expiration Time as though made on and as of such date and time (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall not have been true and correct in all material respects as of such earlier date); and (iii) the representations and warranties of the Company set forth in Article 4 of the Agreement (other than the representations and warranties set forth in the foregoing clauses (2)(c)(i) and (ii)) shall not be true and correct (disregarding for this purpose all "Company Material Adverse Effect," "materiality" or similar qualifications contained in such representations and warranties) as of the Expiration Time as though made on and as of such date and time (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall not have been true and correct as of such earlier date); *provided*, *however*, that notwithstanding anything in this Agreement to the contrary, the condition set forth in this clause (2)(c)(iii) shall be deemed to have been satisfied even if any representations and warranties of the Company are not so true and correct if the failure of such representations and warranties of the Company to be so true and correct, individually or in the aggregate, shall not have resulted in and would not reasonably be expected to have a Company Material Adverse Effect that is continuing at the Expiration Time;

(d) the Company shall not have performed or complied in all material respects with the obligations or covenants that are required to be performed by it prior to the Expiration Time under the Agreement, and such failure to perform or comply shall not have been cured at or prior to the Expiration Time;

(e) the Company shall not have delivered to Parent, dated as of the Expiration Time, a certificate signed on behalf of the Company by an executive officer of the Company to the effect that the conditions set forth in the foregoing clauses (2)(c) and (2)(d) and clause (2)(f) below have been satisfied as of immediately prior to the Expiration Time; or

(f) since the date of the Agreement, there shall have occurred, and be continuing at the Expiration Time, a Company Material Adverse Effect.

Except for the Minimum Condition and the Termination Condition, the foregoing conditions are for the sole benefit of Parent and Merger Sub and may be waived by Parent and Merger Sub, in whole or in part at any time and from time to time, in the sole discretion of Parent and Merger Sub; *provided* that the Minimum Condition may be waived by Parent and Merger Sub only with the prior written consent of the Company, which may be granted or withheld in the Company's sole discretion; and *provided further* that any such waiver by Parent, Merger Sub and/or the Company shall be subject to the terms of this Agreement and the applicable rules and regulations of the SEC. The failure by Parent or Merger Sub at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

EXHIBIT A

FORM OF CERTIFICATE OF INCORPORATION OF SURVIVING CORPORATION

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

DECIPHERA PHARMACEUTICALS, INC.

FIRST: The name of the corporation is Deciphera Pharmaceuticals, Inc. (the "**Corporation**").

SECOND: The address of the Corporation's registered office in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended ("**Delaware Law**").

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is 1,000. All such shares shall be common stock, par value $0.01 per share, and shall be of one class.

FIFTH: In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors of the Corporation is expressly authorized to make, alter and repeal the bylaws of the Corporation, subject to the power of the stockholders of the Corporation to alter or repeal any bylaw of the Corporation whether adopted by them or otherwise.

SIXTH: Election of directors need not be by written ballot unless and except to the extent that the bylaws of the Corporation so provide.

SEVENTH: The Corporation expressly elects not to be governed by Section 203 of Delaware Law.

EIGHTH: A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of his or her fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of Delaware Law or (d) for any transaction

from which the director derived an improper personal benefit. If Delaware Law is amended after the effective date of this certificate of incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by Delaware Law, as so amended.

Any amendment, repeal, modification or elimination of this Article EIGHTH by either of (i) the stockholders of the Corporation or (ii) an amendment to Delaware Law shall not adversely affect any right or protection of a director of the Corporation existing at the time of such amendment, repeal, modification or elimination with respect to any acts or omissions occurring before such amendment, repeal, modification or elimination of a person serving as a director at the time of such amendment, repeal, modification or elimination.

NINTH: The Corporation reserves the right to amend this certificate of incorporation in any manner permitted by Delaware Law and all rights and powers conferred herein on stockholders, directors and officers, if any, are subject to this reserved power.

EXHIBIT B

FORM OF BYLAWS
OF SURVIVING CORPORATION

SECOND AMENDED AND RESTATED

BYLAWS

OF

DECIPHERA PHARMACEUTICALS, INC.

*** * * * ***

ARTICLE 1
OFFICES

Section 1.1 *Registered Office*. The registered office of Deciphera Pharmaceuticals, Inc. (as such name may be changed in accordance with applicable law, the "**Corporation**") in the State of Delaware, and the name of the Corporation's registered agent at such address, shall be as set forth in the certificate of incorporation of the Corporation (as the same may be amended or amended and restated from time to time, the "**Certificate of Incorporation**").

Section 1.2 *Other Offices*. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors of the Corporation (the "**Board of Directors**") may from time to time determine or the business of the Corporation may require.

ARTICLE 2
MEETINGS OF STOCKHOLDERS

Section 2.1 *Time and Place of Meetings*. All meetings of stockholders shall be held at such place, if any, either within or without the State of Delaware, on such date and at such time as may be determined from time to time by the Board of Directors (or the Chairman in the absence of a designation by the Board of Directors).

