UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10-Q/A

(Mark One)

☑ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2015

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from __________ to __________

Commission file number **0-9314**

ABEONA THERAPEUTICS INC.
(Exact name of registrant as specified in its charter)

Delaware	**83-0221517**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer I.D. No.)

3333 Lee Parkway, Suite 600, Dallas, TX 75219
(Address of principal executive offices)

(214) 665-9495
(Registrant's telephone number, including area code)

PLASMATECH BIOPHARMACEUTICALS, INC.
4848 Lemmon Avenue, Suite 517, Dallas, TX 75219
(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.
Yes ☑ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☑ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer" "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☑

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☑

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

The number of shares outstanding of the registrant's common stock as of August 14, 2015 was 32,690,606 shares.

ABEONA THERAPEUTICS INC.

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PART I –FINANCIAL INFORMATION

This Quarterly Report on Form 10-Q (including the information incorporated by reference) contains ''forward-looking statements'' within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, and that involve risks and uncertainties. These statements and other risks described below as well as those discussed elsewhere in this Quarterly Report Form 10-Q, documents incorporated by reference and other documents and reports that we file periodically with the Securities and Exchange Commission ("SEC") include, without limitation, statements relating to uncertainties associated with research and development activities, clinical trials, our ability to raise capital, the timing of and our ability to achieve regulatory approvals, dependence on others to market our licensed products, collaborations and our ability to attract licensing partners, future cash flow, the timing and receipt of licensing and milestone revenues, the future success of our marketed products and products in development, our belief that advances in biotechnology will provide significant opportunities to develop new treatments for rare diseases, our sales projections, and the sales projections of our licensing partners, our ability to achieve licensing milestones, the size of the prospective markets in which we may offer products, anticipated product launches and our commercialization strategies, anticipated product approvals and timing thereof, product opportunities, clinical trials and U.S. Food and Drug Administration (''FDA'') applications, as well as our drug development strategy, our clinical development organization expectations regarding our rate of technological developments and competition, our plan not to establish an internal marketing organization, our expectations regarding minimizing development risk and developing and introducing technology, the terms of future licensing arrangements, our ability to secure additional financing for our operations, our ability to establish new relationships and maintain current relationships, our ability to attract and retain key personnel, our belief that we will not pay any cash dividends in the foreseeable future, our belief that a failure to obtain necessary additional capital in the future will result in our operations being jeopardized, our expectation that we will continue to incur losses, our belief that we will expend substantial funds to conduct research and development programs, preclinical studies and clinical trials of potential products, our belief that we have a rich pipeline of products and product candidates, our belief that recently licensed technology will enable us to provide new therapeutic applications and expand market opportunities while enhancing margins, our belief that we will continue to evaluate the most cost-effective methods to advance our programs, our ability to achieve profitability on a sustained basis or at all, and our expected cash burn rate. These statements relate to future events or our future financial performance. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "expects," "plans," "could," "anticipates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of such terms or other comparable terminology. We intend the forward-looking statements to be covered by the safe harbor for forward-looking statements in these sections. The forward-looking information is based on various factors and was derived using numerous assumptions.

Forward-looking statements necessarily involve risks and uncertainties, and our actual results could differ materially from those anticipated in the forward-looking statements due to a number of factors. The forward-looking statements contained in this Quarterly Report on Form 10-Q represent our judgment only as of the date of this report. We caution readers not to place undue reliance on such statements. Except as required by law, we undertake no obligation to update publicly any forward-looking statements for any reason, even if new information becomes available or other events occur in the future.

ITEM 1. FINANCIAL STATEMENTS

The response to this Item is submitted as a separate section of this report. See page 18.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

OVERVIEW

Abeona Therapeutics Inc. ("Abeona" or the "Company") is focused on developing and delivering gene therapy and plasma-based products for severe and life-threatening rare diseases. Abeona's lead programs are ABO-101 (AA9 NAGLU) and ABO-102 (scAAV9 SGHG), adeno-associated virus (AAV)-based gene therapies for Sanfilippo syndrome (MPS IIIA and IIIB) in collaboration with patient advocate groups, researchers and clinicians, anticipated to commence clinical trials in 2015. We are also developing ABO-201 (scAAV9 CLN3) gene therapy for juvenile Batten disease (JBD); and ABO-301 (AAV LK19 FANCC) for Fanconi anemia (FA) disorder using a novel CRISPR/Cas9-based gene editing approach to gene therapy program for rare blood diseases. In addition, we are also developing rare plasma protein therapies including PTB-101 SDF Alpha™ (alpha-1 protease inhibitor) for inherited COPD using our proprietary SDF™ (Salt Diafiltration) ethanol-free process. Our principal executive office is located at 3333 Lee Parkway, Suite 600, Dallas, Texas 75219. Our website address is *www.abeonatherapeutics.com*.

Recent Developments

On July 31, 2015 we closed an upsized $15.5 million direct placement of registered common stock with institutional investors, including Soros Fund Management and Perceptive Life Science Fund, and two members of our Board of Directors. The financing was comprised of 2.83 million shares of our common stock at a price of $5.50 per share.

During the second quarter we received additional financing of $4.6 million through warrant exercises of our $5.00 warrants.

On June 19, 2015 we announced we changed our name to Abeona Therapeutics Inc. from PlasmaTech Biopharmaceuticals, Inc.

On June 15, 2015 we licensed exclusive worldwide rights to an AAV gene therapy and intellectual property from the University of Minnesota to treat patients with Fanconi anemia (FA) disorder and other rare blood diseases using the CRISPR/cas9 technology platform for undisclosed terms.

On June 8, 2015 we licensed exclusive worldwide rights to an AAV gene therapy and intellectual property for the treatment of juvenile Batten disease (JBD) from UNeMed Corporation, the technology transfer and commercialization office for the University of Nebraska Medical Center in Omaha, Nebraska for undisclosed terms.

On May 11, 2015 we closed a $10 million private placement of common stock consisting of 1,250,000 shares of our common stock, at a price of $8.00 per share, and warrants to purchase 625,000 shares of our common stock with an exercise price of $10 per share.

On May 15, 2015 the Company completed its acquisition of Abeona Therapeutics LLC, an Ohio limited liability company ("Abeona Ohio") pursuant to the terms of an Agreement and Plan of Merger dated May 5, 2015 (the "Merger"). In connection with the Merger, the Company agreed to issue to Abeona Ohio members an aggregate of 3,979,761 of our common stock and, there may be up to an additional $9 million in performance milestones, in common stock or cash, at the Company's option payable to Abeona Ohio members.

On April 23, 2015 we closed an upsized $7 million private placement of common stock consisting of 2,333,333 shares of our common stock, at a price of $3.00 per share.

On April 7, 2015 we announced we had appointed Charlie Strange, M.D. to our Scientific Advisory Board (SAB). Dr. Strange is a key opinion leader in the Alpha-1 community, and has extensive clinical experience in designing and managing Alpha-1 clinical studies. We believe his advice and counsel will help accelerate development and approval of our proprietary SDF Alpha™ biologic drug.

Product Development Strategy

Abeona is focused on developing and delivering gene therapy and plasma-based products for severe and life-threatening rare diseases. A rare disease is one that affects fewer than 200,000 people in the United States. There are nearly 7,000 rare diseases, which may involve chronic illness, disability, and often, premature death. More than 25 million Americans and 30 million Europeans have one. While rare diseases can affect any age group, about 50% of people affected are children (15 million); and rare diseases account for 35% of deaths in the first year of life. These rare diseases are often poorly diagnosed, very complex, and have no treatment or not very effective treatment—over 95% of rare diseases do not have a single FDA or EMA approved drug treatment. However, most rare diseases are often caused by changes in genes—80% are genetic in origin and can present at any stage of life. We believe emerging insights in genetics and advances in biotechnology, as well as new approaches and collaboration between researchers, industry, regulators and patient groups, provide significant opportunities to develop breakthrough treatments for rare diseases. Below is the status of our various products and product candidates.

	Indication	Preclinical	Research	Clinical	Marketed
AAV (adeno-associated virus) Gene Therapy					
ABO-101 (scAAV9 NAGLU)	Sanfilipo syndrome Type B (mucopolysaccharidosis (MPS) III)				
ABO-102 (scAAV9 SGSH)	Sanfilipo syndrome Type A (mucopolysaccharidosis (MPS) III)				
ABO-201 (scAAV CLN3)	Juvenile Batten disease (JBD)				
ABO-201 (AAV LK19 FANCC)	Fanconi anemia (FA)				
CRISPR-Cas9 AAV	Rare blood diseases TBD				
SDF™ (Salt Diafiltration Process)					
SDF Alpha™ (alpha-1 protease inhibitor)	Panacinar emphysema or COPD				
SDF IVIG™ (intravenous immunoglobulin)	Autoimmune, infectious, and idiopathic diseases				
PHT™ (Polymer Hydrogel Technology)					
MuGard™	Mucositis, stomatitis, aphthous ulcers, and traumatic ulcers				
ProctiGard™	Rectal mucositis and radiation proctitis				

Current

Planned

Developing Next Generation Gene Therapy

Gene therapy is the use of DNA as a potential therapy to treat a disease. In many disorders, particularly genetic diseases caused by a single genetic defect, gene therapy aims to treat a disease by delivering the correct copy of DNA into a patient's cells. The healthy, functional copy of the therapeutic gene then helps the cell function correctly. In gene therapy, DNA that encodes a therapeutic protein is packaged within a "vector", often a “naked” virus, which is used to transfer the DNA to the inside of cells within the body. Gene therapy can be delivered by a direct injection, either intravenously (IV) or directly into a specific tissue in the body, where it is taken up by individual cells. Once inside cells, the correct DNA becomes expressed by the cell machinery, resulting in the production of therapeutic protein, which in turn treats the patient's disease and can provide long-term benefit.

Abeona is developing next generation adeno-associated virus (AAV) gene therapies. Viruses such as AAV are utilized because they have evolved a way of encapsulating and delivering one or more genes of the size needed for clinical application, and can be purified in large quantities at high concentration. Unlike AAV vectors found in nature, the AAV vectors used by Abeona have been genetically-modified such that they do not replicate. Although the preclinical studies in animal models of disease demonstrate the promising impact of AAV-mediated gene expression to affected tissues such as the heart, liver and muscle, our programs use a specific virus that is capable of delivering therapeutic DNA across the blood brain barrier and into the central nervous system (CNS) and the somatic system (body), making them attractive for addressing lysosomal storage diseases which have severe CNS manifestations of the disease.

Lysosomal storage diseases (LSD) are a group of rare inborn errors of metabolism resulting from deficiency in normal lysosomal function. These diseases are characterized by progressive accumulation of storage material within the lysosomes of affected cells, ultimately leading to cellular dysfunction. Multiple tissues ranging from musculoskeletal and visceral to tissues of the central nervous system are typically involved in disease pathology. Since the advent of enzyme replacement therapy (ERT) to manage some LSDs, general clinical outcomes have significantly improved; however, treatment with infused protein is lifelong and continued disease progression is still evident in patients. Thus, AAV-based gene therapy may provide a viable alternative or adjunctive therapy to current management strategies for LSDs.

Our initial programs are focused on LSDs such as Mucopolysaccharidosis (MPS) IIIA and IIIB. Also known as Sanfilippo syndromes type A and type B, MPS III is a progressive neuromuscular disease with profound CNS involvement. Our lead product candidates, ABO-101 and ABO-102, have been developed to replace the damaged, malfunctioning enzymes within target cells with the normal, functioning version. Delivered via a single injection, the drug is only given once.

ABO-101 for MPS III B and ABO-102 for MPS III A (Sanfilippo syndrome)

Mucopolysaccharidosis (MPS) type III (Sanfilippo syndrome) is a group of four inherited genetic diseases, described as type A, B, C or D, which cause enzyme deficiencies that result in the abnormal accumulation of glycosaminoglycans (sugars) in body tissues. MPS III is a lysosomal storage disease, a group of rare inborn errors of metabolism resulting from deficiency in normal lysosomal function. The incidence of MPS III (all four types combined) is estimated to be 1 in 70,000 births.

Mucopolysaccharides are long chains of sugar molecule used in the building of connective tissues in the body. There is a continuous process in the body of replacing used materials and breaking them down for disposal. Children with MPS III are missing an enzyme which is essential in breaking down the used mucopolysaccharides called heparan sulfate. The partially broken down mucopolysaccharides remain stored in cells in the body causing progressive damage. Babies may show little sign of the disease, but as more and more cells become damaged, symptoms start to appear.

In MPS III, the predominant symptoms occur due to accumulation within the central nervous system (CNS), including the brain and spinal cord, resulting in cognitive decline, motor dysfunction, and eventual death. To date, there is no cure for MPS III and treatments are largely supportive.

Abeona is developing next generation adeno-associated viral (AAV)-based gene therapies for MPS III (Sanfilippo syndrome), which involves a one-time delivery of a normal copy of the defective gene to cells of the central nervous system with the aim of reversing the effects of the genetic errors that cause the disease.

After a single dose in Sanfilippo preclinical models, ABO-101 and ABO-102 induced cells in the CNS and peripheral organs to produce the missing enzymes which helped repair the damage caused to the cells. Preclinical *in vivo* efficacy studies in Sanfilippo syndrome have demonstrated functional benefits that remain for months after treatment. A single dose of ABO-101 or ABO-102 significantly restored normal cell and organ function, corrected cognitive defects that remained months after drug administration, increased neuromuscular control and increased the lifespan of animals with MPS III over 100% one year after treatment compared to untreated control animals. These results are consistent with studies from several laboratories suggesting AAV treatment could potentially benefit patients with Sanfilippo Syndrome Type A and B. In addition, safety studies conducted in animal models of Sanfilippo syndromes have demonstrated that delivery of AB0-101 or AB0-102 are well tolerated with minimal side effects.

ABO-201 for Juvenile Batten Disease (JBD)

ABO-201 (scAAV9 CLN3) is an AAV-based gene therapy which has shown promising preclinical efficacy in delivery of a normal copy of the defective CLN3 gene to cells of the central nervous system with the aim of reversing the effects of the genetic errors that cause juvenile Batten disease. Juvenile Batten disease (JBD) is a rare, fatal, autosomal recessive (inherited) disorder of the nervous system that typically begins in children between 4 and 8 years of age. Often the first noticeable sign of JBD is vision impairment, which tends to progress rapidly and eventually result in blindness. As the disease progresses, children experience the loss of previously acquired skills (developmental regression). This progression usually begins with the loss of the ability to speak in complete sentences. Children then lose motor skills, such as the ability to walk or sit. They also develop movement abnormalities that include rigidity or stiffness, slow or diminished movements (hypokinesia), and stooped posture. Beginning in mid- to late childhood, affected children may have recurrent seizures (epilepsy), heart problems, behavioral problems, and difficulty sleeping. Life expectancy is greatly reduced. Most people with juvenile Batten disease live into their twenties or thirties. As yet, no specific treatment is known that can halt or reverse the symptoms of juvenile Batten disease.

Juvenile Batten disease is the most common form of a group of disorders known as neuronal ceroid lipofuscinoses (NCLs). Collectively, all forms of NCL affect an estimated 2 to 4 in 100,000 live births in the United States. NCLs are more common in Finland, where approximately 1 in 12,500 individuals are affected; as well as Sweden, other parts of northern Europe, and Newfoundland, Canada.

Most cases of juvenile Batten disease are caused by mutations in the CLN3 gene, which is the focus of our AAV-based gene therapy approach. These mutations disrupt the function of cellular structures called lysosomes. Lysosomes are compartments in the cell that normally digest and recycle different types of molecules. Lysosome malfunction leads to a buildup of fatty substances called lipopigments and proteins within these cell structures. These accumulations occur in cells throughout the body, but neurons in the brain seem to be particularly vulnerable to damage. The progressive death of cells, especially in the brain, leads to vision loss, seizures, and intellectual decline in children with juvenile Batten disease.

ABO-301 for Fanconi Anemia (FA)

ABO-301 (AAV LK19 FANCC) is an AAV-based gene therapy which has shown promising preclinical efficacy in delivery of a normal copy of the defective gene to cells of the hematopoietic or blood system with the aim of reversing the effects of the genetic errors that cause juvenile Batten disease. Fanconi anemia (FA) is a rare (1 in 160,000) pediatric, autosomal recessive (inherited) disease characterized by multiple physical abnormalities, organ defects, bone marrow failure, and a higher than normal risk of cancer. The average lifespan for people with FA is 20 to 30 years.

The major function of bone marrow is to produce new blood cells. In FA, a DNA mutation renders the FANCC gene nonfunctional. Loss of FANCC causes patient skeletal abnormalities and leads to bone marrow failure. Fanconi Anemia patients also have much higher rates of hematological diseases, such as acute myeloid leukemia (AML) or tumors of the head, neck, skin, gastrointestinal system, or genital tract. The likelihood of developing one of these cancers in people with Fanconi anemia is between 10 and 30 percent. Aside from bone marrow transplantation (BMT) there are no specific treatments known that can halt or reverse the symptoms of FA. Reparing fibroblast cells in FA patients with a functional FANCC gene is the focus of our AAV-based gene therapy approach.

Using a novel CRISPR (clustered, regularly interspaced short palindromic repeats)-Cas9 (CRISPR associated protein 9) system, researchers used a protein-RNA complex composed of an enzyme known as Cas9 bound to a guide RNA molecule that has been designed to recognize a particular DNA sequence. The RNA molecules guide the Cas9 complex to the location in the genome that requires repair. CRISPR-Cas9 uniquely enables surgically efficient knock-out, knock-down or selective editing of defective genes in the context of their natural promoters, unlocking the potential to treat both recessive and dominant forms of genetic diseases. Most importantly, this approach has the potential to allow more precise gene modification.

Plasma-based Therapeutics using the SDF™ technology platform

Abeona's proprietary Salt Diafiltration Process™ (SDF) focuses on ethanol-free extraction of therapeutic biologics from human plasma. Plasma biologics are biopharmaceutical proteins extracted, purified, and formulated from human blood plasma by the use of biotechnological processing techniques including precipitation, diafiltration, affinity chromatography, and ion-exchange chromatography. These products are rendered virus-safe by means of chemical treatment, nanofiltration, and pasteurization. Plasma biologics primarily address indications arising from genetic deficiencies, which are increasingly being identified by means of newly available rapid and low-cost diagnostic genetic tests. Examples of plasma biologics include Alpha-1 Antitrypsin (also known as alpha-1 proteinase inhibitor, A1PI), Intravenous Immune Globulin (IVIG), Anti-Hemophilic Factor VIII (AHF) and Albumin.

Plasma biologics are currently obtained from human plasma by a fractionation process known as the Cohn Cold Ethanol Fractionation Process (Cohn Process), which was developed prior to World War II to provide a stable solution of human albumin for the rapid treatment of hemorrhagic shock on the battlefield. This process employs various concentrations of ethanol combined with adjustments of pH, ionic strength, and temperature to bring about the necessary separations by precipitation. Ethanol can inactivate many of the plasma proteins.

In contrast to the highly denaturing Cohn Process, Abeona's patented SDF™ method involves a short two-step, ethanol-free salt precipitation process optimized to extract a wide range of therapeutically useful biologic proteins from human blood plasma. SDF™ enables the production of higher yields of these proteins compared with the Cohn Process.

PTB-101 SDF Alpha™ (alpha-1 protease inhibitor) for emphysema or chronic obstructive pulmonary disease (COPD) due to severe congenital deficiency of A1PI (alpha-1-antitrypsin deficiency)

Alpha-1 antitrypsin deficiency is a rare (1 in 1,500 to 3,500) genetic (inherited) autosomal disorder that may cause lung disease from an inability to neutralize the enzyme neutrophil elastase and liver disease from retained misfolded protein. Alpha-1 antitrypsin deficiency occurs worldwide, but its prevalence varies by population. Alpha-1 antitrypsin is also known as alpha-1 proteinase inhibitor (A1PI).