Section 2.2 *Annual Meetings*. Unless directors are elected by written consent in lieu of an annual meeting as permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended ("**Delaware Law**"), an annual meeting of stockholders shall be held for the election of directors and to transact such other business as may properly be brought before the meeting at such date and time as may be designated by the Board from time to time. Stockholders may, unless the certificate of incorporation otherwise provides, act by written consent to elect directors; *provided*, *however*, that if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

Section 2.3 *Special Meetings*. Special meetings of stockholders may be called by the Board of Directors or the Chairman of the Board and shall be called by the Secretary at the request in writing of holders of record of a majority of the outstanding capital stock of the Corporation entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

Section 2.4 *Notice of Meetings and Adjourned Meetings; Waivers of Notice*. (a) Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by Delaware Law, such notice shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting, as of the record date for determining the stockholders entitled to notice of the meeting. Unless these bylaws otherwise require, when a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time, place, if any, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person or by proxy and vote at such meeting are (i) announced at the meeting at which the adjournment is taken, (ii) displayed during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication or (iii) set forth in the notice of meeting given in accordance with this Section 2.4(a). At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 7.1, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

(b) Whenever notice is required to be given under any provision of Delaware Law, the Certificate of Incorporation or these bylaws, written waiver of any such notice signed by the person entitled thereto, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 2.5 *Quorum*. Unless otherwise provided under the Certificate of Incorporation or these bylaws and subject to Delaware Law, the presence, in person or by proxy, of the holders of a majority of the outstanding capital stock of the Corporation entitled to vote at a meeting of stockholders shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, a majority in voting power of the stockholders present in person or represented by proxy may adjourn the meeting, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally notified.

Section 2.6 *Voting*. (a) Unless otherwise provided in the Certificate of Incorporation and subject to Delaware Law, each stockholder shall be entitled to one vote for each outstanding share of capital stock of the Corporation held by such stockholder. Except as otherwise provided by applicable law, the Certificate of Incorporation or these bylaws, in all matters other than the election of directors, the affirmative vote of the majority of the shares of capital stock of the Corporation present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Shares of the Corporation's capital stock shall neither be entitled to vote nor be counted for quorum purposes if such shares belong to (i) the Corporation, (ii) another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation or (iii) any other entity, if a majority of the voting power of such other entity is held, directly or indirectly, by the Corporation or if such other entity is otherwise controlled, directly or indirectly, by the Corporation.

(b) Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to a corporate action without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless said proxy provides for a longer period.

Section 2.7 *Action by Consent In Lieu of a Meeting*. (a) Unless otherwise provided in the Certificate of Incorporation and subject to the proviso in Section 2.2, any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents, setting forth the action so taken, shall be signed by the holders of outstanding capital stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery in accordance with Delaware Law. If action by consent has been taken by stockholders by less than unanimous consent, prompt notice of the taking of the action by consent shall, to the extent required by Delaware Law, be given to those stockholders as of the record date for the action by consent who have not consented and who would have been entitled to notice of the meeting if the action had been taken at a meeting and the record date for the notice of the meeting were the record date for the action by consent.

(b) A consent must be set forth in writing or in an electronic transmission. No consent shall be effective to take the corporate action referred to therein unless consents signed by a sufficient number of holders to take action are delivered to the Corporation in the manner required by Delaware Law within 60 days of the first date on which a consent is so delivered to the Corporation.

Section 2.8 *Organization*. At each meeting of stockholders, the Chairman of the Board, if one shall have been elected, or in the Chairman's absence or if one shall not have been elected, the director designated by the vote of the majority of the directors present at such meeting, shall act as chairman of the meeting. The Secretary (or in the Secretary's absence or inability to act, the person whom the chairman of the meeting shall appoint secretary of the meeting) shall act as secretary of the meeting and keep the minutes thereof.

Section 2.9 *Order of Business*. The order of business at all meetings of stockholders shall be as determined by the chairman of the meeting.

ARTICLE 3
DIRECTORS

Section 3.1 *General Powers*. Except as otherwise provided in Delaware Law or the Certificate of Incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

Section 3.2 *Number, Election and Term Of Office*. (a) The number of directors which shall constitute the whole Board shall be fixed from time to time by resolution of the Board of Directors but shall not be less than two or more than nine. The directors shall be elected at the annual meeting of the stockholders, except as provided in Section 2.2 and Section 3.11, and each director so elected shall hold office until such director's successor is duly elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders.

(b) Except as otherwise expressly provided in the Certificate of Incorporation, directors shall be elected by a plurality of the votes of the shares of capital stock of the Corporation present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

Section 3.3 *Quorum and Manner of Acting*. Unless the Certificate of Incorporation or these bylaws require a greater number, a majority of the total number of directors shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. When a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Board of Directors may transact any business which might have been transacted at the original meeting. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 3.4 *Annual Meeting*. The Board of Directors shall meet for the purpose of organization, the election of officers and the transaction of other business, as soon as practicable after each annual meeting of stockholders, on the same day and at the same place where such annual meeting shall be held. Notice of such meeting need not be given. In the event such annual meeting is not so held, the annual meeting of the Board of Directors may be held at such place, either within or without the State of Delaware, on such date and at such time as shall be specified in a notice thereof given to each director at least 24 hours before the date of the meeting.

Section 3.5 *Regular Meetings*. Regular meetings of the Board of Directors may be held at such time and place, within or without the State of Delaware, as the Board of Directors may from time to time determine.

Section 3.6 *Special Meetings*. Special meetings of the Board of Directors may be called by the Chairman of the Board, the President or any member of the Board of Directors and held at such time and place, within or without the State of Delaware, as the person calling the special meeting may determine. Notice of special meetings of the Board of Directors shall be given to each director at least 24 hours before the date of the meeting.

Section 3.7 *Committees*. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members of such committee present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors or in these bylaws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to any of the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by Delaware Law to be submitted to the stockholders for approval or (b) adopting, amending or repealing any bylaw of the Corporation. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such provision by the Board of Directors or such rules made by the committee, each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to this Article 3.

Section 3.8 *Action by Consent*. Unless otherwise restricted by the Certificate of Incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission. After the action is taken, the consent or consents relating thereto shall be filed with the minutes of proceedings of the Board of Directors, or the committee thereof, as the case may be, in the same paper or electronic form as the minutes are maintained.

Section 3.9 *Telephonic Meetings*. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or such committee, as the case may be, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 3.10 *Resignation*. Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. The resignation of any director is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events.

Section 3.11 *Vacancies*. Unless otherwise provided by applicable law or the Certificate of Incorporation, vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. Each director so chosen shall hold office until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal. If there are no directors in office, then an election of directors may be held in accordance with Delaware Law. Unless otherwise provided in the Certificate of Incorporation or these bylaws, when one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who shall have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this Section 3.11 in the filling of other vacancies.

Section 3.12 *Removal*. Any director or the entire Board of Directors may be removed, with or without cause, at any time by the affirmative vote of the holders of a majority of the outstanding capital stock of the Corporation then entitled to vote at any election of directors and the vacancies thus created may be filled in accordance with Section 3.11.

Section 3.13 *Compensation*. Unless otherwise restricted by the Certificate of Incorporation or these bylaws, the Board of Directors shall have authority to fix the compensation of directors, including fees and reimbursement of expenses.

Section 3.14 *Manner of Notice*. Except as otherwise provided in these bylaws or permitted by applicable law, notices to directors shall be given in writing and delivered by courier service or mailed to the directors at their addresses appearing on the records of the Corporation or by electronic transmission to their electronic mail addresses appearing on the records of the Corporation.

Section 3.15 *Organization*. Meetings of the Board of Directors shall be presided over by the Chairman of the Board, if one shall have been elected, or in the Chairman's absence or if one shall not have been elected, by a chairman chosen at the meeting. The Secretary (or in the Secretary's absence or inability to act, the person whom the chairperson of the meeting shall appoint secretary of the meeting) shall act as secretary of the meeting and keep minutes thereof.

ARTICLE 4
OFFICERS

Section 4.1 *Principal Officers*. The officers of the Corporation shall be a President, a Treasurer and a Secretary, who shall have the duty, among other things, to record the proceedings of the meetings of stockholders and directors in a book kept for that purpose. The Corporation may also have such other officers as the Board of Directors may in its discretion appoint, including a Chief Executive Officer and one or more Vice Presidents. One person may hold the offices and perform the duties of any two or more of said offices.

Section 4.2 *Election, Term of Office and Remuneration*. The officers of the Corporation shall be elected annually by the Board of Directors at the annual meeting thereof. Each such officer shall hold office until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal. The remuneration of all officers of the Corporation shall be fixed by the Board of Directors. Any vacancy in any office shall be filled in such manner as the Board of Directors shall determine.

Section 4.3 *Subordinate Officers*. In addition to the officers enumerated in Section 4.1, the Corporation may have one or more Assistant Treasurers and Assistant Secretaries and such other officers, agents and employees as the Board of Directors may deem necessary or desirable, each of whom shall hold office for such period as the Board of Directors may from time to time determine. The Board of Directors may delegate to the President the power to appoint and to remove any officers (other than the Treasurer or Secretary), agents or employees.

Section 4.4 *Removal*. Except as otherwise permitted with respect to officers appointed and removable by the President pursuant to a delegation made by the Board of Directors pursuant to the last sentence of Section 4.3, any officer may be removed, with or without cause, at any time, by resolution adopted by the Board of Directors.

Section 4.5 *Resignations*. Any officer may resign at any time upon written notice to the Corporation.

Section 4.6 *Powers and Duties*. The officers of the Corporation shall have such powers and perform such duties incident to each of their respective offices and such other duties as may from time to time be conferred upon or assigned to them by the Board of Directors.

ARTICLE 5
CAPITAL STOCK

Section 5.1 *Certificates For Stock; Uncertificated Shares*. Every holder of stock of the Corporation represented by certificates shall be entitled to have a certificate signed by, or in the name of, the Corporation by any two authorized officers of the Corporation representing the number of shares registered in certificate form. Each of the President and the Secretary, in addition to any other officers of the Corporation authorized by the Board of Directors or these bylaws, is hereby authorized to sign certificates by, or in the name of, the Corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue. The Corporation shall not have power to issue a certificate in bearer form.