About 10 percent of infants with alpha-1 antitrypsin deficiency develop liver disease, which often causes yellowing of the skin and whites of the eyes (jaundice). Approximately 15 percent of adults with alpha-1 antitrypsin deficiency develop liver damage (cirrhosis) due to the formation of scar tissue in the liver. Signs of cirrhosis include a swollen abdomen, swollen feet or legs, and jaundice. Individuals with alpha-1 antitrypsin deficiency are also at risk of developing a type of liver cancer called hepatocellular carcinoma.

Alpha-1 antitrypsin deficiency is inherited with an autosomal codominant pattern, which means that two different versions of the gene may be active (expressed), and both versions contribute to the genetic trait. The most common version (allele) of the SERPINA1 gene, called M, produces normal levels of alpha-1 antitrypsin. Most people in the general population have two copies of the M allele (MM) in each cell. Other versions of the SERPINA1 gene lead to reduced levels of alpha-1 antitrypsin. For example, the S allele produces moderately low levels of this protein, and the Z allele produces very little alpha-1 antitrypsin. Individuals with two copies of the Z allele (ZZ) in each cell are likely to have alpha-1 antitrypsin deficiency. Those with the SZ combination have an increased risk of developing liver and lung diseases such as chronic obstructive pulmonary disease (COPD).

It is estimated that about 200,000 individuals in the United States and Europe have severe alpha-1 antitrypsin deficiency. However, only about 5% of this number have been diagnosed as symptoms caused by this deficiency are very similar to asthma and chronic obstructive pulmonary disease (COPD) from non-genetic causes. Only about 1–2% of COPD patients have severe alpha-1 antitrypsin deficiency. The Global Initiative for Chronic Obstructive Lung Disease (GOLD) defines COPD as group of airflow-limited diseases including emphysema and chronic bronchitis. While severe alpha-1 antitrypsin deficiency can lead to or exacerbate all forms of COPD, it is considered to be the dominant cause of Panacinar Emphysema, a form of emphysema which causes gradual destruction of all lung aveolii.

PTB-101 SDF Alpha™ (alpha1-proteinase inhibitor) for Alpha-1 Antitrypsin Deficiency (Alpha-1)

Abeona is developing PTB-101 SDF Alpha™ (alpha-1-proteinase inhibitor) for chronic augmentation and maintenance therapy in adults with clinically evident panacinar emphysema and other forms of COPD due to severe deficiency of alpha-1-proteinase inhibitor.

Polymer Hydrogel Technology (PHT™)

MuGard® (mucoadhesive oral wound rinse) approved for mucositis, stomatitis, aphthous ulcers, and traumatic ulcers

MuGard® is our marketed product for the management of oral mucositis, a frequent side-effect of cancer therapy for which there is no other established treatment. MuGard, a proprietary nanopolymer formulation, has received marketing clearance from the FDA in the US as well as Europe, China, Australia, New Zealand and Korea. We launched MuGard in the U.S. in 2010 and licensed MuGard for commercialization in the U.S. to AMAG Pharmaceuticals, Inc. (‘AMAG”) in 2013. We licensed MuGard to RHEI Pharmaceuticals, N.V. (“RHEI”) for China and other Southeast Asian countries in 2010; Hanmi Pharmaceutical Co. Ltd. (“Hanmi”) for South Korea in 2014; and Norgine B.V. (“Norgine”) for the European Union, Switzerland, Norway, Iceland, Lichtenstein, Australia and New Zealand in 2014.

ProctiGard™ (mucoadhesive oral wound rinse) approved for rectal mucositis and radiation proctitis

ProctiGard™ received 510(K) marketing clearance from the FDA on July 22, 2014 for the treatment of symptomatic management of rectal mucositis. ProctiGard is our product for the treatment of radiation proctitis, a frequent side effect of radiation treatment to the pelvic region. Radiation proctitis, or RP, is the inflammation and damage to the lower portion of the colon after exposure to x-rays or ionizing radiation as part of radiation therapy. RP is most common after treatments for cancer, such as cervical, colon and prostate cancer. RP can be acute, occurring within weeks of initiation of therapy, or can occur months or years after treatment. We intend to commercialize ProctiGard in a manner similar to the commercialization of MuGard, which may include confirmatory clinical trials, with the objective of commercialization in collaboration with marketing partners globally.

LIQUIDITY AND CAPITAL RESOURCES

We have historically funded our operations primarily through public and private sales of common stock, preferred stock, convertible notes and through licensing agreements. Our principal source of liquidity is cash and cash equivalents. Licensing payments and royalty revenues provided limited funding for operations during the period ended June 30, 2015. As of June 30, 2015, our cash and cash equivalents were $30,410,000.

As of June 30, 2015, our working capital was $29,042,000. Our working capital at June 30, 2015 represented an increase of $20,385,000 as compared to our working capital as of December 31, 2014 of $8,657,000. The net increase in the working capital at June 30, 2015 reflects financings, warrant exercises and the acquisition of Abeona Ohio less six months of net operating costs and changes in current assets and liabilities.

On July 31, 2015 we closed an upsized $15.5 million direct placement of registered common stock with institutional investors, including Soros Fund Management and Perceptive Life Science Fund, and two members of our Board of Directors. The financing was comprised of 2.83 million shares of our common stock at a price of $5.50 per share.

If we raise additional funds by selling equity securities, the relative equity ownership of our existing investors will be diluted and the new investors could obtain terms more favorable than previous investors.

We have incurred negative cash flows from operations since inception, and have expended, and expect to continue to expend in the future, substantial funds to complete our planned product development efforts. Since inception, our expenses have significantly exceeded revenues, resulting in an accumulated deficit as of June 30, 2015 of $302,187,000. We cannot provide assurance that we will ever be able to generate sufficient product sales or royalty revenue to achieve profitability on a sustained basis, or at all.

Since our inception, we have devoted our resources primarily to fund our research and development programs. We have been unprofitable since inception and to date have received limited revenues from the sale of products. We expect to incur losses for the next several years as we continue to invest in product research and development, preclinical studies, clinical trials and regulatory compliance.

SECOND QUARTER 2015 COMPARED TO SECOND QUARTER 2014

Our licensing revenue for the second quarter of 2015 and 2014 was $150,000 for each period. We recognize licensing revenue over the period of the performance obligation under our licensing agreements.

We recorded royalty revenue for MuGard of $132,000 for second quarter of 2015 and $97,000 for the same period of 2014, an increase of $35,000. We licensed MuGard to AMAG on June 6, 2013 and currently receive quarterly royalties from AMAG under our agreement.

Total research and development spending for the second quarter of 2015 was $610,000, as compared to $81,000 for the same period of 2014, an increase of $529,000. The increase in expenses was primarily due to:

- increased development work on our new product A1PI ($352,000);
- increased salary and related costs ($76,000) from the rehiring of scientific staff;
- increased stock based compensation expense ($56,000); and
- other net decreases in research spending ($45,000).

Total general and administrative expenses were $3,667,000 for the second quarter of 2015, as compared to $868,000 for the same period of 2014, an increase of $2,799,000. The increase in expenses was due primarily to the following:

- increase stock based compensation expense for granted restricted stock ($1,038,000) and granted stock options ($534,000);
- increased salary and related costs ($296,000) from hiring additional general and administrative staff;
- increased legal fees ($447,000);
- increased expense for new licenses ($152,000);
- increased investor relations expenses ($150,000); and
- other net increases in general and administrative expenses ($182,000).

Depreciation and amortization was $132,000 for the second quarter of 2015 as compared to $1,000 for the same period in 2014, an increase of $131,000. We are amortizing the license over the life of the patents.

Total operating expenses for the second quarter of 2015 were $4,409,000 as compared to total operating expenses of $950,000 for the same period of 2014, an increase of $3,459,000 for the reasons listed above.

Interest and miscellaneous income was $16,000 for the second quarter of 2015 as compared to $26,000 for the same period of 2014, a decrease of $10,000.

Interest and other expense was $2,000 for the second quarter of 2015 as compared to $137,000 in the same period of 2014, a decrease of $135,000. The interest in 2014 represents interest accrued on unpaid dividends. All dividends and interest on dividends due were paid in December 2014. There are no more dividends accruing.

We recorded a loss for the derivative liability related to preferred stock of $11,693,000 for the second quarter of 2014. The preferred stock related to the dividends was converted into common stock in December 2014.

Preferred stock dividends of $726,000 were accrued for the second quarter of 2014. The preferred stock related to the dividends was converted into common stock in December 2014.

Net loss allocable to common stockholders for the second quarter of 2015 was $4,113,000, or a $0.16 basic and diluted loss per common share as compared to a net loss of $13,233,000, or a $25.26 basic and diluted loss per common share, for the same period in 2014, an decreased loss of $9,120,000.

SIX MONTHS ENDED JUNE 30, 2015 COMPARED TO SIX MONTHS ENDED JUNE 30, 2014

Our licensing revenue for the first six months of 2015 was $301,000 and $296,000 for the same period of 2014. We recognize licensing revenue over the period of the performance obligation under our licensing agreements.

We recorded royalty revenue for MuGard of $239,000 for first six months of 2015 as compared to $159,000 for the same period of 2014, an increase of $80,000. We licensed MuGard to AMAG on June 6, 2013 and currently receive quarterly royalties from AMAG under our agreement.

Total research and development spending for the first six months of 2015 was $1,063,000, as compared to $225,000 for the same period of 2014, an increase of $838,000. The increase in research and development expenses was primarily due to:

- increased development work on our new product A1PI ($620,000);
- increased salary and related costs ($175,000) from increased scientific staff; and
- increased scientific consulting expense ($43,000).

Total general and administrative expenses were $5,356,000 for the first six months of 2015, as compared to $2,260,000 for the same period of 2014, an increase of $3,096,000. The increase in expenses was due primarily to the following:

- increase stock based compensation expense for granted restricted stock ($1,038,000);
- increased legal fees ($695,000);
- increased salary and related costs ($640,000) from hiring additional general and administrative staff;
- increased investor relations expenses ($385,000);
- increased director fees ($190,000); and
- net increase other general and administrative expenses ($148,000).

Depreciation and amortization was $250,000 for the first six months of 2015 as compared to $1,000 for the same period in 2014. We have acquired new licenses and fixed assets in 2015.

Total operating expenses for the first six months of 2015 were $6,669,000 as compared to total operating expenses of $2,486,000 for the same period of 2014, an increase of $4,183,000 for the reasons listed above.

Interest and miscellaneous income was $19,000 for the first six months of 2015 as compared to $34,000 for the same period of 2014, a decrease of $15,000.

Interest and other expense was $3,000 for the first six months of 2015 as compared to $259,000 in the same period of 2014, a decrease of $256,000. The interest in 2014 represents interest accrued on unpaid dividends. All dividends and interest on dividends due were paid in December 2014. There are no more dividends accruing.

We recorded a loss for the derivative liability related to preferred stock of $11,110,000 for the first six months of 2014. The preferred stock related to the dividends was converted into common stock in December 2014.

Preferred stock dividends of $1,451,000 were accrued for the first six months of 2014. The preferred stock related to the dividends was converted into common stock in December 2014.

Net loss allocable to common stockholders for the first six months of 2015 was $6,113,000, or a $0.27 basic and diluted loss per common share as compared to a net loss of $14,817,000, or a $28.46 basic and diluted loss per common share, for the same period in 2014, a decreased loss of $8,704,000.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not applicable.

ITEM 4. CONTROLS AND PROCEDURES

Under the supervision and with the participation of our management and consultants, including the Executive Chairman (our principal executive officer) and Vice President Finance (our principal accounting officer), we have evaluated the effectiveness of the design and operation of our disclosure controls and procedures, as such term is defined in Exchange Act Rules 13a-15(e) and 15d-15(e), as of the end of the period covered by this report.

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act. Our internal control system was designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes, in accordance with generally accepted accounting principles. Because of inherent limitations, a system of internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate due to change in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management, including our principal executive officer and principal accounting officer, conducted an evaluation of the effectiveness of our internal control over financial reporting using the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control—Integrated Framework.

Based on our evaluation, our management concluded in our Annual Report on Form 10-K for the year ended December 31, 2014 that there is a material weakness in our internal control over financial reporting. A material weakness is a deficiency, or a combination of control deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis.

The material weakness identified in our Annual Report on Form 10-K for the year ended December 31, 2014 relates to the monitoring and review of work performed by our Chief Accounting Officer and our then accounting consultant in the preparation of audit and financial statements, footnotes and financial data provided to the Company's registered public accounting firm in connection with the annual audit. All of our financial reporting is now carried out by our Chief Accounting Officer. This lack of accounting staff results in a lack of segregation of duties.

As of the date of this Quarterly Report on Form 10-Q, we have not remediated such material weakness and, as a result, our Executive Chairman and Vice President Finance, have concluded that a material weakness continues to exist as of the end of the period covered by this Quarterly Report on Form 10-Q and, as such, our disclosure controls and procedures were not effective based on the criteria established in Internal Control—Integrated Framework issued by COSO. The material weakness identified did not result in the restatement of any previously reported financial statements or any related financial disclosure, nor does management believe that it had any effect on the accuracy of the Company's financial statements for the current reporting period.

In order to mitigate this material weakness to the fullest extent possible, all financial reports are reviewed for reasonableness by the Executive Chairman as well as the Chairman of the Audit Committee. All unexpected results are investigated. At any time, if it appears that any control can be implemented to continue to mitigate such weaknesses, it is immediately implemented. As soon as our finances allow, we will hire sufficient accounting staff and implement appropriate procedures for monitoring and review of work performed by our Chief Accounting Officer.

Changes In Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the quarter ended June 30, 2015 that have materially affected, or are reasonable likely to materially affect, our internal control over financial reporting.

PART II -- OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS.

Alan Schmidt ("Schmidt"), a former shareholder of Genaera Corporation ("Genaera"), and a former unitholder of the Genaera Liquidating Trust (the "Trust"), filed a purported class action in the United States District Court for the Eastern District of Pennsylvania in June 2012. The lawsuit named thirty defendants, including Abeona, MacroChem Corporation, which was acquired by us in February 2009, Jeffrey Davis, the then-CEO and currently a director of Abeona, and Steven H. Rouhandeh and Mark Alvino, both of whom are our directors (the "Abeona Defendants"). With respect to the Abeona Defendants, the complaint alleged direct and derivative claims asserting that directors of Genaera and the Trustee of the Trust breached their fiduciary duties to Genaera, Genaera's shareholders and the Trust's unitholders in connection with the licensing and disposition of certain assets, aided and abetted by numerous defendants including the Abeona Defendants. Schmidt seeks monetary damages, disgorgement of any distributions received from the Trust, rescission of sales made by the Trust, attorneys' and expert fees, and costs. On December 19, 2012, Schmidt filed an amended complaint (the "Amended Complaint") which asserted substantially the same allegations with respect to the Abeona Defendants. On February 4, 2013, the Abeona Defendants moved to dismiss all claims asserted against them. On August 12, 2013 the court granted the Abeona Defendants' motions to dismiss and entered judgment in favor of the Abeona Defendants on all claims. On August 26, 2013, Schmidt filed a motion for reconsideration. On September 10, 2013 Schmidt filed a Notice of Appeal with the District Court. On September 17, 2013, Schmidt filed his appeal with the U.S. Third Circuit Court of Appeals (the "Third Circuit"). On September 25, 2013, the District Court denied Schmidt's motion for reconsideration. On October 17, 2013, Schmidt amended his appeal to include the District Court's denial of his motion for reconsideration. On March 20, 2014, Schmidt filed his Brief and Joint Appendix. On May 22, 2014, the Abeona Defendants filed their Oppositions to Schmidt's Brief. On May 29, 2014, Schmidt was granted an extension of time until June 23, 2014 to file his Reply Brief and filed his Reply Brief on that date. The Third Circuit held oral argument on September 12, 2014. On October 17, 2014, in a split decision, the Third Circuit reversed the District Court's decision holding, among other things, that the District Court's determination that the Amended Complaint was time-barred on statute of limitations grounds was premature. The Third Circuit did not rule upon any of the other grounds for dismissal advanced in the District Court and on appeal. The Third Circuit remanded the case to the District Court for further proceedings. On January 6, 2015, the District Court ordered the parties to file supplemental briefs on all remaining arguments for dismissal, and further ordered that a hearing on the motions to dismiss would be held on February 3, 2015. On January 23, 2015, the Abeona Defendants filed their Supplemental Brief. At the February 3, 2015 hearing, Schmidt sought and was granted leave to amend his complaint for a second time. Schmidt filed his Second Amended Complaint on February 3, 2015. The Second Amended Complaint asserts substantially the same factual allegations with respect to the Abeona Defendants, but eliminates all causes of action against the Abeona Defendants except for aiding and abetting the Genaera directors' and officers' purported breaches of fiduciary duties, a claim for "punitive damages" and a claim for rescission of a settlement agreement between the Trust and the Abeona Defendants. On March 20, 2015, the Abeona Defendants filed a motion to dismiss the Second Amended Complaint. The Abeona Defendants' motion to dismiss is fully briefed, and oral argument on the motion is scheduled for September 30, 2015. We intend to continue contesting the claims vigorously.

We are not currently subject to any other material pending legal proceedings.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS.

On April 23, 2015 we closed a $7 million private placement of common stock consisting of 2,333,333 shares of common stock, at a price of $3.00 per share. The issuance of shares of our common stock was made pursuant to Section 4(2) and Rule 506 of the Securities Act of 1933, as amended.

On May 11, 2015, we closed a $10 million private placement of common stock consisting of 1,250,000 shares of common stock, at a price of $8.00 per share, and warrants to purchase 625,000 shares of common stock. The warrants have an exercise price of $10.00 per share and are exercisable for 30 months following the closing date. In connection with the private placement, the placement agent received warrants to purchase 50,000 shares of common stock at $11.00 per share and which are exercisable for five years from the closing date. The issuance of shares of our common stock and warrants to purchase shares of our common stock was made pursuant to Section 4(2) and Rule 506 of the Securities Act of 1933, as amended.

On May 15, 2015, we closed our acquisition of Abeona Ohio. In connection with the closing, we issued a total of 3,979,761 shares of common stock to Abeona Ohio members.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES.

None.

ITEM 6. EXHIBITS.

Exhibits:	
3.1	Certificate of Amendment of Certificate of Incorporation filed June 19, 2015 (Incorporated by Reference to Exhibit 3.1 to our Form 8-K filed June 22, 2015)
4.1**	2015 Equity Incentive Plan (Incorporated by reference to Exhibit 4.1 to our Form S-8 filed May 11, 2015)
10.1	Agreement and Plan of Merger, dated May 5, 2015, by and among the Company, Plasmatech Merger Sub Inc., Abeona Therapeutics LLC and Paul A. Hawkins, in his capacity as Member Representative
10.2	Letter Agreement, dated July 31, 2015, by and among the Company, Sabby Healthcare Master Fund Ltd. and Sabby Volatility Warrant Master Fund, Ltd. (Incorporated by reference to Exhibit 10.1 to our Form 8-K filed July 31, 2015)
10.3	Form of Purchase Agreement, dated July 27, 2015 (Incorporated by reference to Exhibit 10.1 to our Form 8-K filed August 3, 2015)
10.4	Form of Common Stock Purchase Agreement, dated April 1, 2015.

10.5	Form of Securities Purchase Agreement dated May 6, 2015.
31.1	Principal Executive Officer Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Principal Financial Officer Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1*	Principal Executive Officer Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2*	Principal Financial Officer Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101	The following materials formatted in XBRL (Extensible Business Reporting Language): (i) Consolidated Balance Sheets at June 30, 2015 and December 31, 2014, (ii) Consolidated Statements of Operations for the three and six months ended June 30, 2015 and June 30, 2014, (iii) Consolidated Statements of Stockholders' Equity for the three and six months ended June 30, 2015, (iv) Consolidated Statements of Cash Flows for the six months ended June 30, 2015 and June 30, 2014, and (v) Notes to Consolidated Financial Statements, tagged as blocks of text.

* This exhibit shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that Section, nor shall it be deemed incorporated by reference in any filings under the Securities Act of 1933 or the Securities and Exchange Act of 1934, whether made before or after the date hereof and irrespective of any general incorporation language in any filing.