Section 5.2 *Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates or Uncertificated Shares*. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

Section 5.3 *Restrictions*. If the Corporation issues any shares of capital stock that are not registered under the Securities Act of 1933, as amended, and registered or qualified under applicable state securities laws, such shares may not be transferred without the consent of the Corporation and the certificates evidencing such shares or the notice required by Delaware law, as the case may be, shall contain substantially the following legend (or such other legend adopted by resolution or resolutions of the Board of Directors):

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY SET FORTH IN THE CORPORATION'S BYLAWS (AS THE SAME MAY BE AMENDED OR AMENDED AND RESTATED FROM TIME TO TIME) AND MAY NOT BE TRANSFERRED EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO A REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM, WITHOUT THE CONSENT OF THE CORPORATION.

ARTICLE 6
INDEMNIFICATION

Section 6.1 *Definitions*. For purposes of this Article 6:

(a) "**Corporate Status**" describes the status of a person who is serving or has served (i) as a Director, (ii) as an Officer, (iii) as a Non-Officer Employee, or (iv) as a director, partner, trustee, officer, employee or agent of any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan, foundation, association, organization or other legal entity which such person is or was serving at the request of the Corporation. For purposes of this Section 6.1(a), a Director, Officer or Non-Officer Employee who is serving or has served as a director, partner, trustee, officer, employee or agent of a Subsidiary shall be deemed to be serving at the request of the Corporation. Notwithstanding the foregoing, "Corporate Status" shall not include the status of a person who is serving or has served as a director, officer, employee or agent of a constituent corporation absorbed in a merger or consolidation transaction with the Corporation with respect to such person's activities prior to said transaction, unless specifically authorized by the Board of Directors or the stockholders of the Corporation;

(b) "**Director**" means any person who serves or has served the Corporation as a director on the Board of Directors;

(c) "**Disinterested Director**" means, with respect to each Proceeding in respect of which indemnification is sought hereunder, a Director who is not and was not a party to such Proceeding;

(d) "**Expenses**" means all attorneys' fees, retainers, court costs, transcript costs, fees of expert witnesses, private investigators and professional advisors (including, without limitation, accountants and investment bankers), travel expenses, duplicating costs, printing and binding costs, costs of preparation of demonstrative evidence and other courtroom presentation aids and devices, costs incurred in connection with document review, organization, imaging and computerization, telephone charges, postage, delivery service fees, and all other disbursements, costs or expenses of the type customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settling or otherwise participating in, a Proceeding;

(e) "**Liabilities**" means judgments, damages, liabilities, losses, penalties, excise taxes, fines and amounts paid in settlement;

(f) "**Non-Officer Employee**" means any person who serves or has served as an employee or agent of the Corporation, but who is not or was not a Director or Officer;

(g) "**Officer**" means any person who serves or has served the Corporation as an officer of the Corporation appointed by the Board of Directors;

(h) "**Proceeding**" means any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, inquiry, investigation, administrative hearing or other proceeding, whether civil, criminal, administrative, arbitrative or investigative; and

(i) "**Subsidiary**" shall mean any corporation, partnership, limited liability company, joint venture, trust or other entity of which the Corporation owns (either directly or through or together with another Subsidiary of the Corporation) either (i) a general partner, managing member or other similar interest or (ii) (A) fifty percent (50%) or more of the voting power of the voting capital equity interests of such corporation, partnership, limited liability company, joint venture or other entity, or (B) fifty percent (50%) or more of the outstanding voting capital stock or other voting equity interests of such corporation, partnership, limited liability company, joint venture or other entity.

Section 6.2 *Indemnification of Directors and Officers*.

(a) Subject to the operation of Section 6.4, each Director and Officer shall be indemnified and held harmless by the Corporation to the fullest extent authorized by Delaware Law (but, in the case of any amendment thereto, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), and to the extent authorized in this Section 6.2.

(1) *Actions, Suits and Proceedings Other than By or In the Right of the Corporation*. Each Director and Officer shall be indemnified and held harmless by the Corporation against any and all Expenses and Liabilities that are incurred or paid by such Director or Officer or on such Director's or Officer's behalf in connection with any Proceeding or any claim, issue or matter therein (other than an action by or in the right of the Corporation), which such Director or Officer is, or is threatened to be made, a party to or participant in by reason of such Director's or Officer's Corporate Status, if such Director or Officer acted in good faith and in a manner such Director or Officer reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(2) *Actions, Suits and Proceedings By or In the Right of the Corporation*. Each Director and Officer shall be indemnified and held harmless by the Corporation against any and all Expenses that are incurred by such Director or Officer or on such Director's or Officer's behalf in connection with any Proceeding or any claim, issue or matter therein by or in the right of the Corporation, which such Director or Officer is, or is threatened to be made, a party to or participant in by reason of such Director's or Officer's Corporate Status, if such Director or Officer acted in good faith and in a manner such Director or Officer reasonably believed to be in or not opposed to the best interests of the Corporation; *provided*, *however*, that no indemnification shall be made under this Section 6.2(a)(2) in respect of any claim, issue or matter as to which such Director or Officer shall have been finally adjudged by a court of competent jurisdiction to be liable to the Corporation, unless, and only to the extent that, the Court of Chancery of the State of Delaware or another court in which such Proceeding was brought shall determine upon application that, despite adjudication of liability, but in view of all the circumstances of the case, such Director or Officer is fairly and reasonably entitled to indemnification for such Expenses that such court deems proper.