** Management contract or compensatory plan.

SIGNATURES

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

ABEONA THERAPEUTICS INC.

Date: August 14, 2015	By: /s/ Steven H. Rouhandeh Steven H. Rouhandeh Executive Chairman (Principal Executive Officer)
Date: August 14, 2015	By: /s/ Stephen B. Thompson Stephen B Thompson Vice President Finance (Principal Accounting Officer)

Abeona Therapeutics Inc. and Subsidiaries

Condensed Consolidated Balance Sheets

	June 30, 2015	December 31, 2014
	(unaudited)	
ASSETS		
Current assets		
Cash and cash equivalents	$ 30,410,000	$ 11,520,000
Receivables	330,000	35,000
Prepaid expenses and other current assets	222,000	-
Total current assets	30,962,000	11,555,000
Property and equipment, net	66,000	4,000
Licensed technology, net	6,900,000	4,991,000
Goodwill	38,955,000	-
Other assets	42,000	32,000
Total assets	$ 76,925,000	$ 16,582,000
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable	$ 1,318,000	$ 1,896,000
Short-term notes payable	-	400,000
Current portion of deferred revenue	602,000	602,000
Total current liabilities	1,920,000	2,898,000
Contingent consideration liability	6,489,000	-
Payable due Licensor	4,000,000	4,000,000
Long-term deferred revenue	4,567,000	4,868,000
Total liabilities	16,976,000	11,766,000
Commitments and contingencies		
Stockholders' equity		
Common stock - $.01 par value; authorized 200,000,000 shares; issued, 29,861,515 at June 30, 2015 and 19,960,801 at December 31, 2014	299,000	200,000
Additional paid-in capital	361,837,000	300,690,000
Accumulated deficit	(302,187,000)	(296,074,000)
Total stockholders' equity	59,949,000	4,816,000
Total liabilities and stockholders' equity	$ 76,925,000	$ 16,582,000

The accompanying notes are an integral part of these condensed consolidated statements.

Abeona Therapeutics Inc. and Subsidiaries

Condensed Consolidated Statements of Operations
(unaudited)

	Three months ended June 30,		Six months ended June 30,	
	2015	2014	2015	2014
Revenues				
License revenues	$ 150,000	$ 150,000	$ 301,000	$ 296,000
Royalties	132,000	97,000	239,000	159,000
Total revenues	282,000	247,000	540,000	455,000
Expenses				
Research and development	610,000	81,000	1,063,000	225,000
General and administrative	3,667,000	868,000	5,356,000	2,260,000
Depreciation and amortization	132,000	1,000	250,000	1,000
Total expenses	4,409,000	950,000	6,669,000	2,486,000
Loss from operations	(4,127,000)	(703,000)	(6,129,000)	(2,031,000)
Interest and miscellaneous income	16,000	26,000	19,000	34,000
Interest and other expense	(2,000)	(137,000)	(3,000)	(259,000)
Loss on change in fair value of derivative - preferred stock	-	(11,693,000)	-	(11,110,000)
	14,000	(11,804,000)	16,000	(11,335,000)
Net loss	(4,113,000)	(12,507,000)	(6,113,000)	(13,366,000)
Less preferred stock dividends	-	726,000	-	1,451,000
Net loss allocable to common stockholders	$ (4,113,000)	$ (13,233,000)	$ (6,113,000)	$ (14,817,000)
Basic and diluted loss per common share	$ (0.16)	$ (25.26)	$ (0.27)	$ (28.46)
Weighted average number of common shares outstanding	25,695,973	523,826	22,855,642	520,700

The accompanying notes are an integral part of these condensed consolidated statements.

Abeona Therapeutics Inc. and Subsidiaries

Condensed Consolidated Statements of Stockholders' Equity
(unaudited)

	Common Stock				
	Shares	Amount	Additional paid-in capital	Accumulated deficit	Total stockholders' equity
Balance December 31, 2014	19,960,801	$ 200,000	$300,690,000	$(296,074,000)	$ 4,816,000
Common stock issued to employees	10,000	-	32,000	-	32,000
Common stock issued for services	28,000	-	87,000	-	87,000
Stock option compensation expense	-	-	224,000	-	224,000
Net loss	-	-	-	(2,000,000)	(2,000,000)
Balance March 31, 2015	19,998,801	$ 200,000	$301,033,000	$(298,074,000)	$ 3,159,000
Restricted common stock issued to employees	1,350,000	13,000	1,023,000	-	1,036,000
Common stock issued for services	22,500	-	75,000	-	75,000
Exercise of $5.00 warrants	927,119	9,000	4,626,000	-	4,635,000
Common stock issued for $3.00 share net of costs	2,333,334	24,000	6,977,000	-	7,001,000
Common stock issued for $8.00 share net of costs	1,250,000	13,000	8,992,000	-	9,005,000
Common stock issued to Abeona Ohio holders	3,979,761	40,000	38,207,000	-	38,247,000
Stock option compensation expense	-	-	904,000	-	904,000
Net loss	-	-	-	(4,113,000)	(4,113,000)
Balance June 30, 2015	29,861,515	$ 299,000	$361,837,000	$(302,187,000)	$ 59,949,000

The accompanying notes are an integral part of these condensed consolidated statements.

Abeona Therapeutics Inc. and Subsidiaries

Condensed Consolidated Statements of Cash Flows
(unaudited)

	Six Months ended June 30,	
	2015	2014
Cash flows from operating activities:		
Net loss	$ (6,113,000)	$ (13,366,000)
Adjustments to reconcile net loss to cash used in operating activities:		
Loss on change in fair value of derivative – preferred stock	-	11,110,000
Depreciation and amortization	250,000	1,000
Stock option compensation expense	1,128,000	987,000
Stock issued to directors, employees and consultants	1,068,000	-
Stock issued for services	162,000	207,000
Change in operating assets and liabilities:		
Receivables	(294,000)	16,000
Prepaid expenses and other current assets	(194,000)	(13,000)
Other assets	(9,000)	-
Accounts payable and accrued expenses	(731,000)	477,000
Interest payable on dividends	-	259,000
Deferred revenue	(301,000)	(47,000)
Net cash used in operating activities	(5,034,000)	(369,000)
Cash flows from investing activities:		
Capital expenditures	(14,000)	-
Cash from Abeona Ohio	3,697,000	-
Net cash provided by investing activities	3,683,000	-
Cash flows from financing activities:		
Proceeds from $3.00 common stock issuances net of costs	7,001,000	-
Proceeds from $8.00 common stock issuances net of costs	9,005,000	-
Proceeds from exercise of $5.00 warrants	4,635,000	-
Payment of short-term debt	(400,000)	-
Net cash provided by financing activities	20,241,000	-
Net increase (decrease) in cash and cash equivalents	18,890,000	(369,000)
Cash and cash equivalents at beginning of period	11,520,000	424,000
Cash and cash equivalents at end of period	$ 30,410,000	$ 55,000
Supplemental cash flow information:		
Cash paid for interest	*$ -*	*$ -*
Supplemental disclosure of noncash transactions:		
Shares issued to holders of Abeona Ohio for acquisition	*$ 31,758,000*	*$ -*
Contingent milestones to Abeona Ohio members	*6,489,000*	
Licensed technology from Abeona Ohio	*2,156,000*	
Preferred stock dividends in dividends payable	*-*	*1,451,000*

The accompanying notes are an integral part of these condensed consolidated statements.

Abeona Therapeutics Inc. and Subsidiaries

Notes to Condensed Consolidated Financial Statements
Three and Six Months Ended June 30, 2015 and 2014
(unaudited)

Abeona Therapeutics Inc. (together with our subsidiaries, “we”, “our”, “Abeona” or the “Company”) is a Delaware corporation. We are an emerging biopharmaceutical company focused on developing and delivering gene therapy and plasma-based products for severe and life-threatening rare diseases. Abeona's lead programs are ABO-101 (AA9 NAGLU) and ABO-102 (scAAV9 SGHG), adeno-associated virus (AAV)-based gene therapies for Sanfilippo syndrome (MPS IIIA and IIIB) in collaboration with patient advocate groups, researchers and clinicians, anticipated to commence clinical trials in 2015. We are also developing ABO-201 (scAAV9 CLN3) gene therapy for juvenile Batten disease (JBD); and ABO-301 (AAV LK19 FANCC) for Fanconi anemia (FA) disorder using a novel CRISPR/Cas9-based gene editing approach to gene therapy program for rare blood diseases. In addition, we are also developing rare plasma protein therapies including PTB-101 SDF Alpha™ (alpha-1 protease inhibitor) for inherited COPD using our proprietary SDF™ (Salt Diafiltration) ethanol-free process. Our efforts have been principally devoted to research and development, resulting in significant losses.

(1) Interim Financial Statements

The condensed consolidated balance sheet as of June 30, 2015, the condensed consolidated statements of operations for the three and six months ended June 30, 2015 and 2014, the condensed consolidated statements of stockholders’ equity for the three and six months ended June 30, 2015, and the condensed consolidated statements of cash flows for the six months ended June 30, 2015 and 2014, were prepared by management without audit. In the opinion of management, all adjustments, consisting only of normal recurring adjustments, except as otherwise disclosed, necessary for the fair presentation of the financial position, results of operations, and changes in financial position for such periods, have been made.

Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted. It is suggested that these interim financial statements be read in conjunction with the consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2014. The results of operations for the period ended June 30, 2015 are not necessarily indicative of the operating results which may be expected for a full year. The condensed consolidated balance sheet as of December 31, 2014 contains financial information taken from the audited Abeona financial statements as of that date.

Certain reclassifications to the consolidated financial statements for all periods presented have been made to conform to the June 30, 2015 presentation.

On June 19, 2015 we changed our name from PlasmaTech Biopharmaceuticals, Inc. to Abeona Therapeutics Inc.

(2) Intangible Assets

Intangible assets consist of the following (in thousands):

	June 30, 2015		December 31, 2014	
	Gross carrying value	Accumulated amortization	Gross carrying value	Accumulated Amortization
Amortizable intangible assets				
Licensed technology	$ 7,156	$ 256	$ 5,000	$ 9

Amortization expense related to intangible assets totaled $116,000 and $232,000 for the three and six months ended June 30, 2015, respectively, and totaled $0 for the three and six months ended June 30, 2014. The aggregate estimated amortization expense for intangible assets remaining as of June 30, 2015 is as follows (in thousands):

2015	$ 291
2016	582
2017	582
2018	582
2019	582
over 5 years	4,281
Total	$ 6,900

(3) Stock Based Compensation

For the three and six months ended June 30, 2015, we recognized stock-based compensation expense of $904,000 and $1,128,000, respectively. For the three and six months ended March 31, 2014 we recognized stock-based compensation expense of $192,000 and $987,000, respectively.

The following table summarizes stock-based compensation for the three and six months ended June 30, 2015 and 2014:

	Three months ended June 30,		Six months ended June 30,	
	2015	2014	2015	2014
Research and development	$ 86,000	$ 18,000	$ 104,000	$ 95,000
Selling, general and administrative	818,000	174,000	1,024,000	892,000
Stock-based compensation expense included in operating expense	$ 904,000	$ 192,000	$ 1,128,000	$ 987,000

For the three and six months ended June 30, 2015 we granted 1,695,000 and 1,815,000 stock options, respectively, and for the three and six months ended June 30, 2014 we granted 210,000 and 210,000 stock options.

For the three and six months ended June 30, 2015 we granted 1,350,000 and 1,360,000 shares of our common stock to directors and employees. For the three and six months ended June 30, 2014 we granted no shares of our common stock to directors and employees.

(4) Litigation

Alan Schmidt ("Schmidt"), a former shareholder of Genaera Corporation ("Genaera"), and a former unitholder of the Genaera Liquidating Trust (the "Trust"), filed a purported class action in the United States District Court for the Eastern District of Pennsylvania in June 2012. The lawsuit named thirty defendants, including Abeona, MacroChem Corporation, which was acquired by us in February 2009, Jeffrey Davis, the then-CEO and currently a director of Abeona, and Steven H. Rouhandeh and Mark Alvino, both of whom are our directors (the "Abeona Defendants"). With respect to the Abeona Defendants, the complaint alleged direct and derivative claims asserting that directors of Genaera and the Trustee of the Trust breached their fiduciary duties to Genaera, Genaera's shareholders and the Trust's unitholders in connection with the licensing and disposition of certain assets, aided and abetted by numerous defendants including the Abeona Defendants. Schmidt seeks monetary damages, disgorgement of any distributions received from the Trust, rescission of sales made by the Trust, attorneys' and expert fees, and costs. On December 19, 2012, Schmidt filed an amended complaint (the "Amended Complaint") which asserted substantially the same allegations with respect to the Abeona Defendants. On February 4, 2013, the Abeona Defendants moved to dismiss all claims asserted against them. On August 12, 2013 the court granted the Abeona Defendants' motions to dismiss and entered judgment in favor of the Abeona Defendants on all claims. On August 26, 2013, Schmidt filed a motion for reconsideration. On September 10, 2013 Schmidt filed a Notice of Appeal with the District Court. On September 17, 2013, Schmidt filed his appeal with the U.S. Third Circuit Court of Appeals (the "Third Circuit"). On September 25, 2013, the District Court denied Schmidt's motion for reconsideration. On October 17, 2013, Schmidt amended his appeal to include the District Court's denial of his motion for reconsideration. On March 20, 2014, Schmidt filed his Brief and Joint Appendix. On May 22, 2014, the Abeona Defendants filed their Oppositions to Schmidt's Brief. On May 29, 2014, Schmidt was granted an extension of time until June 23, 2014 to file his Reply Brief and filed his Reply Brief on that date. The Third Circuit held oral argument on September 12, 2014. On October 17, 2014, in a split decision, the Third Circuit reversed the District Court's decision holding, among other things, that the District Court's determination that the Amended Complaint was time-barred on statute of limitations grounds was premature. The Third Circuit did not rule upon any of the other grounds for dismissal advanced in the District Court and on appeal. The Third Circuit remanded the case to the District Court for further proceedings. On January 6, 2015, the District Court ordered the parties to file supplemental briefs on all remaining arguments for dismissal, and further ordered that a hearing on the motions to dismiss would be held on February 3, 2015. On January 23, 2015, the Abeona Defendants filed their Supplemental Brief. At the February 3, 2015 hearing, Schmidt sought and was granted leave to amend his complaint for a second time. Schmidt filed his Second Amended Complaint on February 3, 2015. The Second Amended Complaint asserts substantially the same factual allegations with respect to the Abeona Defendants, but eliminates all causes of action against the Abeona Defendants except for aiding and abetting the Genaera directors' and officers' purported breaches of fiduciary duties, a claim for "punitive damages" and a claim for rescission of a settlement agreement between the Trust and the Abeona Defendants. On March 20, 2015, the Abeona Defendants filed a motion to dismiss the Second Amended Complaint. The Abeona Defendants' motion to dismiss is fully briefed, and oral argument on the motion is scheduled for September 30, 2015. We intend to continue contesting the claims vigorously.

We are not currently subject to any other material pending legal proceedings.

(5) Abeona Therapeutics LLC Acquisition

On May 15, 2015, we agreed to issue an aggregate of 3,979,761 unregistered shares of our common stock to the members of Abeona Therapeutics LLC (Abeona Ohio). Abeona Ohio’s principal activities were focused on developing and delivering gene therapy products for severe and life-threatening rare diseases. Abeona Ohio's lead program is ABO-101 (AA9 NAGLU) and ABO-102 (scAAV9 SGHG), adeno-associated virus (AAV)-based gene therapies for Sanfilippo syndrome (MPS IIIA and IIIB) in collaboration with patient advocate groups, researchers and clinicians, anticipated to commence clinical trials in 2015.

The initial consideration of $31,758,000 was calculated using the Company’s stock price on date of the closing, May 15, 2015 of $7.98 times the number of the Company shares (3,979,761) issued to Abeona Ohio members.

There is a contingent valuation on three milestones. Per the merger agreement with Abeona Ohio each milestone would consist of either cash, our stock or a combination of both, at the Company’s election, equivalent to a stated dollar amount. The fair value of the probability of achieving all three milestones is estimated at $6,489,000.

The following preliminary purchase price allocation is based on information we have to date and is unaudited.

Total purchase price		
Initial consideration	$	31,758,000
Contingent consideration		6,489,000
Total purchase price	$	38,247,000
Allocation of the purchase price		
Cash	$	3,697,000
Accounts receivable		1,000
Prepaid expenses		28,000
Property and equipment		51,000
Other assets		1,000
Accounts payable		(153,000)
Total tangible assets		3,625,000
Licensing agreement		2,156,000
Goodwill		38,955,000
Contingent consideration liability		(6,489,000)
Total net asset value	$	38,247,000

In connection with the acquisition $375,000 in merger costs were expensed.

(6) Subsequent Events

On July 31, 2015 we closed an upsized $15.5 million direct placement of registered common stock with institutional investors, including Soros Fund Management and Perceptive Life Science Fund, and two members of the Board of Directors. The financing is comprised of 2.83 million shares of common stock at a price of $5.50 per share.

EXHIBIT 10.1

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

PLASMATECH BIOPHARMACEUTICALS, INC.

AND

PLASMATECH MERGER SUB, INC.

AND

ABEONA THERAPEUTICS LLC

AND

MEMBER REPRESENTATIVE

DATED AS OF MAY __, 2015

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EXHIBITS

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Exhibit B - Letter of Transmittal

Exhibit C - Member Written Consent

ANNEXES

Annex A – Milestones

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "**Agreement**"), is made as of May 5, 2015, by and among PLASMATECH BIOPHARMACEUTICALS, INC., a Delaware corporation ("**Parent**"), PLASMATECH MERGER SUB, INC., a Delaware corporation ("**Merger Sub**"), ABEONA THERAPEUTICS LLC, an Ohio limited liability company (the "**Company**"), and Paul A. Hawkins, an individual, solely in his capacity as Member Representative ("**Member Representative**").

RECITALS

WHEREAS, the parties intend that Merger Sub be merged with and into the Company, with the Company surviving that merger on the terms and subject to the conditions set forth herein (the "**Merger**");

WHEREAS, the board of managers of the Company (the "**Company Board**") has unanimously (a) determined that this Agreement and the transactions contemplated hereby, including the Merger, are in the best interests of the Company and its members, (b) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger, and (c) resolved to recommend adoption of this Agreement by the members of the Company in accordance with the Ohio Limited Liability Company Act (the "**Ohio Act**");

WHEREAS, following the execution of this Agreement, the Company shall seek to obtain, in accordance with Section 4.3(c) of the Amended and Restated Operating Agreement of the Company dated October 31, 2014 (the "**Operating Agreement**"), a written consent of its members approving this Agreement, the Merger and the transactions contemplated hereby in accordance with Section 1705.37 of the Ohio Act;

WHEREAS, the respective boards of directors of Parent and Merger Sub have (a) determined that this Agreement and the transactions contemplated hereby, including the Merger, are in the best interests of Parent, Merger Sub and their respective stockholders, and (b) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger; and

WHEREAS, Parent, as the sole stockholder of Merger Sub, has approved and adopted this Agreement and the transactions contemplated hereby, including the Merger, upon the terms and subject to the conditions set forth herein, in accordance with the DGCL.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

The following terms have the meanings specified or referred to in this **ARTICLE I**:

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“**Adjusted Pro Rata Interest**” means the percentage necessary to ensure that the net consideration the Members receive under this Agreement is equal to the amount they would have received had the net consideration received by the Members under this Agreement been allocated pursuant to Section 3.1(a) of the Operating Agreement, taking into account the Closing Merger Consideration, the Portion of the Holdback Amount received by the Members, any Milestone Payments received by the Members, amounts paid by the Members pursuant to their indemnification obligations under this Agreement, and reimbursements made by the Members for Member Representative’s costs and expenses incurred in connection with this Agreement, for each Member as set forth on the Consideration Spreadsheet and as updated pursuant to **Section 2.15(i)**.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the 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**” has the meaning set forth in the preamble.

“**Ancillary Document(s)**” means when used in reference to a particular person, any agreement, certificate, instrument, or other document executed or contemplated to be executed by such person in connection with the transactions contemplated hereby..

“**Assets**” has the meaning set forth in **Section 3.09(a)**.

“**Audit Notice**” has the meaning set forth in **Section 2.15(g)**.

“**Audited Financial Statements**” has the meaning set forth in **Section 5.15**.

“**Balance Sheet**” has the meaning set forth in **Section 3.06(a)(i)**.

“**Balance Sheet Date**” has the meaning set forth in **Section 3.06(a)(i)**.

“**Basket**” has the meaning set forth in **Section 8.04(b)**.

“**Benefit Plan**” has the meaning set forth in **Section 3.16(a)**.

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in New York, New York are authorized or required by Law to be closed for business.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

"**Certificates of Merger**" has the meaning set forth in **Section 2.03**.

"**Closing**" has the meaning set forth in **Section 2.02**.

"**Closing Date**" has the meaning set forth in **Section 2.02**.

"**Closing Merger Consideration**" means the Merger Consideration, minus the Maximum Milestone Payments, and minus the Holdback Amount.

"**Closing Transaction Expenses and Indebtedness Certificate**" means a certificate executed by the President & Chief Executive Officer of the Company, certifying the amount of Transaction Expenses remaining unpaid as of the close of business on the Closing Date (including an itemized list of each such unpaid Transaction Expense with a description of the nature of such expense and the Person to whom such expense is owed).

"**Closing Working Capital**" has the meaning set forth in **Section 7.02(f)(ix)**.

"**Closing Working Capital Statement**" has the meaning set forth in **Section 7.02(f)(ix)**.

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

"**Commercially Reasonable Efforts**" has the meaning set forth in **Section 2.15(b)**.

"**Company**" has the meaning set forth in the preamble.

"**Company Board**" has the meaning set forth in the Recitals.

"**Company Charter Documents**" has the meaning set forth in **Section 3.03**.

"**Company Disclosure Schedules**" means the Disclosure Schedules delivered by the Company concurrently with the execution and delivery of this Agreement.

"**Company Intellectual Property**" means all Intellectual Property that is owned, licensed to, or held for use by the Company, or under an obligation of assignment or option to the Company.

"**Company IP Agreements**" means all assignments, options, licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, permissions and other Contracts (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, relating to Intellectual Property to which the Company is a party, beneficiary or otherwise bound.

"**Company IP Registrations**" means all Company Intellectual Property that is subject to any issuance registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing.

“**Company Permits**” has the meaning set forth in **Section 3.14(b)**.

“**Confidentiality Agreement**” has the meaning set forth in **Section 5.02(b)**.

“**Consideration Determination Date**” has the meaning set forth in **Section 2.16(a)**.

“**Consideration Spreadsheet**” has the meaning set forth in **Section 2.16(a)**.

“**Contract**” or “**Contracts**” means with respect to any Person, any contract, lease, sublease, deed, mortgage, license, sublicense or any other promise, instrument, note, commitment, understanding, arrangement, undertaking, indenture, joint venture, whether written or oral, to which or by which such Person is a party or otherwise subject or bound or to which or by any property, business, operation or right of such Person is subject or bound.

“**Current Assets**” means cash and cash equivalents, accounts receivable, inventory and prepaid expenses, but excluding (a) the portion of any prepaid expense of which Parent will not receive the benefit following the Closing, (b) Tax assets and (c) receivables from any of the Company’s Affiliates, directors, employees, officers or stockholders and any of their respective Affiliates, determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end.

“**Current Liabilities**” means accounts payable, accrued Taxes and accrued expenses, but excluding payables to any of the Company’s Affiliates, directors, employees, officers or stockholders and any of their respective Affiliates, deferred Tax liabilities, Transaction Expenses and the current portion of any Indebtedness of the Company, determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end.

“**D&O Indemnified Party**” has the meaning set forth in **Section 5.08(a)**.

“**D&O Insurance Policies**” has the meaning set forth in **Section 5.08(b)**.

“**D&O Tail Policy**” has the meaning set forth in **Section 5.08(b)**.

“**Data**” has the meaning set forth in **Section 3.14(e)**.

“**Debarred**” has the meaning set forth in **Section 3.14(c)**.

“**Delaware Certificate of Merger**” has the meaning set forth in **Section 2.03**.

“**DGCL**” means the Delaware General Corporation Law.

“**Dissenting Membership Interests**” has the meaning set forth in **Section 2.08**.

“**Dollars or $**” means the lawful currency of the United States.

“**Effective Time**” has the meaning set forth in **Section 2.03**.

“**Encumbrance**” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“**Environmental Claim**” means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“**Environmental Law**” means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

“**Environmental Notice**” means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

"**Environmental Permit**" means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

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

"**ERISA Affiliate**" means all employers (whether or not incorporated) that would be treated together with the Company or any of its Affiliates as a "single employer" within the meaning of Section 414 of the Code.

"**Exchange**" means NASDAQ Global Market or such other stock exchange on which Parent Common Stock is listed or quoted.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Exchange Agent**" has the meaning set forth in **Section 2.09(b)**.

"**FDA**" means the United States Food and Drug Administration.

"**FDA Act**" means the Federal Food, Drug and Cosmetic Act, as amended.

"**FDA Ethics Policy**" has the meaning set forth in **Section 3.14(j)**.

"**Financial Statements**" has the meaning set forth in **Section 3.06(a)(iii)**.

"**FIRPTA Statement**" has the meaning set forth in **Section 6.09**.

"**First Milestone**" means the milestone set forth on **Annex A** under the heading "**First Milestone**."

"**First Milestone Payment**" has the meaning set forth in **Annex A**.

"**Formation Date**" means March 29, 2013.

"**GAAP**" means generally accepted accounting principles in the United States as in effect from time to time.

"**Good Laboratory Practices**" has the meaning set forth in **Section 3.14(h)**.

"**Government Contracts**" has the meaning set forth in **Section 3.08(a)(vii)**.

"**Governmental Authority**" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

"**Governmental Order**" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"**Hazardous Materials**" means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls.

"**HIPAA**" has the meaning set forth in **Section 3.14(k)**.

"**Holdback Amount**" means 397,976 shares of Parent Common Stock plus 10% of any Milestone Payment that is actually paid to the Members prior to the Holdback Amount Payment Date in accordance with terms of this Agreement.

"**Holdback Amount Payment Date**" means the date that is fifteen (15) months following the Closing Date.

"**IND**" means, with respect to the FDA, an Investigational New Drug application.

"**Indebtedness**" means, without duplication and with respect to the Company, all (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services (other than Current Liabilities taken into account in the calculation of Closing Working Capital), (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement; (e) capital lease obligations; (f) reimbursement obligations under any letter of credit, banker's acceptance or similar credit transactions; (g) guarantees made by the Company on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (f); and (h) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (g).

"**Indemnified Party**" has the meaning set forth in **Section 8.05**.

"**Indemnifying Party**" has the meaning set forth in **Section 8.05**.

"**Instructions**" has the meaning set forth in **Section 2.09(c)**.

"**Insurance Policies**" has the meaning set forth in **Section 3.12**.

“**Intellectual Property**” means all intellectual property and industrial property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, pursuant to the Laws of any jurisdiction throughout the world, whether registered or unregistered, including any and all: (a) trademarks, service marks, trade names, brand names, logos, trade dress, design rights and other similar designations of source, sponsorship, association or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications and renewals for, any of the foregoing; (b) internet domain names, whether or not trademarks, registered in any top-level domain by any authorized private registrar or Governmental Authority, web addresses, web pages, websites and related content, accounts with Twitter, Facebook and other social media companies and the content found thereon and related thereto, and URLs; (c) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights, author, performer, moral and neighboring rights, and all registrations, applications for registration and renewals of such copyrights; (d) inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections and other confidential and proprietary information and all rights therein; (e) patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other Governmental Authority-issued indicia of invention ownership (including inventor’s certificates, petty patents and patent utility models); and (f) software and firmware, including data files, source code, object code, application programming interfaces, architecture, files, records, schematics, computerized databases and other related specifications and documentation.

“**Interim Balance Sheet**” has the meaning set forth in **Section 3.06(b)**.

“**Interim Balance Sheet Date**” has the meaning set forth in **Section 3.06(b)**.

“**Interim Financial Statements**” has the meaning set forth in **Section 3.06(a)(iii)**.

“**IRB**” has the meaning set forth in **Section 3.14(i)**.

“**Key Product Candidates**” means ABX-A and ABX-B.

“**Knowledge**” (including any derivation thereof such as “known” or “knowing”) means, when used with respect to the Company, the actual or constructive knowledge of Paul A. Hawkins or Tim Miller, after due inquiry.

“**Knowledge**” (including any derivation thereof such as “known” or “knowing”) means, when used with respect to the Parent or Merger Sub, the actual or constructive knowledge of Jeffrey Davis, after due inquiry.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“**Letter of Transmittal**” has the meaning set forth in **Section 2.09(c)**.

“**Liabilities**” has the meaning set forth in **Section 3.06(c)**.

“**Losses**” means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Majority Holders**” has the meaning set forth in **Section 10.01(b)**.

“**Managers Recommendation**” has the meaning set forth in **Section 3.02(b)**.

“**Material Adverse Effect**” means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise), assets or prospects of a party hereto, or (b) the ability of a party hereto to consummate the transactions contemplated hereby on a timely basis; *provided, however*, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to (i) any adverse change, effect or circumstance arising out of or resulting from actions contemplated by the parties in connection with this Agreement or the pendency or announcement of the transactions contemplated by this Agreement; (ii) changes in law, rules or regulations or generally accepted accounting principles or the interpretation or method of enforcement thereof, except to the extent the Company is disproportionately affected relative to other participants in the markets or industries in which the Company conducts business; (iii) changes in the markets or industries in which the Company conducts business, except to the extent the Company is disproportionately affected relative to other participants in the markets or industries in which the Company conducts business; (iv) changes in general economic or political conditions or the financing or capital markets in general or changes in currency exchange rates; (v) any action taken pursuant to or in accordance with this Agreement or at the request of Parent or Merger Sub; or (vi) any natural disaster, sabotage, terrorism, military action or war (whether or not declared) or the escalation thereof.

“**Material Contracts**” has the meaning set forth in **Section 3.08(a)**.

“**Maximum Milestone Payments**” means the aggregate of the First Milestone Payment, the Second Milestone and the Third Milestone Payment.

“**Member**” means a holder of the Company’s Membership Interests at the time of Closing.

“**Member Indemnitees**” has the meaning set forth in **Section 8.03**.

“**Member Representative**” has the meaning set forth in the preamble.

“**Member Representative Objection**” has the meaning set forth in **Section 2.15(c)**.

“**Membership Interest**” shall mean a Member’s share of cash distributions, other economic rights, and voting and other rights in the Company, including, without limitation, any rights as a holder of Units under the Operating Agreement.

“**Merger**” has the meaning set forth in the Recitals.

“**Merger Consideration**” means (i) an aggregate number of shares of Parent Common Stock equal to 3,979,761, which in all events shall not exceed 19.9% of the outstanding shares of Parent Common Stock immediately prior to the Effective Time, unless Parent, in its sole discretion, has previously obtained Stockholder Approval to issue in excess of 19.9% of its outstanding shares of Parent Common Stock in connection with this Agreement, and (ii) the Maximum Milestone Payments, which in all events, including the shares of Parent Common stock in clause (i) above, shall not exceed 19.9% of the outstanding shares of Parent Common Stock immediately prior to the Effective Time, unless Parent has previously obtained Stockholder Approval to issue in excess of 19.9% of its outstanding shares of Parent Common Stock in connection with this Agreement.

“**Merger Sub**” has the meaning set forth in the preamble.

“**MPS-IIIA**” means Sanfilippo syndrome, or Mucopolysaccharidosis, subtype A.

“**MPS-IIIB**” means Sanfilippo syndrome type A or Mucopolysaccharidosis, subtype B.

“**Milestones**” means the First Milestone, the Second Milestone and the Third Milestone.

“**Milestone Deadline Date**” has the meaning set forth in **Annex A**.

“**Milestone Failure Notice**” has the meaning set forth in **Section 2.15(c)**.

“**Milestone Payments**” means the First Milestone Payment, the Second Milestone Payment and the Third Milestone Payment.

“**Milestone Period**” has the meaning set forth in **Section 2.15(f)**.

“**Milestone Records**” has the meaning set forth in **Section 2.15(f)**.

“**Multiemployer Plan**” has the meaning set forth in **Section 3.16(c)**.

“**Nationwide**” means Nationwide Children’s Hospital, Inc., located in Columbus, Ohio.

“**NIH**” has the meaning set forth in **Section 3.08(a)(xi)**.

“**Ohio Certificate of Merger**” has the meaning set forth in **Section 2.03**.

“**Ohio Act**” has the meaning set forth in the Recitals.

“**Operating Agreement**” has the meaning set forth in the Recitals.

“**Parent**” has the meaning set forth in the Preamble.

“**Parent Common Stock**” means the voting common stock, par value $0.01 per share, of Parent.

“**Parent Disclosure Schedules**” means the Disclosure Schedules delivered by the Parent concurrently with the execution and delivery of this Agreement.

“**Parent Indemnitees**” has the meaning set forth in **Section 8.02**.

“**Parent Insurance Policies**” has the meaning set forth in **Section 4.07**.

“**Parent SEC Documents**” has the meaning set forth in **Section 4.04(a)**.

“**Parent Share Value**” means the volume weighted average of the closing prices of sales of Parent Common Stock on the primary Exchange on which Parent Common Stock is listed or quoted for the ten (10) trading days ending on the trading day prior to the date of this Agreement.

“**Permits**” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained or filed, or required to be obtained or filed, from or with Governmental Authorities including any authorizations required to conduct pre-clinical studies, animal studies, and clinical trials.

“**Permitted Encumbrances**” has the meaning set forth in **Section 3.09(a)**.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“**Portion**” with regard to any payment made by Parent to any Member hereunder, including, the payment of the Merger Consideration, means the portion of such payment that is payable to such Member pursuant to Section 3.1(a) of the Operating Agreement.

“**Post-Closing Tax Period**” means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning on or before and ending after the Closing Date, the portion of such taxable period beginning on the day after the Closing Date.

“**Pre-Closing Tax Period**” means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

“**Pre-Closing Taxes**” means Taxes of the Company for any Pre-Closing Tax Period.

“**Privacy Laws**” has the meaning set forth in **Section 3.14(n)**.

“**Privacy Policies**” has the meaning set forth in **Section 3.14(n)**.

“**Proprietary Information**” means at any date, any information of a Person, that is not already generally available to the public (unless such information has entered the public domain and become available to the public through fault on the part of the party to be charged hereunder), which constitute trade secrets, personally identifiable financial information, or personal health information under governing Law.

“**Pro Rata Interest**” means for each Member the percentage equal to the total consideration received by such Member under this Agreement divided by the total consideration received by all of the Members under this Agreement, as set forth on the Consideration Spreadsheet and as updated in accordance with **Section 2.15(j)**.

“**Proxy Statement**” has the meaning set forth in **Section 5.14**.

“**Qualified Benefit Plan**” has the meaning set forth in **Section 3.16(c)**.

“**Real Property**” has the meaning set forth in **Section 3.10(a)**.

“**Recall**” has the meaning set forth in **Section 3.14(d)**.

“**Release**” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“**Replaced Adjusted Pro Rata Interest**” has the meaning set forth in **Section 2.15(i)**.

“**Replaced Pro Rata Interest**” has the meaning set forth in **Section 2.15(j)**.

“**Representative**” means, with respect to any Person, any and all directors, officers, employees, managers, advisors, consultants, agents, Persons providing services or activities for, with, on behalf of, or in conjunction with the Company, but only to the extent of those services or activities, or other representative of such Person, including legal counsel, accountants, and financial advisors.

“**Representative Accountant**” has the meaning set forth in **Section 2.15(g)**.

“**Representative Fund**” has the meaning set forth in **Section 10.01(c)**.

“**Representative Losses**” has the meaning set forth in **Section 10.01(c)**.

“**Requisite Member Approval**” has the meaning set forth in **Section 3.02(a)**.

“**Rule 144**” has the meaning set forth in **Section 5.12**.

“**Satisfaction Date**” has the meaning set forth in **Section 2.15(b)**.

“**Satisfied**” or “**Satisfaction**” has the meaning set forth in **Section 2.15(b)**.

“**SEC**” has the meaning set forth in **Section 4.04(a)**.

“**Second Milestone**” means the milestone set forth on **Annex A** under the heading “Second Milestone.”

“**Second Milestone Payment**” has the meaning set forth in **Annex A**.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Stockholder Approval**” has the meaning set forth in **Section 5.14**.

“**Stockholders Meeting**” has the meaning set forth in **Section 5.14**.

“**Stockholder Meeting Deadline**” has the meaning set forth in **Section 5.14**.

“**Straddle Period**” has the meaning set forth in **Section 6.05**.

“**Studies**” has the meaning set forth in **Section 3.14(e**).

“**Subsidiary**” means, with respect to any Person, any corporation, limited liability company, partnership, association, trust or other entity (i) of which securities or other ownership interests representing more than 50% of the equity and more than 50% of the ordinary voting power (or, in the case of a partnership, more than 50% of the general partnership interests) are, as of the date of determination, owned by such Person or one or more Subsidiaries of such Person, or (ii) that is a variable interest entity in which such Person is the primary beneficiary, as determined in accordance with GAAP.

“**Surviving Entity**” has the meaning set forth in **Section 2.01**.

“**Tax Election**” has the meaning set forth in **Section 3.18(x)**.

“**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real, personal or tangible property), real property gains, windfall profits, capital, net worth, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“**Tax Claim**” has the meaning set forth in **Section 6.06**.

“**Tax Return**” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Third Milestone**” means the milestone set forth on **Annex A** under the heading “Third Milestone.”

“**Third Milestone Payment**” has the meaning set forth in **Annex A**.

“**Third Party Claim**” has the meaning set forth in **Section 8.05(a)**.

“**Transaction Expenses**” means all fees and expenses incurred by the Company and any Affiliate at or prior to the Closing in connection with the preparation, negotiation and execution of this Agreement and the Ancillary Documents, and the performance and consummation of the Merger and the other transactions contemplated hereby and thereby, including any unpaid costs of the D&O Tail Policy referenced in Section 5.08(b).

“**Unaudited Financial Statements**” has the meaning set forth in **Section 3.06(a)(ii)**.

“**Union**” has the meaning set forth in **Section 3.17(b)**.

“**Unit**” means a unit of ownership in the Company having such rights and preferences as provided in the Operating Agreement, and shall include the Class A Units, Class B Units, Class C Units and Class D Units of the Company.

"**Updated Adjusted Pro Rata Interest**" has the meaning set forth in **Section 2.15(i)**.

"**Updated Pro Rata Interest**" has the meaning set forth in **Section 2.15(j)**.

"**Update Report**" has the meaning set forth in **Section 2.15(h)**.

"**Working Capital**" means, as of the date specified, the Current Assets of the Company, less the Current Liabilities of the Company, all determined in accordance with GAAP.

"**Written Consent**" has the meaning set forth in **Section 5.04**.

ARTICLE II
THE MERGER

Section 2.01. The Merger. On the terms and subject to the conditions set forth in this Agreement, and in accordance with the Ohio Act and the DGCL, at the Effective Time, (a) Merger Sub will merge with and into the Company, and (b) the separate corporate existence of Merger Sub will cease and the Company will continue its existence under the Ohio Act as the surviving entity in the Merger (sometimes referred to herein as the "**Surviving Entity**").

Section 2.02. Closing. Subject to the terms and conditions of this Agreement, the closing of the Merger (the "**Closing**") shall take place at 10:00 a.m., New York, New York time, no later than two (2) Business Days after the last of the conditions to Closing set forth in **ARTICLE VII** have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), at the offices of Morgan, Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, or at such other time or on such other date or at such other place as the Company and Parent may mutually agree upon in writing (the day on which the Closing takes place being the "**Closing Date**").