(3) *Survival of Rights*. The rights of indemnification provided by this Section 6.2 shall continue as to a Director or Officer after he or she has ceased to be a Director or Officer and shall inure to the benefit of his or her heirs, executors, administrators and personal representatives.

(4) *Actions by Directors or Officers*. Notwithstanding the foregoing, the Corporation shall indemnify any Director or Officer seeking indemnification in connection with a Proceeding initiated by such Director or Officer only if such Proceeding (including any parts of such Proceeding not initiated by such Director or Officer) was authorized in advance by the Board of Directors, unless such Proceeding was brought to enforce such Officer's or Director's rights to indemnification or, in the case of Directors, advancement of Expenses under these Bylaws in accordance with the provisions set forth herein.

Section 6.3 *Indemnification of Non-Officer Employees*. Subject to the operation of Section 6.4, each Non-Officer Employee may, in the discretion of the Board of Directors, be indemnified by the Corporation to the fullest extent authorized by Delaware Law, against any or all Expenses and Liabilities that are incurred by such Non-Officer Employee or on such Non-Officer Employee's behalf in connection with any threatened, pending or completed Proceeding, or any claim, issue or matter therein, which such Non-Officer Employee is, or is threatened to be made, a party to or participant in by reason of such Non-Officer Employee's Corporate Status, if such Non-Officer Employee acted in good faith and in a manner such Non-Officer Employee reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The rights of indemnification provided by this Section 6.3 shall exist as to a Non-Officer Employee after he or she has ceased to be a Non-Officer Employee and shall inure to the benefit of his or her heirs, personal representatives, executors and administrators. Notwithstanding the foregoing, the Corporation may indemnify any Non-Officer Employee seeking indemnification in connection with a Proceeding initiated by such Non-Officer Employee only if such Proceeding was authorized in advance by the Board of Directors.

Section 6.4 *Determination*. Unless ordered by a court, no indemnification shall be provided pursuant to this Article 6 to a Director, to an Officer or to a Non-Officer Employee unless a determination shall have been made that such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal Proceeding, such person had no reasonable cause to believe his or her conduct was unlawful. Such determination shall be made by (a) a majority vote of the Disinterested Directors, even though less than a quorum of the Board of Directors, (b) a committee comprised of Disinterested Directors, such committee having been designated by a majority vote of the Disinterested Directors (even though less than a quorum), (c) if there are no such Disinterested Directors, or if a majority of Disinterested Directors so directs, by independent legal counsel in a written opinion, or (d) by the stockholders of the Corporation.

Section 6.5 *Advancement of Expenses to Directors Prior to Final Disposition*.

(a) The Corporation shall advance all Expenses incurred by or on behalf of any Director in connection with any Proceeding in which such Director is involved by reason of such Director's Corporate Status within 30 days after the receipt by the Corporation of a written statement from such Director requesting such advance or advances from time to time prior to the final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Director and shall be preceded or accompanied by an undertaking by or on behalf of such Director to repay any Expenses so advanced if it shall ultimately be determined that such Director is not entitled to be indemnified against such Expenses. Notwithstanding the foregoing, the Corporation shall advance all Expenses incurred by or on behalf of any Director seeking advancement of expenses hereunder in connection with a Proceeding initiated by such Director only if such Proceeding (including any parts of such Proceeding not initiated by such Director) was (i) authorized by the Board of Directors, or (ii) brought to enforce such Director's rights to indemnification or advancement of Expenses under these Bylaws.

(b) If a claim for advancement of Expenses under Section 6.5(a) by a Director is not paid in full by the Corporation within 30 days after receipt by the Corporation of documentation of Expenses and the required undertaking, such Director may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and if successful in whole or in part, such Director shall also be entitled to be paid the expenses of prosecuting such claim. The failure of the Corporation (including its Board of Directors or any committee thereof, independent legal counsel, or stockholders) to make a determination concerning the permissibility of such advancement of Expenses under this Article 6 shall not be a defense to an action brought by a Director for recovery of the unpaid amount of an advancement claim and shall not create a presumption that such advancement is not permissible. The burden of proving that a Director is not entitled to an advancement of expenses shall be on the Corporation.

(c) In any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the Director has not met any applicable standard for indemnification set forth in Delaware Law.

Section 6.6 *Advancement of Expenses to Officers and Non-Officer Employees Prior to Final Disposition*.

(a) The Corporation may, at the discretion of the Board of Directors, advance any or all Expenses incurred by or on behalf of any Officer or any Non-Officer Employee in connection with any Proceeding in which such person is involved by reason of his or her Corporate Status as an Officer or Non-Officer Employee upon the receipt by the Corporation of a statement or statements from such Officer or Non-Officer Employee requesting such advance or advances from time to time prior to the final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Officer or Non-Officer Employee and shall be preceded or accompanied by an undertaking by or on behalf of such person to repay any Expenses so advanced if it shall ultimately be determined that such Officer or Non-Officer Employee is not entitled to be indemnified against such Expenses.