Section 2.03. Effective Time. Subject to the provisions of this Agreement, at the Closing, the Company, Parent and Merger Sub shall cause (i) a certificate of merger (the "**Delaware Certificate of Merger**") to be executed, acknowledged and filed with the Secretary of State of the State of Delaware in accordance with the relevant provisions of the DGCL and shall make all other filings or recordings required under the DGCL and (ii) a certificate of merger (the "**Ohio Certificate of Merger**," and, together with the Delaware Certificate of Merger, the "**Certificates of Merger**") to be executed, acknowledged and filed with the Secretary of State of the State of Ohio in accordance with the relevant provisions of the Ohio Act and shall make all other filings or recordings required under the Ohio Act. The Merger shall become effective at such time as the Certificates of Merger has been duly filed with the Secretary of State of the State of Delaware and the Secretary of State of the State of Ohio, as applicable, or at such later date or time as may be agreed by the Company and Parent in writing and specified in the Certificates of Merger in accordance with the DGCL and the Ohio Act (the effective time of the Merger being hereinafter referred to as the "**Effective Time**").

Section 2.04. Effects of the Merger. The Merger shall have the effects set forth herein and in the applicable provisions of the DGCL and the Ohio Act. Without limiting the generality of the foregoing, and subject thereto, from and after the Effective Time, all property, rights, privileges, immunities, powers, franchises, licenses and authority of the Company and Merger Sub shall vest in the Surviving Entity, and all debts, liabilities, obligations, restrictions and duties of each of the Company and Merger Sub shall become the debts, liabilities, obligations, restrictions and duties of the Surviving Entity.

Section 2.05. Operating Agreement. At the Effective Time, the Operating Agreement of the Company shall be amended so as to read in its entirety as set forth in Exhibit A, and, as so amended, shall be the operating agreement of the Surviving Entity until thereafter amended in accordance with the terms thereof or as provided by applicable Law.

Section 2.06. Officers. The officers of Merger Sub, shall, from and after the Effective Time, be set forth in the Operating Agreement of the Surviving Entity, as may be amended from time to time in accordance with the provisions thereof.

Section 2.07. Effect of the Merger on Membership Interest. At the Effective Time, as a result of the Merger and without any action on the part of Parent, Merger Sub, the Company or any Member:

(a) Conversion of Membership Interest. The Membership Interest held by each Member immediately prior to the Effective Time (other than Dissenting Membership Interests) shall be converted into the right to receive such Portion of the Closing Merger Consideration, the First Milestone Payment, if any, the Second Milestone Payment, if any, the Third Milestone Payment, if any, and the Holdback Amount paid to the Members, if any, without interest, as set forth in the Consideration Spreadsheet, at the times and upon the terms and subject to the conditions set forth in this Agreement.

(b) Conversion of Merger Sub Capital Stock. Each share of common stock, par value $0.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one newly issued, fully paid and non-assessable Membership Interest of the Surviving Entity.

Section 2.08. Dissenting Membership Interests. Notwithstanding any provision of this Agreement to the contrary, including **Section 2.07**, Membership Interests issued and outstanding immediately prior to the Effective Time and held by a holder who has not voted in favor of adoption of this Agreement or consented thereto in writing and who has properly exercised dissenters rights of such Membership Interests in accordance with Section 1705.41 of the Ohio Act (such Membership Interests being referred to collectively as the "**Dissenting Membership Interests**" until such time as such holder fails to perfect or otherwise loses such holder's appraisal rights under the Ohio Act with respect to such Membership Interests) shall not be converted into a right to receive a Portion of the Merger Consideration, but instead shall be entitled to only such rights as are granted by Section 1705.41 of the Ohio Act; *provided, however*, that if, after the Effective Time, such holder fails to perfect, withdraws or loses such holder's right to dissent pursuant to Section 1705.41 of the Ohio Act or if a court of competent jurisdiction shall determine that such holder is not entitled to the relief provided by Section 1705.41 of the Ohio Act, such Membership Interests shall be treated as if they had been converted as of the Effective Time into the right to receive the Portion of the Merger Consideration, if any, to which such holder is entitled pursuant to **Section 2.07(a)**, without interest thereon. The Company shall provide Parent prompt written notice of any demands received by the Company for dissenters rights, any withdrawal of any such demand and any other demand, notice or instrument delivered to the Company prior to the Effective Time pursuant to the Ohio Act that relates to such demand, and Parent shall have the opportunity and right to direct all negotiations and proceedings with respect to such demands. Except with the prior written consent of Parent, the Company shall not make any payment with respect to, or settle or offer to settle, any such demands.

Section 2.09. Surrender and Payment.

(a) At the Effective Time, all Membership Interests outstanding immediately prior to the Effective Time shall automatically be cancelled and retired and shall cease to exist, and, subject to **Section 2.08**, each holder of Membership Interests shall cease to have any rights as a Member of the Company.

(b) Parent shall be appointed as of the Effective Time (the "**Exchange Agent**") to act as the exchange agent in the Merger.

(c) As promptly as practicable following the date hereof and in any event not later than two (2) Business Days prior to the Closing Date, each Member shall deliver to the Exchange Agent a duly completed and validly executed letter of transmittal substantially in the form of Exhibit B hereto (the "**Letter of Transmittal**"), together with written instructions regarding (i) the Person in whose name the Portion of the Closing Merger Consideration issuable to such holder shall be registered, and (ii) the Person to whom the certificate(s) representing such Parent Common Stock shall be delivered at Closing (collectively, subclauses (i) and (ii), the "**Instructions**"). Until such Letter of Transmittal is delivered, the Membership Interests shall be deemed from and after the Effective Time, for all purposes, to evidence the right to receive the Portion of the Merger Consideration as provided in **Section 2.07(a)**.

(d) The Exchange Agent shall as soon as practicable following the Effective Time, subject to the Exchange Agent's receipt of such Member's delivery of a Letter of Transmittal and Instructions, issue and deliver to such Member the certificate(s) representing such Member's Portion of the Closing Merger Consideration in accordance with such Instructions.

(e) If any portion of the Closing Merger Consideration is to be paid to a Person other than the Person in whose name the Membership Interest is registered, it shall be a condition to such payment that (i) the Exchange Agent be provided with reasonable evidence of the transfer of such Membership Interest to such Person, and (ii) the Person requesting such payment shall pay to the Exchange Agent any transfer or other Tax required as a result of such payment to a Person other than the registered holder of such Membership Interest or establish to the reasonable satisfaction of the Exchange Agent that such Tax has been paid or is not payable.

Section 2.10. No Further Ownership Rights in Company Membership Interests. All Merger Consideration paid or payable upon the delivery of a Letter of Transmittal in accordance with the terms hereof shall be deemed to have been paid or payable in full satisfaction of all rights pertaining to the Membership Interests, and from and after the Effective Time, there shall be no further registration of transfers of Membership Interests on the transfer books of the Surviving Entity. If, after the Effective Time, Letters of Transmittal with regard to Membership Interests which have not been surrendered in accordance with **Section 2.09** are presented to the Surviving Entity, the Membership Interests so surrendered shall be cancelled and exchanged for the Merger Consideration provided for, and in accordance with the procedures set forth, in this **ARTICLE II** and elsewhere in this Agreement.

Section 2.11. Adjustments. Without limiting the other provisions of this Agreement, if at any time during the period between the date of this Agreement and the Effective Time, any change in the outstanding shares of capital stock of Parent shall occur, including by reason of any reclassification, recapitalization, stock split (including reverse stock split) or combination, exchange or readjustment of shares, or any stock dividend or distribution paid in stock, the Merger Consideration and any other amounts payable pursuant to this Agreement shall be appropriately adjusted to reflect such change. For the avoidance of doubt, issuances of Parent Common Stock will have no effect or adjustment to the Merger Consideration set forth in this **Section 2.11**.

Section 2.12. Withholding Rights. Each of the Exchange Agent, Parent, Merger Sub and the Surviving Entity shall be entitled to deduct and withhold from the consideration otherwise payable to any Person pursuant to this **ARTICLE II** such amounts as may be required to be deducted and withheld with respect to the making of such payment under any provision of Tax Law. To the extent that amounts are so deducted and withheld by the Exchange Agent, Parent, Merger Sub or the Surviving Entity, as the case may be, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which the Exchange Agent, Parent, Merger Sub or the Surviving Entity, as the case may be, made such deduction and withholding.

Section 2.13. Intentionally Omitted.

Section 2.14. Holdback Amount. At the Closing, Parent shall retain the Holdback Amount solely to satisfy any reduction in the Merger Consideration to which Parent is entitled pursuant to the provisions of **ARTICLE VIII**, or any other provision of this Agreement. Subject to such provisions, Parent shall pay the Holdback Amount as follows:

(a) Payments. Within ten (10) Business Days following the Holdback Amount Payment Date, Parent shall pay, deliver, or cause to be paid or delivered, to the Members the remaining Holdback Amount, if any, minus any portion thereof which Parent is directed or entitled to retain pursuant to **ARTICLE VIII**, or any other provision of this Agreement for amounts owed to Parent, by (i) paying to each Member its Portion of the remaining cash portion of the Holdback Amount, if any, and (ii) issuing to each Member a certificate evidencing such Member's Portion of the remaining Parent Common Stock portion of the Holdback Amount, if any, in each case as set forth in Consideration Spreadsheet.

(b) Letter of Transmittal. Only Members who have properly delivered a duly completed and validly executed Letter of Transmittal as set forth in **Section 2.09(c)** shall be entitled to receive any payment of the Holdback Amount, if any, payable pursuant to this Agreement.

Section 2.15. Milestones. Subject to the terms and conditions of this Agreement, Parent shall pay to the Members the Milestone Payments (if any) as follows:

(a) Milestone Payments. If Parent determines pursuant to **Section 2.15(b)** that a Milestone has been Satisfied on or prior to the Milestone Deadline Date applicable to such Milestone, Parent shall pay or cause to be paid to the Members the applicable Milestone Payments within ten (10) Business Days of the applicable Satisfaction Date with respect to such Milestone as set forth on **Annex A**, by delivering to each Member its Adjusted Pro Rata Interest of such Milestone Payment.

(b) Satisfaction of Milestones. Parent, using its reasonable and good faith discretion, shall determine whether or not each Milestone has been fully satisfied ("**Satisfied**" or "**Satisfaction**") and the date upon which such Satisfaction occurs (with respect to each Milestone, the "**Satisfaction Date**"). Parent shall consult in good faith with Member Representative when determining whether or not each Milestone has been Satisfied. This **Section 2.15** shall not impose or imply any restriction or limitation on Parent's right to conduct its business in its sole and absolute discretion. The Parent, itself or through one or more of its Affiliates, will use Commercially Reasonable Efforts to achieve each of the Milestones. For purposes of this **Section 2.15(b)**, "**Commercially Reasonable Efforts**" means with respect to the efforts to be expended by Parent and its Affiliates with respect to the Milestones, reasonable, diligent, good faith efforts to accomplish any such Milestones as is commonly used in the biotechnology industry generally to accomplish a similar objective under similar circumstances by companies of similar size with similar resources as Parent, and such efforts will be substantially equivalent to those efforts and resources commonly used in the biotechnology industry generally by a biotechnology company for a product owned by it or to which it has rights, that is at a similar stage in its development and is of similar market potential as MPS-IIIA or MPS-IIIB taking into account efficacy, safety, approved labeling, the competitiveness of alternative products in the marketplace, the patent and other proprietary position of the product, the likelihood of regulatory approval, the profitability and commercial potential of the product, but without regard to any Milestone Payment due to be paid to the Members hereunder.

(c) Milestone Satisfaction Dispute Resolution. In the event that Parent determines that a Milestone has not been Satisfied on or before the applicable Milestone Deadline Date, Parent shall deliver to Member Representative written notice of such failure to achieve the applicable Milestones setting forth in reasonable detail the basis for such determination (the "**Milestone Failure Notice**") no later than ten (10) Business Days following the applicable Milestone Deadline Date. If Member Representative disagrees with Parent's determination as set forth in the Milestone Failure Notice, Member Representative shall notify Parent in writing in detail of its disagreement and the basis therefor within ten (10) Business Days after receipt of such determination (the "**Member Representative Objection**"). If Member Representative Objection is not received by Parent within such ten (10) Business Day period, Parent's determination shall be deemed final and binding for all purposes of this Agreement. If Parent does receive the Member Representative Objection within such ten (10) Business Day period, Parent and Member Representative shall attempt in good faith to resolve any disagreement for a period of thirty (30) days after Parent's receipt of the Member Representative Objection. If Parent and Member Representative resolve their disagreement they shall set forth the agreement in a written document executed by Parent and Member Representative and such written document shall be deemed final and binding for all purposes of this Agreement. If Parent and Member Representative are unable to resolve their disagreement within such thirty (30) day period, the parties shall submit such dispute to binding arbitration in Washington, D.C. before a single arbitrator, who shall have significant experience in biopharmaceutical clinical development disputes. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. The costs of arbitration, including the fees of the arbitrator, shall be born equally one-half by Parent and one-half by the Members. Notwithstanding the foregoing, the arbitrator may, in the award, allocate all or a portion of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the other party.

(d) Form of Milestone Payment. Parent may pay each Milestone Payment in cash, shares of Parent Common Stock or a combination thereof, in its sole discretion, subject in all cases to Stockholder Approval (for the avoidance of doubt, such Stockholder Approval shall not include the shares of Parent Common Stock held by the Members) to approve such issuance in Parent Common Stock. Shares of Parent Common Stock included in a Milestone Payment shall be valued at the Parent Share Value.

(e) Tax Treatment of Contingent Payment. Any Milestone Payment shall be treated as including two components, respectively, a principal component and an interest component, the amounts of which shall be determined as provided in Reg. Section 1.483-4(b) example (2) using the 3-month test rate of interest provided for in Reg. Section 1.1274-4(a)(1)(ii) employing the semi-annual compounding period. As to each such Milestone Payment paid in Parent Common Stock, shares representing the principal component and any shares representing the interest component shall be represented by separate share certificates.

(f) Recordkeeping. From the Closing Date until the earlier of (A) such time as all Milestone Payments have been paid by Parent, or Parent has caused them to be paid, pursuant to this **Section 2.15** or (B) ninety (90) days after the expiration of the latest Milestone Deadline Date (the "**Milestone Period**"), Parent shall, and shall cause its applicable Affiliates to, maintain reasonable documentation, consistent with Parent's customary practices and in compliance with applicable Laws, regarding its activities relating to seeking and obtaining the Milestones (the "**Milestone Records**"). Further, notwithstanding anything else to the contrary in this **Section 2.15(f)**, Parent shall maintain the Milestone Records during any pending audit performed by Member Representative regarding the Milestone Payments.

(g) Audit Rights. If Member Representative desires to pursue audit compliance with this **Section 2.15**, Member Representative shall give written notice to Parent of its desire to conduct such audit (the "**Audit Notice**"). Within ten (10) Business Days after Parent's receipt of the Audit Notice, Parent shall afford Member Representative and an independent accounting firm engaged by Member Representative (the "**Representative's Accountant**") reasonable access, during normal business hours, to such information in the possession of Parent and its Affiliates as may reasonably be requested by Member Representative and the Representative's Accountant for the purposes of determining compliance with this **Section 2.15**. Member Representative may deliver an Audit Notice no more often than one (1) time per year.

(h) Reporting. Until the expiration of the Milestone Period, Parent shall provide Member Representative, on a semi-annual basis, on or about February 1st and August 1st of each year within such period, a written summary in reasonable detail regarding the status of its efforts to achieve the Milestones and Parent's progress with respect thereto, including Parent's then-current plans for progressing toward the achievement thereof (each such report, an "**Update Report**"). Within twenty (20) Business Days after delivery of an Update Report, if Member Representative requests in writing a meeting with representatives of Parent to discuss such report, Parent shall make available for such a meeting to be held in Parent's offices one or more representatives (as determined by Parent); provided, however, that, for the avoidance of doubt, at any such meeting, other representatives (including counsel and advisors) of Parent and Member Representative may be present. Member Representative may not request more than two (2) meetings with the Buyer in any twelve (12) month period. In the absence of a timely written request by Member Representative for such a meeting, Parent shall not have any further obligations to hold any meeting. All information contained in any Update Report, or conveyed to Member Representative in any meeting or other communication regarding an Update Report, shall be subject to the confidentiality obligations set forth herein. Each of the Parent and Member Representative shall be solely responsible for bearing its own costs associated with exercising its rights or performing its obligation under this **Section 2.15(h)**.

(i) Adjusted Pro Rata Interest. At least three (3) Business Days before Parent's payment of any Milestone, Member Representative will provide Parent with an updated calculation of each Member's Adjusted Pro Rata Interest (the "**Updated Adjusted Pro Rata Interest**") that will replace the previous percentage of such Member's Adjusted Pro Rata Interest (the "**Replaced Adjusted Pro Rata Interest**"). After Member Representative delivers the Updated Adjusted Pro Rata Interest to Parent, all references in this Agreement to a Member's Adjusted Pro Rata Interest shall be equal to the Updated Adjusted Pro Rata Interest and Parent will not use the Replaced Adjusted Pro Rata Interest for any future calculations. Member Representative's delivery of each Member's Updated Adjusted Pro Rata Interest to Parent will have no effect on previous calculations under this Agreement made using the Replaced Adjusted Pro Rata Interest.

(j) Pro Rata Interest. At least three (3) Business Days before Parent's payment of any Milestone, Member Representative will provide Parent with an updated calculation of each Member's Pro Rata Interest (the "**Updated Pro Rata Interest**") that will replace the previous percentage of such Member's Pro Rata Interest (the "**Replaced Pro Rata Interest**") effective as of the date Parent paid the most recent Milestone Payment to the Members. After Member Representative delivers the Updated Pro Rata Interest to Parent, all references in this Agreement to a Member's Pro Rata Interest shall be equal to the Updated Pro Rata Interest. Member Representative's delivery of each Member's Updated Pro Rata Interest to Parent will have no effect on previous calculations under this Agreement made using the Replaced Pro Rata Interest.

(k) Adjustments for Tax Purposes. Any payments made pursuant to this **Section 2.15** that are not characterized as interest in accordance with **Section 2.15(e)** shall, unless otherwise required by Law, be treated by the parties for Tax purposes as an adjustment to the consideration paid for the Membership Interests.

Section 2.16. Consideration Spreadsheet.

(a) At least three (3) Business Days before the Closing (the "**Consideration Determination Date**"), the Company shall prepare and deliver to Parent a spreadsheet (the "**Consideration Spreadsheet**"), certified by the President & Chief Executive Officer of the Company, which shall set forth, as of the Closing Date and immediately prior to the Effective Time except as set forth below, the following:

(i) the names and addresses of all Members;

(ii) the Portion of the Merger Consideration payable to each Member;

(iii) the Pro Rata Interest of the Members (effective as of the Effective Time); and

(iv) the Adjusted Pro Rata Interest of the Members (effective as of the Effective Time).

(b) Each Member consents and agrees that, for the purposes of determining the Member's Portion of the Merger Consideration, the value of the shares of Parent Common Stock shall be the Parent Share Value. The Members further agree that any Preferred Return (as defined in the Operating Agreement) will cease to accrue as of the Consideration Determination Date.

(c) The parties agree that Parent and Merger Sub shall be entitled to rely on the Consideration Spreadsheet in making payments under this **ARTICLE II** and Parent and Merger Sub shall not be responsible for the calculations or the determinations regarding such calculations in such Consideration Spreadsheet.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the correspondingly numbered Section of the Company Disclosure Schedules, the Company represents and warrants to Parent and Merger Sub that the statements contained in this **ARTICLE III** are true and correct as of the date hereof.

Section 3.01. Organization and Qualification of the Company. The Company is a limited liability company duly organized, validly existing and in good standing under the Laws of the state of Ohio and has full limited liability company power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. **Section 3.01** of the Company Disclosure Schedules sets forth each jurisdiction in which the Company is licensed or qualified to do business, and the Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary.