(b) In any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the Officer or Non-Officer Employee has not met any applicable standard for indemnification set forth in Delaware Law.

Section 6.7 *Contractual Nature of Rights*.

(a) The provisions of this Article 6 shall be deemed to be a contract between the Corporation and each Director and Officer entitled to the benefits hereof at any time while this Article 6 is in effect, in consideration of such person's past or current and any future performance of services for the Corporation. Neither amendment, repeal, modification or elimination of any provision of this Article 6 nor the adoption of any provision of the Certificate of Incorporation inconsistent with this Article 6 shall eliminate or reduce any right conferred by this Article 6 in respect of any act or omission occurring, or any cause of action or claim that accrues or arises or any state of facts existing, at the time of or before such amendment, repeal, modification, elimination or adoption of an inconsistent provision (even in the case of a proceeding based on such a state of facts that is commenced after such time), and all rights to indemnification and advancement of Expenses granted herein or arising out of any act or omission shall vest at the time of the act or omission in question, regardless of when or if any proceeding with respect to such act or omission is commenced. The rights to indemnification and to advancement of expenses provided by, or granted pursuant to, this Article 6 shall continue notwithstanding that the person has ceased to be a director or officer of the Corporation and shall inure to the benefit of the estate, heirs, executors, administrators, legatees and distributes of such person.

(b) If a claim for indemnification under Section 6.1 by a Director or Officer is not paid in full by the Corporation within 60 days after receipt by the Corporation of a written claim for indemnification, such Director or Officer may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, such Director or Officer shall also be entitled to be paid the expenses of prosecuting such claim. The failure of the Corporation (including its Board of Directors or any committee thereof, independent legal counsel, or stockholders) to make a determination concerning the permissibility of such indemnification under this Article 6 shall not be a defense to an action brought by a Director or Officer for recovery of the unpaid amount of an indemnification claim and shall not create a presumption that such indemnification is not permissible. The burden of proving that a Director or Officer is not entitled to indemnification shall be on the Corporation.

(c) In any suit brought by a Director or Officer to enforce a right to indemnification hereunder, it shall be a defense that such Director or Officer has not met any applicable standard for indemnification set forth in Delaware Law.

Section 6.8 *Non-Exclusivity of Rights*. The rights to indemnification and to advancement of Expenses set forth in this Article 6 shall not be exclusive of any other right which any Director, Officer or Non-Officer Employee may have or hereafter acquire under any statute, provision of the Certificate or these bylaws, agreement, vote of stockholders or Disinterested Directors or otherwise.

Section 6.9 *Insurance*. The Corporation may maintain insurance, at its expense, to protect itself and any Director, Officer or Non-Officer Employee against any liability of any character asserted against or incurred by the Corporation or any such Director, Officer or Non-Officer Employee, or arising out of any such person's Corporate Status, whether or not the Corporation would have the power to indemnify such person against such liability under Delaware Law or the provisions of this Article 6.

Section 6.10 *Other Indemnification*. The Corporation's obligation, if any, to indemnify or provide advancement of Expenses to any person under this Article 6 as a result of such person serving, at the request of the Corporation, as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount such person may collect as indemnification or advancement of Expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or enterprise (the "**Primary Indemnitor**"). Any indemnification or advancement of Expenses under this Article 6 owed by the Corporation as a result of a person serving, at the request of the Corporation, as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall only be in excess of, and shall be secondary to, the indemnification or advancement of Expenses available from the applicable Primary Indemnitor(s) and any applicable insurance policies.

ARTICLE 7
GENERAL PROVISIONS

Section 7.1 *Fixing the Record Date*. (a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the

close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however,* that the Board of Directors may fix a new record date for determination of the stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 7.1(a) at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action without a meeting, when no prior action by the Board of Directors is required by Delaware Law, shall be the first date on which a signed consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with Delaware Law. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by Delaware Law, the record date for determining stockholders entitled to consent to corporate action without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 7.2 *Dividends*. Subject to any limitations contained in applicable law and the Certificate of Incorporation, the Board of Directors may declare and pay dividends upon the shares of capital stock of the Corporation, which dividends may be paid either in cash, in property or in shares of the capital stock of the Corporation.

Section 7.3 *Year*. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

Section 7.4 *Corporate Seal*. The corporate seal of the Corporation shall have inscribed thereon the name of the Corporation, the year of its organization and the words “Corporate Seal, Delaware”. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

Section 7.5 *Voting of Stock Owned by the Corporation*. The Board of Directors may authorize any person, on behalf of the Corporation, to attend, vote at and grant proxies to be used at any meeting of stockholders of any corporation (except this Corporation) in which the Corporation may hold stock.

Section 7.6 *Amendments*. These bylaws or any of them, may be altered, amended or repealed, or new bylaws may be made, by the stockholders entitled to vote thereon at any annual or special meeting thereof or by the Board of Directors.