Section 3.02. Authority; Board Approval.

(a) The Company has full limited liability company power and authority to enter into and perform its obligations under this Agreement and the Ancillary Documents to which it is a party and, subject to, in the case of the consummation of the Merger, adoption of this Agreement by the affirmative vote or consent of Members representing more than seventy percent (70%) of the issued and outstanding Units of the Company ("**Requisite Member Approval**"), to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Company of this Agreement and any Ancillary Document to which it is a party and the consummation by the Company of the transactions contemplated hereby and thereby have been duly authorized by all requisite limited liability company action on the part of the Company and no other limited liability company proceedings on the part of the Company are necessary to authorize the execution, delivery and performance of this Agreement or to consummate the Merger and the other transactions contemplated hereby and thereby, subject only, in the case of consummation of the Merger, to the receipt of the Requisite Member Approval. The Requisite Member Approval is the only vote or consent of the holders of any class or series of the Company's capital stock required to approve and adopt this Agreement and the Ancillary Documents, approve the Merger and consummate the Merger and the other transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by the Company, and (assuming due authorization, execution and delivery by each other party hereto) this Agreement constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or similar laws relating to or affecting creditors' rights generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). When each Ancillary Document to which the Company is or will be a party has been duly executed and delivered by the Company (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of the Company enforceable against it in accordance with its terms, subject to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or similar laws relating to or affecting creditors' rights generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) The Company Board, by resolutions duly adopted by unanimous vote at a meeting of all Managers of the Company duly called and held or pursuant to a written consent and, as of the date hereof, not subsequently rescinded or modified in any way, has, as of the date hereof (i) determined that this Agreement and the transactions contemplated hereby, including the Merger, are fair to, and in the best interests of, the Members, (ii) approved and declared advisable the "agreement of merger" (as such term is used in Section 1705.36 of the Ohio Act) contained in this Agreement and the transactions contemplated by this Agreement, including the Merger, in accordance with the Ohio Act, (iii) directed that the "agreement of merger" contained in this Agreement be submitted to the Members for adoption, and (iv) resolved to recommend that the Members adopt the "agreement of merger" set forth in this Agreement (collectively, the "**Managers Recommendation**") and directed that such matter be submitted for consideration by the Members.

Section 3.03. No Conflicts; Consents. The execution, delivery and performance by the Company of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, including the Merger, do not and will not: (i) conflict with or result in a violation or breach of, or default under, any provision of the articles of organization of the Company or Operating Agreement ("**Company Charter Documents**"); (ii) subject to, in the case of the Merger, obtaining the Requisite Member Approval, conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to the Company; (iii) except as set forth in **Section 3.03** of the Company Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract to which the Company is a party or by which the Company is bound or to which any of their respective properties and assets are subject (including any Material Contract) or any Permit affecting the properties, assets or business of the Company; or (iv) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of the Company. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to the Company in connection with the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, except for the filing of the Ohio Certificate of Merger with the Secretary of State of the State of Ohio and the Delaware Certificate of Merger with the Secretary of State of the State of Delaware, as applicable.

Section 3.04. Capitalization.

(a) There are 189,950 Units issued and outstanding as of the close of business on the date of this Agreement.

(b) **Section 3.04(b)** of the Company Disclosure Schedules set forth, as of the date hereof, the name of each Person that is the registered owner of any Units and the number of Units owned by such Person.

(c) (i) no subscription, warrant, option, convertible or exchangeable security, or other right (contingent or otherwise) to purchase or otherwise acquire equity securities of the Company is authorized or outstanding, and (ii) the Company has no commitment to issue membership interests, subscriptions, warrants, options, convertible or exchangeable securities, or other such rights or to distribute to holders of any of its equity securities any evidence of indebtedness or asset, to repurchase or redeem any securities of the Company or to grant, extend, accelerate the vesting of, change the price of, or otherwise amend any warrant, option, convertible or exchangeable security or other such right. There are no undeclared or accrued and unpaid dividends with respect to any of the Company's Membership Interests.

(d) Except as set forth on **Section 3.04(d)** of the Company Disclosure Schedules, all issued and outstanding Units are (i) duly authorized, validly issued, fully paid and non-assessable; (ii) not subject to any preemptive rights created by statute, the Company Charter Documents or any agreement to which the Company is a party; and (iii) free of any Encumbrances created by the Company in respect thereof. All issued and outstanding Units were issued in compliance with applicable Law.

(e) No outstanding Unit is subject to vesting or forfeiture rights or repurchase by the Company. There are no outstanding or authorized stock appreciation, dividend equivalent, phantom stock, profit participation or other similar rights with respect to the Company or any of its securities.

(f) All distributions, dividends, repurchases and redemptions of the membership interest (or other equity interests) of the Company were undertaken in compliance with the Company Charter Documents then in effect, any agreement to which the Company then was a party and in compliance with applicable Law.

Section 3.05. No Subsidiaries. The Company does not own, or have any interest in any shares or have an ownership interest in any other Person.

Section 3.06. Financial Matters.

(a) Financial Statements. **Section 3.06(a)** of the Company Disclosure Schedules contains complete copies of each of the following:

(i) the Company's audited balance sheet (the "**Balance Sheet**") as at June 30, 2014 (the "**Balance Sheet Date**") for the six month period then ended,

(ii) the Company's unaudited financial statements consisting of the balance sheet of the Company as at December 31, 2014 and December 31, 2013 and the related statements of income and retained earnings, members' equity and cash flow for the years then ended (the "**Unaudited Financial Statements**"), and

(iii) the Company's unaudited financial statements consisting of the balance sheet of the Company as of March 31, 2015, and the related statements of income and retained earnings, members' equity and cash flow for three-month period then ended (the "**Interim Financial Statements**" and together with Balance Sheet and the Unaudited Financial Statements, the "**Financial Statements**").

(b) Compliance with GAAP, etc. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not, individually or in the aggregate, be materially adverse). The Financial Statements are based on the books and records of the Company, and fairly present the financial condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated. The balance sheet of the Company as of March 31, 2015 is referred to herein as the "**Interim Balance Sheet**" and the date thereof as the "**Interim Balance Sheet Date**". The Company maintains a standard system of accounting established and administered in accordance with GAAP.

(c) Undisclosed Liabilities. Except as disclosed in **Section 3.06(c)** of the Company Disclosure Schedules, the Company has no liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise ("**Liabilities**"), except (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, and (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date and which are not, individually or in the aggregate, material in amount.

(d) Banking Facilities. **Section 3.06(d)** of the Company Disclosure Schedules sets forth an accurate and complete list of (i) each bank, savings and loan or similar financial institution with which the Company has an account or safety deposit box or other similar arrangement and any numbers or other identifying codes of such accounts, safety deposit boxes or such other arrangements maintained by the Company thereat, and (ii) the names of all Persons authorized to draw on any such account or to have access to any such safety deposit box facility or such other arrangement.

Section 3.07. Absence of Certain Changes, Events and Conditions. Except as set forth in **Section 3.07** of the Company Disclosure Schedules, since the Balance Sheet Date, and other than in the ordinary course of business consistent with past practice, there has not been, with respect to the Company, any:

(a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) amendment of the Company Charter Documents;

(c) split, combination or reclassification of any of its Units;

(d) issuance, sale or other disposition of any of its Units or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its Units;

(e) declaration or payment of any dividends or distributions on or in respect of any of its Units or redemption, purchase or acquisition of its Units;

(f) material change in any method of accounting or accounting practice of the Company, except as required by GAAP or as disclosed in the notes to the Financial Statements;

(g) entry into any Contract that would constitute a Material Contract;

(h) incurrence, assumption or guarantee of any indebtedness for borrowed money except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;

(i) transfer, assignment, sale or other disposition of any of the assets shown or reflected in the Balance Sheet or cancellation of any debts or entitlements;

(j) transfer, assignment or grant of any license or sublicense of any material rights under or with respect to any Company Intellectual Property or Company IP Agreements;

(k) material damage, destruction or loss (whether or not covered by insurance) to its property;

(l) any capital investment in, or any loan to, any other Person;

(m) acceleration, termination, material modification to or cancellation of any material Contract (including, but not limited to, any Material Contract) to which the Company is a party or by which it is bound;

(n) any material capital expenditures;

(o) imposition of any Encumbrance upon any of the Company properties, capital stock or assets, tangible or intangible;

(p) any loss, damage, destruction or eminent domain taking, whether or not covered by insurance, with respect to any of its material assets or the business;

(q) (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of its current or former employees, officers, directors, independent contractors or consultants, other than as provided for in any written agreements or required by applicable Law, (ii) change in the terms of employment for any employee or any termination of any employees, or (iii) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, director, independent contractor or consultant;

(r) hiring or promoting any person as or to (as the case may be) an officer of the Company or hiring or promoting any employee below an officer of the Company except to fill a vacancy in the ordinary course of business;

(s) adoption, modification or termination of any: (i) employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant, (ii) Benefit Plan or (iii) collective bargaining or other agreement with a Union, in each case whether written or oral;

(t) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any of its stockholders or current or former directors, officers and employees;

(u) entry into a new line of business or abandonment or discontinuance of existing lines of business;

(v) except for the Merger, adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(w) purchase, lease or other acquisition of the right to own, use or lease any property or assets;

(x) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof;

(y) except for the Tax Election, action by the Company to make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, change any accounting method in regard to Taxes, take any action, omit to take any action or enter into any other transaction that would have the effect of increasing the Tax liability or reducing any Tax asset of Parent in respect of any Post-Closing Tax Period; or

(z) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

Section 3.08. Material Contracts.

(a) **Section 3.08(a)** of the Company Disclosure Schedules lists each of the following Contracts of the Company (such Contracts, together with all Contracts concerning the occupancy, management or operation of any Real Property (including without limitation, brokerage contracts) listed or otherwise disclosed in **Section 3.10(b)** of the Company Disclosure Schedules and all Company IP Agreements set forth in **Section 3.11(c)** of the Company Disclosure Schedules, being "**Material Contracts**"):

(i) all Contracts that require the Company to purchase its total requirements of any product or service from a third party or that contain "take or pay" provisions;

(ii) all Contracts that provide for the indemnification by the Company of any Person or the assumption of any Tax, environmental or other Liability of any Person;

(iii) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(iv) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts to which the Company is a party;

(v) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements) to which the Company is a party and which are not cancellable without material penalty or without more than 60 days' notice;

(vi) except for Contracts relating to trade receivables, all Contracts relating to indebtedness (including, without limitation, guarantees) of the Company;

(vii) all Contracts with any Governmental Authority to which the Company is a party ("**Government Contracts**");

(viii) all Contracts that limit or purport to limit the ability of the Company to compete in any line of business or with any Person or in any geographic area or during any period of time;

(ix) any Contracts to which the Company is a party that provide for any joint venture, partnership or similar arrangement by the Company;

(x) all collective bargaining agreements or Contracts with any Union to which the Company is a party;

(xi) any grants or research funding agreements, including agreements with the National Institutes of Health ("**NIH**"), as well as any collaboration agreements; and

(xii) any other Contract that is material to the Company and not previously disclosed pursuant to this **Section 3.08**.

(b) Each Material Contract is valid and binding on the Company in accordance with its terms and is in full force and effect, subject to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or similar laws relating to or affecting creditors' rights generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). None of the Company or, to the Company's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been delivered to Parent.

Section 3.09. Assets.

(a) Ownership of Assets. The Company has good and marketable title to, or, in the case of property held under a lease or other Contract, a sole and exclusive, enforceable leasehold interest in, or adequate rights to use, all of its properties, rights and assets, whether real or personal and whether tangible or intangible, including all Assets reflected in the Balance Sheet or acquired after the Balance Sheet Date, except for such Assets that have been sold or otherwise disposed of since the Balance Sheet Date in the ordinary course of business (collectively, the "**Assets**"). All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):

(i) statutory liens for current Taxes not yet due and payable;

(ii) mechanics', carriers', workmen's, repairmen's or similar statutory liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the business of the Company; or

(iii) liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the business of the Company.

(b) Sufficiency of Assets. The Assets comprise all of the assets, properties and rights of every type and description, whether real or personal, tangible or intangible, that are used in the operations of the Business of the Company and are adequate to conduct the business of the Company as currently being conducted by the Company.

(c) Condition of Tangible Assets. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property of the Company included in the Assets, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost.

Section 3.10. Real Property.

(a) The Company does not own, nor has it ever owned, real property. **Section 3.10(a)** of the Company Disclosure Schedules set forth a list of the addresses of all real property leased, subleased or licensed by, or for which a right to use or occupy has been granted to, the Company (the "**Real Property**").

(b) **Section 3.10(b)** of the Company Disclosure Schedules lists (i) the street address of each parcel of Real Property; (ii) if such property is leased or subleased by the Company, the landlord under the lease, the rental amount currently being paid, and the expiration of the term of such lease or sublease for each leased or subleased property; and (iii) the current use of such property.

(c) The Company has delivered or made available to Parent true, complete and correct copies of any leases of the Company for the Real Property. The Company is not a sublessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any leased Real Property. The use and operation of the Real Property in the conduct of the Company's business do not violate in any material respect any Law, Material Contract, or Company Permit. There are no Actions pending nor, to the Company's Knowledge, threatened against or affecting the Real Property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain proceedings.

Section 3.11. Intellectual Property.

(a) **Section 3.11(a)** of the Company Disclosure Schedules lists all (i) Company IP Registrations and (ii) Company Intellectual Property, including software, that are not registered but that are material to the Company's business or operations. All required filings and fees related to the Company IP Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Company IP Registrations are otherwise in good standing. The Company has provided Parent with true and complete copies of file histories, documents, certificates, office actions, correspondence and other materials related to all Company IP Registrations.

(b) No Governmental Authority grants were used in the conception or reduction to practice of any Company IP Registrations.

(c) **Section 3.11(c)** of the Company Disclosure Schedules lists all Company IP Agreements. The Company has provided Parent with true and complete copies of all such Company IP Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Company IP Agreement is valid and binding on the Company in accordance with its terms and is in full force and effect, subject to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or similar laws relating to or affecting creditors' rights generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). Neither the Company nor, to the Company's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of breach or default of or any intention to terminate, any Company IP Agreement.

(d) Except as set forth in **Section 3.11(d)** of the Company Disclosure Schedules, the Company is the sole and exclusive legal and beneficial, and with respect to the Company IP Registrations, record, owner of all right, title and interest in and to the Company Intellectual Property, and has the valid right to use all other Intellectual Property used in the Company's current business or operations, in each case, free and clear of Encumbrances other than Permitted Encumbrances. Without limiting the generality of the foregoing, except as set forth in **Section 3.11(d)** of the Company Disclosure Schedules, the Company has entered into binding, written agreements with every current and former employee, and with every current and former independent contractor, whereby such employees and independent contractors (i) assign to the Company any ownership interest and right they may have in the Company Intellectual Property; and (ii) acknowledge the Company's exclusive ownership of all Company Intellectual Property. The Company has provided Parent with true and complete copies of all such agreements.

(e) Except as set forth in **Section 3.11(e)** of the Company Disclosure Schedules, the consummation of the transactions contemplated hereunder will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, the Company's right to own, use or hold for use any Intellectual Property as owned, used or held for use in the conduct of the Company's business or operations as currently conducted.

(f) Except as set forth on **Schedule 3.11(f)**, to the Company's Knowledge, the Company's rights in the Company Intellectual Property are valid, subsisting and enforceable. Except as set forth on **Section 3.11(f)** of the Company Disclosure Schedules, the Company has taken all reasonable steps to maintain the Company Intellectual Property and to protect and preserve the confidentiality of all trade secrets included in the Company Intellectual Property, including requiring all Persons having access thereto to execute written non-disclosure agreements. Except as set forth on **Section 3.11(f)** of the Company Disclosure Schedules, all current and former employees, consultants and contractors of the Company who contributed to the creation or development of the Company Intellectual Property that is owned by the Company have executed Contracts that assign to the Company all of such Person's rights to Intellectual Property in such contribution.

(g) To the Company's Knowledge, and, except as set forth on **Section 3.11(g)** of the Company Disclosure Schedules, the conduct of the Company's business as currently and formerly conducted, and the products, processes and services of the Company, have not infringed, misappropriated, diluted or otherwise violated, and do not infringe, dilute, misappropriate or otherwise violate the Intellectual Property or other rights of any Person. To the Company's Knowledge, no Person has infringed, misappropriated, diluted or otherwise violated, or is currently infringing, misappropriating, diluting or otherwise violating, any Company Intellectual Property.

(h) Except as set forth on **Section 3.11(h)** of the Company Disclosure Schedules, there are no Actions (including any oppositions, interferences or re-examinations) settled, pending or, to the Company's Knowledge, threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, dilution or violation of the Intellectual Property of any Person by the Company; (ii) challenging the validity, enforceability, registrability or ownership of any Company Intellectual Property or the Company's rights with respect to any Company Intellectual Property; or (iii) by the Company or any other Person alleging any infringement, misappropriation, dilution or violation by any Person of the Company Intellectual Property. The Company is not subject to any outstanding or prospective Governmental Order (including any motion or petition therefor) that does or would restrict or impair the use of any Company Intellectual Property.

(i) Each of Douglas M. McCarty and Haiyan Fu is (i) employed solely by Nationwide and (ii) not party to or bound by any Contract, either assignment, consulting or otherwise, pursuant to which any rights in or to Company Intellectual Property are granted to a third party.

Section 3.12. Insurance. **Section 3.12** of the Company Disclosure Schedules sets forth a true and complete list of each insurance policy of the Company (collectively, the "**Insurance Policies**"), including policy number, type, coverage, underwriter, and true and complete copies of such Insurance Policies have been made available to Parent. Such Insurance Policies are in full force and effect and shall remain in full force and effect following the consummation of the transactions contemplated by this Agreement. The Company has not received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if due and payable prior to Closing, will be paid prior to Closing in accordance with the payment terms of each Insurance Policy. The Insurance Policies do not provide for any retrospective premium adjustment or other experience-based liability on the part of the Company. All such Insurance Policies (a) are valid and binding in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage. There are no claims related to the business of the Company pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. The Company is not in default under, and has not otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Company and are sufficient for compliance with all applicable Laws and Contracts to which the Company is a party or by which it is bound.

Section 3.13. Legal Proceedings; Governmental Orders.

(a) There are no Actions pending or, to the Company's Knowledge, threatened (a) against or by the Company affecting any of its properties or assets; or (b) against or by the Company that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To the Company's Knowledge, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) There are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Company or any of its Assets.

Section 3.14. Compliance With Laws; Permits; Regulatory Matters.

(a) The Company and, to the Company's Knowledge, its Representatives have complied, and are now complying, in all material respects with all Laws applicable to it or its business, properties or assets, including, without limitation, the FDA Act (21 U.S.C. §§301 et seq.) and its implementing regulations. Notwithstanding the foregoing, no representation or warranty is made in this **Section 3.14** with respect to (i) Intellectual Property and related matters; (ii) applicable laws with respect to Taxes; (iii) ERISA and other employee benefit-related matters; (iv) labor law matters; or (v) Environmental Laws, and representations and warranties with respect to these matters are exclusively made in **Sections 3.11, 3.15, 3.16, 3.18**.

(b) The Company and, to the Company's Knowledge, its Representatives have all material Permits required to conduct their business, as it relates to the Company's operations, and all such Permits are valid and in full force and effect (including all material Permits that may be required by the FDA, NIH or any other Governmental Authority engaged in the regulation of the operations of the Company's business). All fees and charges with respect to such Permits as of the date hereof have been paid in full and all filing, reporting, and maintenance obligations have been completely and timely satisfied. **Section 3.14(b)** of the Company Disclosure Schedules lists all current Permits issued to the Company or required for the conduct of activities related to the Company's business, including those Permits issued and held by the Company's Representatives for the Company's business (the "**Company Permits**"), including the names of the Permits, the holder of the Permit, and their respective dates of issuance and expiration. All Company Permits are valid and in full force and effect and will continue to be so upon consummation of the transactions contemplated by this Agreement, except for such invalidity or failure to be in full force and effect that, individually or in the aggregate, would not be material to the Company taken as a whole. No event has occurred that, with or without notice lapse or limitation of time or both, would reasonably be expected to result in the revocation, suspension, or lapse of any Company Permit. The Company, and to the Company's Knowledge, its Representatives, are in material compliance with the terms of the Company Permits, except for such failures to comply that, individually or in the aggregate, would not be material to the Company taken as a whole. The Company, and to the Company's Knowledge, its Representatives, have not received any notice or other communication from any Governmental Authority regarding (i) any material adverse change in any Company Permit, or any failure to comply with any applicable Laws of any Governmental Authority or any term or requirement of any Company Permit or (ii) any lapse, revocation, withdrawal, suspension, cancellation, limitation, subjection to an integrity review, termination, material modification of, or any other action against any Company Permit.

(c) (i) None of the Company and, to the Company's Knowledge, any of its Representatives, have been convicted of any crime, engaged in any conduct, or have been the subject of any proceeding that has previously caused or would reasonable be expected to result in (A) debarment or suspension from participation in any activities or programs related to pharmaceutical product candidates or pharmaceutical products pursuant to 21 U.S.C. Section 335a; (B) exclusion under 42 U.S.C. Section 1320a-7 or any similar law, rule or regulation of any Governmental Authority, (C) exclusion, debarment, suspension or ineligibility to participate in federal procurement and non-procurement programs, including those produced by the U.S. General Services Administration; (D) charging or conviction of a criminal or civil offense or otherwise named in an action that falls within the ambit of 21 U.S.C. § 331, 21 U.S.C. § 333, 21 U.S.C. § 334, 21 U.S.C. § 335a, 21 U.S.C. § 335b, 42 U.S.C. § 1320a - 7, 31 U.S.C. §§ 3729 – 3733, 42 U.S.C. § 1320a-7a, or any other statute pertaining to the development, testing, manufacturing, labeling, packaging, distribution, sale, marketing, promotion, or advertising of drugs, biologics, devices, or health related products; or (E) disqualified or deemed ineligible pursuant to 21 C.F.R. Parts 312, 511, or 812 (collectively (A)-(E), "**Debarred**"); (ii) the Company, and to the Company's Knowledge, the Company's Representatives do not employ or use the services of, and are not a party to a Contract with any person who is Debarred; (iii) neither the Company nor, to the Knowledge of the Company, a Company Representative has employed, used the services of, or been a party to a Contract with any Person who, during the time when such Person was employed by, under contract with, or provided services to the Company or Representative, was Debarred; and (iv) neither the Company nor, to the Knowledge of the Company, and Representatives have received any notice or other communication from any Governmental Authority or any Person threatening, investigating, or pursuing Debarment.

(d) Each of the product candidates of the Company (including the Key Product Candidates) is and has, among other things, being developed, tested, manufactured and held, shipped, and labeled, as applicable, by the Company, and, to the Knowledge of the Company, by the Representatives, in material compliance with the FDA Act and/or applicable Law, regulations and guidances issued by the FDA, NIH, and/or other Governmental Authority. No product candidate (including the Key Product Candidates) developed, manufactured, tested, held, shipped, or labeled by the Company or, to the Knowledge of the Company, a Company Representative, has been or has been requested by a Governmental Authority or Person to be recalled, withdrawn, removed, suspended or discontinued or otherwise corrected (whether voluntarily or otherwise) (collectively "**Recall**"). Neither the Company, a Representative, nor any Governmental Authority has sought, is seeking, or has or is currently threatening or contemplating any Recall or seizure of the product candidates of the Company (including the Key Product Candidates). No proceedings (whether completed or pending) seeking the recall, withdrawal, removal, discontinuation, suspension or seizure of any such product candidate, pre-market approvals or other study authorizations, or marketing authorizations are pending, or to the Knowledge of the Company threatened, against the Company or, to the Company's Knowledge, any Representative, nor have any such proceedings been pending at any time.

(e) All material reports, documents, claims, notices and other submissions required to be filed, maintained, or furnished to the FDA, NIH, or other Governmental Authority by the Company or, to the Company's Knowledge, a Company Representative have been so filed, maintained or furnished and were complete and correct in all material respects on the date filed (or were corrected in or supplemented by a subsequent filing), except for any such reports, documents, claims or notices the failure of which to so file, maintain or furnish would not have a Material Adverse Effect with regard to the Company. For all pre-clinical studies, animal studies, and clinical trials conducted or being conducted by, in conjunction with, or on behalf of the Company or a Representative or otherwise contemplated by the Company or a Representative (collectively "**Studies**"), the Company has made available to Parent true, complete and correct copies of all study reports, protocols, and statistical analysis plans (collectively, the "**Data**"). All Data accurately, completely, and fairly reflects the results from and plans for the Studies. The Company has no knowledge of any other studies, the results of which are inconsistent with, or otherwise call into question, the Data. Except as reflected in the Data, the Company is not aware of any material facts or circumstances related to the safety or efficacy of any of the product candidates of the Company (including the Key Product Candidates) that was the subject of a Study that would materially and adversely affect the ability of the Company to receive, or otherwise delay the receipt of, regulatory approval for the marketing and commercialization of any of the product candidates of the Company (including the Key Product Candidates).

(f) The Company has delivered to Parent each annual report filed by the Company or, to the Company's Knowledge, a Representative with the FDA, NIH, and any similar Governmental Authority with respect to any product candidates (including the Key Product Candidates), if any. The Company has delivered to Parent all material information in its possession about adverse drug experiences obtained or otherwise received by the Company or, to the Company's Knowledge, a Representative from any source, including information derived from clinical investigations, animal or pre-clinical investigations, and reports in the scientific literature, and unpublished scientific papers relating to any product candidate (including the Key Product Candidates).

(g) The Company has delivered to Parent as of the date hereof (i) complete and correct copies of each investigational new drug application filed with the FDA and each similar regulatory filing made by or on behalf of the Company with any other Governmental Authority, including the NIH, and including all supplements and amendments thereto with respect to each product candidate (including the Key Product Candidate) and Study, in each case, if any (ii) all material correspondence or submissions including summaries of oral interactions sent to and received from the FDA, NIH, and similar Governmental Authority by the Company or, to the Company's Knowledge, a Representative that concerns or would reasonably be expected to impact a product candidate (including the Key Product Candidates) of the Company or Study, if any and (iii) all existing written records relating to all material discussions and all meetings between the Company and the FDA, NIH, or similar Governmental Authority with respect to each product candidate (including the Key Product Candidates) or Study, if any.

(h) The Studies have been and are being conducted in all material respects in accordance with all applicable Law and requirements of the FDA, NIH, and similar Governmental Authorities, including, but not limited to, as applicable, the requirements of "**Good Laboratory Practice**" as promulgated by the FDA under and in accordance with Title 21, Part 58 of the U.S. Code of Federal Regulations, and the applicable guidelines and standards published by the FDA that relate thereto, and the applicable principles of Good Laboratory Practice as promulgated by the European Commission under European Directives 2004/9/EC and 2004/10/EC, and the requirements of "Good Clinical Practice," informed consent, and all other applicable requirements relating to protection of human subjects and the conduct of clinical trials contained in Title 21, Parts 50, 56, and 312, and in Title 45, Part 46 of the U.S. Code of Federal Regulations, and the applicable guidelines and standards published by the FDA and United States Department of Health and Human Services that relate to the conduct of clinical studies in humans, the applicable practices and standards described in the Guidelines on Principles of Good Clinical Practice in Conduct of EU Clinical Trials as promulgated by the European Commission under European Directive 2001/20/EC, and similar applicable standards, guidelines and regulations promulgated or otherwise required by the International Conference on Harmonisation ("**ICH**") Harmonised Tripartite Guideline for Good Clinical Practice (ICH E6).

(i) Neither the Company nor, to the Company's Knowledge, any Representative has received any written or other notice or communication from the FDA, NIH, any other Governmental Authority, any Institutional Review Board ("**IRB**"), or other Person or board responsible for the oversight or conduct of any Study, requiring or threatening the termination, suspension, material modification or restriction, delay, or clinical hold of, or otherwise rejecting any Study that was, is planned to be, or is being conducted, nor has any such action commenced. All Studies were and, if still pending, are being conducted in all material respects in accordance with the protocols, procedures and controls designed and approved for such Studies, with standard medical and scientific research procedures, and in accordance with any requirement of an IRB or other Person or board responsible for review of such Studies. All Studies have obtained all applicable approvals from an IRB or other Person or board responsible for review of such Studies. In the case of any Studies involving human subjects, all subjects, or their legal representatives, have provided their informed consent for participation. **Section 3.14(i)** of the Company Disclosure Schedules lists all clinical trial investigatory sites at which a Study is or has been conducted, identifying as to each such site whether the Company or Representatives has conducted a regulatory and quality assessment and audit of such site. To the Company's Knowledge, each such site has been, and is in material compliance with applicable Law, regulations, and requirements of the FDA, NIH, or similar Governmental Authority. **Section 3.14(i)** of the Company Disclosure Schedules also lists all manufacturing sites used by the Company or a Representative conducting Studies with respect to the product candidates of the Company (including the Key Product Candidates). To the Company's Knowledge, each site has been, and is in compliance with applicable Law, regulations, and requirements of the FDA, NIH, or similar Governmental Authority

(j) The Company has not, and to the Company's Knowledge, none of its Representatives, has made an untrue statement of a material fact or fraudulent or misleading statement to the FDA, NIH, or a Governmental Authority, failed to disclose a material fact required to be disclosed to the FDA, NIH or a Governmental Authority, or otherwise committed an act, made a statement, or failed to make a statement that, 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" Final Policy set forth in 56 Fed. Reg. 46191 (September 10, 1991) and any amendments thereto (the "**FDA Ethics Policy**"). Neither the Company nor, to the Company's Knowledge, any Representatives is the subject of any pending or, to the Knowledge of the Company, threatened investigation pursuant to the FDA Ethics Policy, or resulting from any other untrue or false statement or omission.

(k) The Company and, to the Company's Knowledge, its Representatives are in compliance with, and since the Company's incorporation, has complied with, in all material respects, all applicable security and privacy standards regarding protected health information, including, but not limited to, the standards under (i) the Health Insurance Portability and Accountability Act of 1996, (42 U.S.C. § 1320d et seq.), as amended, and its implementing Administrative Simplification regulations related to the privacy of Protected Health Information and the Security Standards, as defined by law (45 C.F.R. parts 160, 162 and 164), also known as the HIPAA Privacy Rule ("**HIPAA**"), and the Standards for Electronic Transactions, the Security Standards and the Health Information Technology for Economic and Clinical Health Act as incorporated in the American Recovery and Reinvestment Act of 2009 and (ii) any applicable state privacy Laws. No claims have been asserted or, to the Company's Knowledge, are threatened against the Company by any Person or Governmental Authority alleging a violation of any privacy, personal or confidentiality rights under any applicable Laws. To the Company's Knowledge, there has been no unauthorized access to, theft, breach or disclosure of or other misuse of that information. There has been no unauthorized disclosure by the Company, of electronic communications, patient data, clinical data or protected health information to any third party.

(l) No Actions, investigations, lawsuits, or regulatory proceedings, are or have ever been pending, brought, or to the Company's Knowledge, threatened by or before the FDA, NIH, the Centers for Medicare and Medicaid Services, the U.S. Office of Inspector General of the U.S. Health and Human Services, the U.S. Department of Justice, or other Person in which the Company or, to the Company's Knowledge, a Representative was, is or will be made the defendant or respondent, nor are there any adverse judgments, decrees, or orders, currently in effect that have been issued by such Governmental Authority against the Company or to the Company's Knowledge, a Representative.

(m) The Company does not participate in (i) Medicare (42 U.S.C. §1395 et seq.), (ii) Medicaid (42 U.S.C. § 1396 et seq.), or other governmental payment program; and no income or revenue of the Company is derived from any of the foregoing.

(n) The Company and, to the Company's Knowledge, its Representatives are in material compliance with, and since its Formation Date, have complied with, in all material respects, all applicable Laws of all Governmental Authority, or any self-regulating organization, regarding privacy, security and/or data protection (collectively, "**Privacy Laws**"). The Company and, to the Company's Knowledge, its Representatives have maintained, enforced and complied with in all material respects written privacy, security and data protection policies (the "**Privacy Policies**") with respect to any Proprietary Information providing for, without limitation: (i) clear and conspicuous disclosure of the Company's privacy, security and data protection practices, including collection, storage, use and disclosure of, and provision of access and corrections to any Proprietary Information, and (ii) protection from loss, misappropriation, disclosure or corruption of, and unauthorized access to any Proprietary Information. Neither this Agreement nor the transactions contemplated by this Agreement violate or will violate the terms and conditions of any Privacy Policies. To the Company's Knowledge, no Proprietary Information has been subject to any breach, misappropriation, unauthorized disclosure, or unauthorized access or use by any Person.

(o) Neither the Company nor, to the Knowledge of the Company, its Representatives, including sites engaging in the manufacture and/or testing of the product candidates, and conduct of Studies, have received any notice or other communication from any Governmental Authority or other Person and is not aware that any Governmental Authority or other Person has or is alleging any violation of any Laws applicable to a Study, the product candidates of the Company (including the Key Product Candidates) or the Company's operations. Without limiting the foregoing, neither the Company, nor to the Company's Knowledge, its Representatives, have received, had threatened, had asserted, or have pending any Warning Letters, Untitled Letters, Cyber Letters, notices of violation, adverse inspectional findings, or FDA Form 483s, or other notice of enforcement action, including without limitation, any suspension, consent decree, corporate integrity agreement, monitoring agreement, settlement order, notice of criminal investigation, indictment, sentencing memorandum, plea agreement, court order, target or no-target letter, or other similar agreement or action relating to the conduct of the Company's business, the Studies, or the product candidates of the Company (including the Key Product Candidates).

Section 3.15. Environmental Matters.

(a) The operations of the Company and the business of the Company are and have been in compliance with all Environmental Laws and the Company has not received from any Person any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) The Company has obtained and is in compliance with all Environmental Permits (each of which is disclosed in **Section 3.15(b)** of the Company Disclosure Schedules) necessary for the ownership, lease, operation or use of the business or assets of the Company and all such Environmental Permits are in full force and effect and shall be maintained in full force and effect by the Company through the Closing Date in accordance with Environmental Law, and the Company is not aware of any condition, event or circumstance that might prevent or impede, after the Closing Date, the ownership, lease, operation or use of the business or assets of the Company as currently carried out.

(c) No real property currently or formerly owned, operated or leased by the Company is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(d) The Company has not Released any Hazardous Materials in contravention of Environmental Law. The Company has not received any Environmental Notice that any real property currently or formerly owned, operated or leased in connection with the business of the Company (including soils, groundwater, surface water, buildings and other structure located on any such real property) has been contaminated with any Hazardous Material which could reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, the Company.

(e) **Section 3.15(e)** of the Company Disclosure Schedules contains a complete and accurate list of all active or abandoned aboveground or underground storage tanks owned or operated by the Company.

(f) **Section 3.15(f)** of the Company Disclosure Schedules contains a complete and accurate list of all off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by the Company and any predecessors as to which the Company may retain liability, and none of these facilities or locations has been placed or proposed for placement on the National Priorities List (or CERCLIS) under CERCLA, or any similar state list, and the Company has not received any Environmental Notice regarding potential liabilities with respect to such off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by the Company.

(g) The Company has not retained or assumed, by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law.

(h) The Company has provided or otherwise made available to Parent and listed in **Section 3.15(h)** of the Company Disclosure Schedules: (i) any and all environmental reports, studies, audits, records, sampling data, site assessments, risk assessments, economic models and other similar documents that are in the possession of the Company with respect to the business or assets of the Company or any currently or formerly owned, operated or leased real property which are in the possession or control of the Company related to compliance with Environmental Laws, Environmental Claims or an Environmental Notice or the Release of Hazardous Materials; and (ii) any and all material documents concerning planned or anticipated capital expenditures required to reduce, offset, limit or otherwise control pollution and/or emissions, manage waste or otherwise ensure compliance with current or future Environmental Laws (including, without limitation, costs of remediation, pollution control equipment and operational changes).

Section 3.16. Employee Benefit Matters.

(a) **Section 3.16(a)** of the Company Disclosure Schedules contains a true and complete list of each pension, benefit, retirement, compensation, employment, consulting, profit sharing, deferred compensation, incentive, bonus, performance award, phantom equity, stock or stock-based, change in control, retention, severance, vacation, paid time off, welfare, fringe-benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each "employee benefit plan" within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by the Company for the benefit of any current or former employee, officer, director, retiree, independent contractor or consultant of the Company or any spouse or dependent of such individual, or under which the Company or any of its ERISA Affiliates has or may have any Liability, or with respect to which Parent or any of its Affiliates would reasonably be expected to have any Liability, contingent or otherwise (as listed on **Section 3.16(a)** of the Company Disclosure Schedules, each, a "**Benefit Plan**").

(b) With respect to each Benefit Plan, the Company has made available to Parent accurate, current and complete copies of each of the following: (i) where the Benefit Plan has been reduced to writing, the plan document together with all amendments; (ii) where the Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any trust agreements or other funding arrangements, custodial agreements, insurance policies and contracts, administration agreements and similar agreements, and investment management or investment advisory agreements, now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise; (iv) copies of any summary plan descriptions, summaries of material modifications, employee handbooks and any other written communications (or a description of any oral communications) relating to any Benefit Plan; (v) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion or advisory letter from the Internal Revenue Service; (vi) in the case of any Benefit Plan for which a Form 5500 is required to be filed, a copy of the two most recently filed Form 5500, with schedules and financial statements attached; (vii) actuarial valuations and reports related to any Benefit Plans with respect to the two most recently completed plan years; (viii) the most recent nondiscrimination tests performed under the Code; and (ix) copies of material notices, letters or other correspondence from the Internal Revenue Service, Department of Labor, Pension Benefit Guaranty Corporation or other Governmental Authority relating to the Benefit Plan.

(c) Each Benefit Plan and any related trust (other than any multiemployer plan within the meaning of Section 3(37) of ERISA (each a "**Multiemployer Plan**")) has been established, administered and maintained in accordance with its terms and in compliance with all applicable Laws (including ERISA and the Code). Each Benefit Plan that is intended to be qualified within the meaning of Section 401(a) of the Code (a "**Qualified Benefit Plan**") is so qualified and has received a favorable and current determination letter from the Internal Revenue Service, or with respect to a prototype plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan sponsor, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and nothing has occurred that could reasonably be expected to adversely affect the qualified status of any Qualified Benefit Plan. Nothing has occurred with respect to any Benefit Plan that has subjected or could reasonably be expected to subject the Company or any of its ERISA Affiliates or, with respect to any period on or after the Closing Date, Parent or any of its Affiliates, to a penalty under Section 502 of ERISA or to tax or penalty under Section 4975 of the Code. All benefits, contributions and premiums relating to each Benefit Plan have been timely paid in accordance with the terms of such Benefit Plan and all applicable Laws and accounting principles, and all benefits accrued under any unfunded Benefit Plan have been paid, accrued or otherwise adequately reserved to the extent required by, and in accordance with, GAAP.

(d) Neither the Company nor any of its ERISA Affiliates has (i) incurred or reasonably expects to incur, either directly or indirectly, any material Liability under Title I or Title IV of ERISA or related provisions of the Code or applicable local Law relating to employee benefit plans; (ii) failed to timely pay premiums to the Pension Benefit Guaranty Corporation; (iii) withdrawn from any Benefit Plan; or (iv) engaged in any transaction which would give rise to liability under Section 4069 or Section 4212(c) of ERISA.