Exhibit 99.1

Deciphera Pharmaceuticals to be Acquired by ONO Pharmaceutical For $2.4 Billion

Deciphera Shareholders to Receive $25.60 per Share in Cash

Deciphera's Kinase Inhibitor Expertise and Established Commercialization Platform in Key Markets Will Reinforce ONO Pharmaceutical's Pipeline and Accelerate Global Reach

WALTHAM, Mass.—(BUSINESS WIRE)—April 29, 2024—Deciphera Pharmaceuticals, Inc. (NASDAQ: DCPH), a biopharmaceutical company focused on discovering, developing, and commercializing important new medicines to improve the lives of people with cancer, today announced that it has entered into a definitive merger agreement with ONO Pharmaceutical Co., Ltd. (ONO), under which ONO will acquire all outstanding shares of Deciphera common stock for $25.60 per share in cash through a tender offer followed by a merger of Deciphera with a wholly-owned subsidiary of ONO (the "Acquisition"), for a total equity value of $2.4 billion. The boards of directors of both companies have unanimously approved the transaction.

Together, ONO and Deciphera will accelerate their shared vision to deliver innovative new drugs and serve patients around the world. Deciphera brings specialized research and development capabilities in kinase drug discovery, well-established commercial and sales platforms in the United States and Europe, and global clinical development capabilities. In addition to QINLOCK®—Deciphera's switch-control inhibitor for the treatment of fourth-line gastrointestinal stromal tumor (GIST), which is approved in the United States and over 40 other countries, Deciphera also brings a mature, diverse pipeline of best-or-first in class potential medicines, including vimseltinib, DCC-3116 (an ULK inhibitor) and multiple additional oncology candidates. Vimseltinib is a highly selective switch-control kinase inhibitor with successful pivotal clinical data for the potential to be a best-in-class and first-in-class agent for the treatment of tenosynovial giant cell tumor (TGCT), and potentially other indications. The Acquisition is expected to enable ONO to build a robust presence in oncology, one of its key priority areas, and also support ONO's efforts to become a Global Specialty Pharma company.

Steven L. Hoerter, President and Chief Executive Officer of Deciphera, said, "Deciphera and ONO share a deep commitment to improve the lives of people living with cancer, and the transaction announced today enables us to make even greater impact for patients. Together, we expect to advance and accelerate each organization's important work through combined research and development capabilities and a global commercial footprint. Importantly, this acquisition delivers for all of Deciphera's stakeholders. It provides immediate, compelling value for our shareholders, provides greater opportunities for our world-class team, and ultimately, greater hope for patients. I am excited about the future of the combined organization, and we are honored to contribute to the continued growth of ONO in the U.S. and around the world."

Gyo Sagara, Representative Director, Chairman of the Board and Chief Executive Officer of ONO, said, "We expect that this acquisition of Deciphera will not only expand ONO's target oncology portfolio, but also accelerate ONO's business development in the United States and Europe, and strengthen kinase drug discovery research. Deciphera's mission statement 'Inspired by Patients: Defeat Cancer' is aligned with ONO's corporate philosophy 'Dedicated to the Fight against Disease and Pain.' We respect the innovative culture of Deciphera and look forward to working together to drive further growth for both ONO and Deciphera."

Transaction Details

The Acquisition is structured as a tender offer and subsequent merger of Deciphera with a wholly-owned subsidiary of ONO. Under the terms of the definitive merger agreement, ONO will acquire all outstanding shares of Deciphera for $25.60 per share in cash for a total equity value of approximately $2.4 billion. The purchase price represents a premium of 74.7% to Deciphera's closing share price of $14.65 on April 26, 2024, and a premium of 68.8% to Deciphera's 30-trading-day volume weighted average price as of April 26, 2024.

ONO will promptly commence the tender offer, and it will expire 20 business days after its commencement, unless otherwise extended. If the tender offer conditions are not satisfied, ONO may be required to extend the tender offer under certain circumstances. Upon the successful completion of the tender offer, ONO's wholly-owned subsidiary will merge with and into Deciphera, with Deciphera continuing as the surviving corporation and a wholly-owned subsidiary of ONO, and any shares of common stock of Deciphera not tendered into the offer will receive the same USD per share price payable in the tender offer. The Acquisition is expected to close in the third quarter of 2024, subject to customary closing conditions, including U.S. antitrust clearance and the tender of a majority of Deciphera's outstanding shares of common stock.

In connection with the execution of the merger agreement, certain stockholders of the Company owning approximately 28% of the outstanding shares of Deciphera Common Stock have entered into Tender and Support Agreements pursuant to which they will tender all of their owned shares in the offer.

Upon completion of the Acquisition, Deciphera will operate as a standalone business of ONO Group, from its headquarters in Waltham, Massachusetts.

In light of the Acquisition, Deciphera will not host a first quarter 2024 earnings call. The Company will file a Form 10-Q in the ordinary course.

Advisors

J.P. Morgan Securities LLC is serving as exclusive financial advisor to Deciphera and Goodwin Procter LLP is serving as legal counsel. BofA Securities is serving as financial advisor to ONO and Greenberg Traurig is serving as legal counsel.

About Deciphera Pharmaceuticals

Deciphera is a biopharmaceutical company focused on discovering, developing, and commercializing important new medicines to improve the lives of people with cancer. We are leveraging our proprietary switch-control kinase inhibitor platform and deep expertise in kinase biology to develop a broad portfolio of innovative medicines. In addition to advancing multiple product candidates from our platform in clinical studies, QINLOCK® is Deciphera's switch-control inhibitor for the treatment of fourth-line GIST. QINLOCK is approved in Australia, Canada, China, the European Union, Hong Kong, Iceland, Israel, Liechtenstein, Macau, New Zealand, Norway, Singapore, Switzerland, Taiwan, the United Kingdom, and the United States. For more information, visit www.deciphera.com and follow us on LinkedIn and X (@Deciphera).

Cautionary Note Regarding Forward-Looking Statements

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, as amended, including, without limitation, statements regarding the proposed acquisition of Deciphera by Ono, the expected timetable for completing the transaction, Deciphera's future financial or operating performance, the expectations and timing regarding the potential for Deciphera's preclinical and/or clinical stage pipeline assets to be first-in-class and/or best-in-class treatments, and the ability of Deciphera to become a company with multiple approved medicines. The words "may," "will," "could," "would," "should," "expect," "plan," "anticipate," "intend," "believe," "estimate," "predict," "project," "potential," "continue," "seek," "target" and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. Any forward-looking statements in this press release are based on management's current expectations and beliefs and are subject to a number of risks, uncertainties and important factors that may cause actual events or results to differ materially from those expressed or implied by any forward-looking statements contained in this press release, including, without limitation: (i) risks associated with the timing of the closing of the proposed transaction, including the risks that a condition to closing would not be satisfied within the expected timeframe or at all or that the closing of the proposed transaction will not occur; (ii) uncertainties as to how many of Deciphera's stockholders will tender their shares in the offer; (iii) the possibility that a governmental entity may prohibit, delay or refuse to grant approval for the consummation of the transaction; (iv) the possibility that competing offers will be made; (v) the outcome of any legal proceedings that may be instituted against the parties and others related to the merger agreement; (vi) unanticipated difficulties or expenditures relating to the proposed transaction, the response of business partners and competitors to the announcement of the proposed transaction, and/or potential difficulties in employee retention as a result of the announcement and pendency of the proposed transaction; (vii) Deciphera's ability to successfully demonstrate the efficacy and safety of its drug or drug candidates, and the preclinical or clinical results for its product candidates, which may not support further development of such product candidates; (viii) comments, feedback and actions of regulatory agencies; (ix) Deciphera's ability to commercialize QINLOCK® and execute on its marketing plans for any drugs or indications that may be approved in the future; (x) the inherent uncertainty in estimates of patient populations, competition from other products, Deciphera's ability to obtain and maintain reimbursement for any approved product and the extent to which patient assistance programs are utilized; and (xi) other risks identified in our Securities and Exchange Commission (SEC) filings, including our Annual Report on Form 10-K for the year ended December 31, 2023, and subsequent filings with the SEC. We caution you not to place undue reliance on any forward-looking statements, which speak only as of the date they are made. We disclaim any obligation to publicly update or revise any such statements to reflect any change in expectations or in events, conditions or circumstances on which any such statements may be based, or that may affect the likelihood that actual results will differ from those set forth in the forward-looking statements.

Additional Information about the Proposed Transaction and Where to Find It

The tender offer referred to in this press release has not yet commenced. This communication is for informational purposes only and is neither an offer to purchase nor a solicitation of an offer to sell shares, nor is it a substitute for the tender offer materials that Ono and its acquisition subsidiary will file with the SEC upon commencement of the tender offer. At the time the tender offer is commenced, Ono and its acquisition subsidiary will cause to be filed a tender offer statement on Schedule TO with the SEC, and

Deciphera will file a solicitation/recommendation statement on Schedule 14D-9 with respect to the tender offer. THE TENDER OFFER STATEMENT (INCLUDING AN OFFER TO PURCHASE, A RELATED LETTER OF TRANSMITTAL AND OTHER OFFER DOCUMENTS) AND THE SOLICITATION/RECOMMENDATION STATEMENT WILL CONTAIN IMPORTANT INFORMATION THAT SHOULD BE READ CAREFULLY AND CONSIDERED BY DECIPHERA STOCKHOLDERS BEFORE ANY DECISION IS MADE WITH RESPECT TO THE TENDER OFFER. Both the tender offer statement and the solicitation/recommendation statement will be mailed to Deciphera's stockholders free of charge. A free copy of the tender offer statement and the solicitation/recommendation statement will also be made available to all stockholders of Deciphera by accessing the "Investors & News" section of www.deciphera.com or by contacting Investor Relations at deciphera@argotpartners.com. In addition, the tender offer statement and the solicitation/recommendation statement (and all other documents filed with the SEC) will be available at no charge on the SEC's website, www.sec.gov, upon filing with the SEC.

DECIPHERA STOCKHOLDERS ARE ADVISED TO READ THE SCHEDULE TO AND THE SCHEDULE 14D-9, AS EACH MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME, AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SEC WHEN THEY BECOME AVAILABLE BEFORE THEY MAKE ANY DECISION WITH RESPECT TO THE TENDER OFFER, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION AND THE PARTIES THERETO.

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