(e) With respect to each Benefit Plan (i) no such plan is a Multiemployer Plan, and (A) all contributions required to be paid by the Company or its ERISA Affiliates have been timely paid to the applicable Multiemployer Plan, (B) neither the Company nor any ERISA Affiliate has incurred any withdrawal liability under Title IV of ERISA which remains unsatisfied, and (C) a complete withdrawal from all such Multiemployer Plans at the Effective Time would not result in any material liability to the Company; (ii) no such plan is a "multiple employer plan" within the meaning of Section 413(c) of the Code or a "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA); (iii) no Action has been initiated by the Pension Benefit Guaranty Corporation to terminate any such plan or to appoint a trustee for any such plan; (iv) no such plan is subject to the minimum funding standards of Section 412 of the Code or Title IV of ERISA, and none of the assets of the Company or any ERISA Affiliate is, or may reasonably be expected to become, the subject of any lien arising under Section 302 of ERISA or Section 412(a) of the Code, no such plan is subject to the minimum funding standards of Section 412 of the Code or Title IV of ERISA, and no plan listed in **Section 3.16(e)** of the Company Disclosure Schedules has failed to satisfy the minimum funding standards of Section 302 of ERISA or Section 412 of the Code; and (v) no "reportable event," as defined in Section 4043 of ERISA, has occurred with respect to any such plan.

(f) Each Benefit Plan can be amended, terminated or otherwise discontinued after the Closing in accordance with its terms, without material liabilities to Parent, the Company or any of their Affiliates other than ordinary administrative expenses typically incurred in a termination event. The Company has no commitment or obligation and has not made any representations to any employee, officer, director, independent contractor or consultant, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan or any collective bargaining agreement, in connection with the consummation of the transactions contemplated by this Agreement or otherwise.

(g) Other than as required under Section 601 et. seq. of ERISA or other applicable Law, no Benefit Plan provides post-termination or retiree welfare benefits to any individual for any reason, and neither the Company nor any of its ERISA Affiliates has any Liability to provide post-termination or retiree welfare benefits to any individual or ever represented, promised or contracted to any individual that such individual would be provided with post-termination or retiree welfare benefits.

(h) There is no pending or, to the Company's Knowledge, threatened Action relating to a Benefit Plan (other than routine claims for benefits), and no Benefit Plan has since the Company's incorporation been the subject of an examination or audit by a Governmental Authority or the subject of an application or filing under or is a participant in, an amnesty, voluntary compliance, self-correction or similar program sponsored by any Governmental Authority.

(i) There has been no amendment to, announcement by the Company or any of its Affiliates relating to, or change in employee participation or coverage under, any Benefit Plan or collective bargaining agreement that would increase the annual expense of maintaining such plan above the level of the expense incurred for the most recently completed fiscal year with respect to any director, officer, employee, independent contractor or consultant, as applicable. Neither the Company nor any of its Affiliates has any commitment or obligation or has made any representations to any director, officer, employee, independent contractor or consultant, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan or any collective bargaining agreement.

(j) Each Benefit Plan that is subject to Section 409A of the Code has been administered in compliance with its terms and the operational and documentary requirements of Section 409A of the Code and all applicable regulatory guidance (including notices, rulings and proposed and final regulations) thereunder. The Company does not have any obligation to gross up, indemnify or otherwise reimburse any individual for any excise taxes, interest or penalties incurred pursuant to Section 409A of the Code.

(k) Each individual who is classified by the Company as an independent contractor has been properly classified for purposes of participation and benefit accrual under each Benefit Plan.

(l) Neither the execution of this Agreement nor any of the transactions contemplated by this Agreement will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any current or former director, officer, employee, independent contractor or consultant of the Company to severance pay or any other payment; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation due to any such individual; (iii) limit or restrict the right of the Company to merge, amend or terminate any Benefit Plan; (iv) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan; (v) result in “excess parachute payments” within the meaning of Section 280G(b) of the Code; or (vi) require a “gross-up” or other payment to any “disqualified individual” within the meaning of Section 280G(c) of the Code.

Section 3.17. Employment Matters.

(a) **Section 3.17(a)** of the Company Disclosure Schedules contains a list of all persons who are employees, independent contractors or consultants of the Company as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full or part time); (iii) hire date; (iv) current annual base compensation rate; (v) commission, bonus or other incentive-based compensation; and (vi) a description of the fringe benefits provided to each such individual as of the date hereof. As of the date hereof, all compensation, including wages, commissions and bonuses, payable to all employees, independent contractors or consultants of the Company for services performed on or prior to the date hereof have been paid in full and there are no outstanding agreements, understandings or commitments of the Company with respect to any compensation, commissions or bonuses.

(b) The Company is not, and has never been, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, "**Union**"), and there is not, and has never been, any Union representing or purporting to represent any employee of the Company, and no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. There has never been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting the Company or any of its employees. The Company has no duty to bargain with any Union.

(c) The Company is in compliance with all applicable Laws pertaining to employment and employment practices to the extent they relate to employees of the Company, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence and unemployment insurance. All individuals characterized and treated by the Company as independent contractors or consultants are properly treated as independent contractors under all applicable Laws. All employees of the Company classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified. There are no Actions against the Company pending, or to the Company's Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former applicant, employee, consultant, volunteer, intern or independent contractor of the Company, including, without limitation, any claim relating to unfair labor practices, employment discrimination, harassment, retaliation, equal pay, wage and hours or any other employment-related matter arising under applicable Laws.

Section 3.18. Taxes.

(a) All Tax Returns required to have been filed by the Company have been timely filed. Such Tax Returns were and remain true, complete and correct in all respects. All Taxes that have become due and payable by the Company (whether or not shown on any Tax Return) have been timely paid. At all times from the Formation Date to the effective date of the Tax Election, the Company was classified and treated as a partnership and not as an association taxable as a corporation for U.S. federal and applicable state and local income Tax purposes. At all times since the effective date of the Tax Election, the Company has been classified and treated as an association taxable as a corporation for U.S. federal and applicable state and local income Tax purposes.

(b) The Company has withheld and timely paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) No claim has been made by any taxing authority in any jurisdiction where the Company does not file Tax Returns that it is, or may be, subject to Tax by that jurisdiction. The Company does not have, and has never had, a branch, permanent establishment or other taxable presence in any foreign country, as determined pursuant to applicable foreign Law and any applicable Tax treaty or convention between the United States and such foreign country.

(d) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of the Company.

(e) The amount of the Company's Liability for unpaid Taxes for all periods ending on or before the Balance Sheet Date does not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) reflected on the Financial Statements. The amount of the Company's Liability for unpaid Taxes for all periods following the end of the recent period covered by the Financial Statements shall not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) as adjusted for the passage of time in accordance with the past custom and practice of the Company (and which accruals shall not exceed comparable amounts incurred in similar periods in prior years).

(f) **Section 3.18(f)** of the Company Disclosure Schedules sets forth:

(i) the taxable years of the Company as to which the applicable statutes of limitations on the assessment and collection of Taxes have not expired;

(ii) those years for which examinations by the taxing authorities have been completed; and

(iii) those taxable years for which examinations by taxing authorities are presently being conducted.

(g) All deficiencies asserted, or assessments made, against the Company as a result of any examinations by any taxing authority have been fully paid.

(h) The Company is not a party to any Action by any taxing authority. There are no pending or threatened Actions by any taxing authority.

(i) The Company has delivered to Parent copies of all federal, state, local and foreign Tax Returns, examination reports, and statements of deficiencies assessed against, or agreed to by, the Company for all Tax periods ending after December 31, 2010.

(j) The Company is not currently the beneficiary of any extension of time within which to file any Tax Return, nor has any such extension been requested.

(k) There are no Encumbrances for Taxes (other than for current Taxes not yet due and payable) upon the assets of the Company.

(l) The Company is not a party to, or bound by, any Tax indemnity, Tax sharing or Tax allocation agreement.

(m) No private letter ruling, technical advice memorandum or similar agreement or ruling has been requested, entered into or issued by any taxing authority with respect to the Company.

(n) The Company has never been a member of an affiliated, combined, consolidated or unitary Tax group for Tax purposes. The Company has no Liability for Taxes of any Person (other than the Company) under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or foreign Law), as transferee or successor, by contract or otherwise.

(o) The Company will not be required to include any item of income in, or exclude any item or deduction from, taxable income for any Post-Closing Tax Period as a result of:

(i) any change in a method of accounting under Section 481 of the Code (or any comparable provision of state, local or foreign Tax Laws), or use of an improper method of accounting, for a taxable period ending on or prior to the Closing Date;

(ii) an open transaction occurring on or prior to the Closing Date;

(iii) a prepaid amount or deferred revenue received on or before the Closing Date;

(iv) any closing agreement under Section 7121 of the Code, or similar provision of state, local or foreign Law; or

(v) any election under Section 108(i) of the Code.

(p) The Company is not, nor has it been, a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(q) The Company has not been a “distributing corporation” or a “controlled corporation” in connection with a distribution described in Section 355 of the Code.

(r) The Company has not engaged in any transaction that could give rise to (i) a reporting obligation under Section 6111 of the Code or the regulations thereunder, (ii) a list maintenance obligation under Section 6112 of the Code or the regulations thereunder, (iii) a disclosure obligation with respect to a “reportable transaction” under Section 6011 of the Code and the regulations thereunder, or (iv) any similar obligation under any predecessor or successor Law or comparable provision of the Tax Laws of any jurisdiction other than the federal Laws of the United States. The Company has not taken a position on any Tax Return that could give rise to a substantial understatement of Tax within the meaning of Section 6662 of the Code (or any similar provision of state, local or foreign Tax Law).

(s) There is currently no limitation on the utilization of net operating losses, capital losses, built-in losses, tax credits or similar items of the Company under Sections 269, 382, 383, 384 or 1502 of the Code and the Treasury Regulations thereunder (and comparable provisions of state, local or foreign Law).

(t) **Section 3.18(t)** of the Company Disclosure Schedules sets forth all foreign jurisdictions in which the Company is subject to Tax, is engaged in business or has a permanent establishment. The Company has not entered into a gain recognition agreement pursuant to Treasury Regulations Section 1.367(a)-8. The Company has not transferred an intangible the transfer of which would be subject to the rules of Section 367(d) of the Code.

(u) No property owned by the Company is (i) required to be treated as being owned by another person pursuant to the so-called "safe harbor lease" provisions of former Section 168(f)(8) of the Internal Revenue Code of 1954, as amended, (ii) subject to Section 168(g)(1)(A) of the Code, or (iii) subject to a disqualified leaseback or long-term agreement as defined in Section 467 of the Code.

(v) All persons who hold the Company's Units that at the time of acquisition were subject to a substantial risk of forfeiture under Section 83 of the Code have timely filed elections under Section 83(b) of the Code and any analogous provisions of applicable foreign, state and local Tax laws.

(w) The Company is in compliance with all terms and conditions of any Tax exemption, Tax holiday, Tax subsidy, Tax credit (or grant in lieu thereof) or other Tax reduction agreement, application, approval or order of any Tax authority addressed to it or to any of its predecessors, and neither the Tax Election nor the Merger had or will have any adverse effect on the validity and effectiveness of any such Tax exemption, Tax holiday, Tax subsidy, Tax credit (or grant in lieu thereof), or other Tax reduction agreement, application, approval or order or otherwise result in the termination or recapture of any such Tax exemption, Tax holiday, Tax subsidy, Tax credit (or grant in lieu thereof) or other Tax reduction agreement, application approval or order of any Tax authority.

(x) Effective as of February 1, 2015, the Company elected to be classified as an association taxable as a corporation for federal tax purposes by filing IRS form 8832 (the "**Tax Election**"); prior to the effective date of the Tax Election, the Company was a domestic eligible entity classified as a partnership under the default rules set forth in Treasury Regulations Section 301.7701-3(b).

Section 3.19. Books and Records. The minute books and stock record books of the Company, all of which have been delivered to Parent, are complete and correct and have been maintained in accordance with sound business practices. The minute books of the Company contain accurate and complete records of all meetings, and actions taken by written consent of, the Members, the Company Board and any committees of the Company Board, and no meeting, or action taken by written consent, of any such Members, Company Board or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of the Company.

Section 3.20. Related Party Transactions. No executive officer or director of the Company or any person owning 1% or more of the Membership Interests (or any of such person's immediate family members or Affiliates or associates) is a party to any Contract with or binding upon the Company or any of its assets, rights or properties or has any interest in any property owned by the Company or has engaged in any transaction with any of the foregoing within the last twelve (12) months.

Section 3.21. Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of the Company.

Section 3.22. Non-Reliance on Parent Estimates, Projections, Forecasts, Forward-Looking Statements and Business Plans. In connection with the due diligence investigation of Parent and Merger Sub by the Company and its Representatives, the Company and its Representatives have received and may continue to receive after the date hereof from Parent, Merger Sub and their respective Representatives certain estimates, projections, forecasts and other forward-looking information, as well as certain business plan information, regarding Parent and its business and operations. The Company hereby acknowledges and agrees that: (a) there are uncertainties inherent in attempting to make such estimates, projections, forecasts and other forward-looking statements, as well as in such business plans, with which the Company is familiar; and (b) the Company hereby waives any claim against Parent, Merger Sub, or their respective Representatives with respect to any information described in this **Section 3.22** unless any such information is expressly addressed or included in a representation or warranty contained in **ARTICLE IV** of this Agreement, and has relied solely on the results of its own independent investigation and on the representations, warranties, agreements and covenants made by Parent and Merger Sub and contained in this Agreement. Accordingly, the Company hereby acknowledges and agrees that none of Parent, Merger Sub, or their respective Representatives, has made or is making any express or implied representation or warranty with respect to such estimates, projections, forecasts, forward-looking statements or business plans (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, forward-looking statements or business plans) unless any such information is expressly addressed or included in a representation or warranty contained in **ARTICLE IV** of this Agreement.

Section 3.23. No Other Representations or Warranties. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT AND ANY ANCILLARY DOCUMENTS, THE COMPANY DOES NOT MAKE ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, INCLUDING WITH RESPECT TO VALUE, CONDITION, MERCHANTABILITY OR SUITABILITY, WITH RESPECT TO THE COMPANY OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER RIGHTS OR OBLIGATIONS TO BE TRANSFERRED DIRECTLY OR INDIRECTLY HEREUNDER OR PURSUANT HERETO.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except as set forth in the correspondingly numbered Section of the Parent Disclosure Schedules or the Parent SEC Documents, Parent and Merger Sub represent and warrant to the Company that the statements contained in this **ARTICLE IV** are true and correct as of the date hereof.

Section 4.01. Organization and Authority of Parent and Merger Sub. Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation. Each of Parent and Merger Sub has full corporate power and authority to enter into and perform its obligations under this Agreement and the Ancillary Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Parent and Merger Sub of this Agreement and any Ancillary Document to which they are a party and the consummation by Parent and Merger Sub of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Parent and Merger Sub and no other corporate proceedings on the part of Parent and Merger Sub are necessary to authorize the execution, delivery and performance of this Agreement or to consummate the Merger and the other transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Parent and Merger Sub, and (assuming due authorization, execution and delivery by each other party hereto) this Agreement constitutes a legal, valid and binding obligation of Parent and Merger Sub enforceable against Parent and Merger Sub in accordance with its terms, subject to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or similar laws relating to or affecting creditors' rights generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). When each Ancillary Document to which Parent or Merger Sub is or will be a party has been duly executed and delivered by Parent or Merger Sub (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Parent or Merger Sub enforceable against it in accordance with its terms.

Section 4.02. No Conflicts; Consents. The execution, delivery and performance by Parent and Merger Sub of this Agreement and the Ancillary Documents to which they are a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Parent or Merger Sub; (b) conflict with or result in a material violation or breach of any provision of any Law or Governmental Order applicable to Parent or Merger Sub; or (c) require the consent, notice or other action by any Person under any Contract to which Parent or Merger Sub is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Parent or Merger Sub in connection with the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, except for the filing of the Delaware Certificate of Merger with the Secretary of State of Delaware.

Section 4.03. No Prior Merger Sub Operations. Merger Sub was formed solely for the purpose of effecting the Merger and has not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated hereby.

Section 4.04. Financial Statements.

(a) Parent has filed or furnished (as applicable) in a timely manner with the Securities and Exchange Commission (the "**SEC**") all forms, reports, schedules, statements, filings, prospectuses and registration, proxy and other documents and statements required by it to be filed or furnished as applicable since and including January 1, 2015 under the Exchange Act (all such forms, reports, schedules, statements, filings, prospectuses and registration, proxy and other documents and statements filed by Parent with the SEC under the Exchange Act since January 1, 2015, together with all amendments thereto and including all exhibits and schedules thereto and documents incorporated by reference therein, collectively, the "**Parent SEC Documents**"). As of their respective effective dates (in the case of Parent SEC Documents that are registration statements filed pursuant to the requirements of the Securities Act) and as of the respective dates of the last amendment filed with the SEC (in the case of all other Parent SEC Documents), the Parent SEC Documents complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the SEC promulgated thereunder, each as in effect on the applicable date referred to above, applicable to such Parent SEC Documents, and none of the Parent SEC Documents as of such respective dates contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements (including all related notes and schedules) of Parent and its Subsidiaries included in the Parent SEC Documents present fairly in all material respects the consolidated financial position of Parent and its Subsidiaries, as at the respective dates thereof, and the consolidated results of their operations and their cash flows for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end or period-end adjustments and to any other adjustments described therein, including the notes thereto) and were prepared in conformity with GAAP (except, in the case of the unaudited statements, as permitted by the SEC) applied on a consistent basis during the periods involved (except as may be expressly indicated therein or in the notes thereto). No Subsidiary of Parent is subject to periodic reporting requirements of the Exchange Act.

(c) The records, systems, controls, data and information of Parent are recorded, stored, maintained and operated under means (including any electronic, mechanical or photographic process, whether computerized or not) that are under the exclusive ownership and direct control of Parent or their accountants (including all means of access thereto and therefrom). Parent has implemented and maintains a system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP.

Section 4.05. Ownership of Assets. Parent has good and marketable title to, or, in the case of property held under a lease or other Contract, a sole and exclusive, enforceable leasehold interest in, or adequate rights to use, all of its properties, rights and assets, whether real or personal and whether tangible or intangible.

Section 4.06. Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Parent or Merger Sub.

Section 4.07. Parent Insurance Policies. **Section 4.07** of the Parent Disclosure Schedules sets forth a true and complete list of each insurance policy of the Parent (collectively, the "**Parent Insurance Policies**"), including policy number, type, coverage, underwriter, and true and complete copies of such Parent Insurance Policies have been made available to the Company. Such Parent Insurance Policies are in full force and effect and shall remain in full force and effect following the consummation of the transactions contemplated by this Agreement. Parent has not received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Parent Insurance Policies. All premiums due on such Parent Insurance Policies have either been paid or, if due and payable prior to Closing, will be paid prior to Closing in accordance with the payment terms of each Parent Insurance Policy. The Parent Insurance Policies do not provide for any retrospective premium adjustment or other experience-based liability on the part of Parent. All such Parent Insurance Policies (a) are valid and binding in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage. There are no claims related to the business of Parent pending under any such Parent Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. Parent is not in default under, and has not otherwise failed to comply with, in any material respect, any provision contained in any such Parent Insurance Policy. The Parent Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to Parent and are sufficient for compliance with all applicable Laws and Contracts to which Parent is a party or by which it is bound.

Section 4.08. Legal Proceedings. Except as set forth in the Parent SEC Documents, there are no Actions pending or, to Parent's Knowledge, threatened (a) against or by Parent or Merger Sub affecting any of their properties or assets; or (b) against or by Parent or Merger Sub that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To the Knowledge of Parent and Merger Sub, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

Section 4.09. Capitalization.

(a) As of the date of this Agreement, the authorized capital stock of Parent consists of 200,000,000 shares of Parent Common Stock, of which 22,232,135 shares of Parent Common Stock, are issued and outstanding, all of which are validly issued, fully paid and nonassessable.

(b) Parent owns all of the issued and outstanding shares of capital stock (or other equity securities) in Merger Sub. Except as described in the Parent SEC Documents, there are no outstanding securities convertible into, exchangeable for or carrying the right to acquire equity securities of Parent or Merger Sub, or subscriptions, warrants, options, rights (including preemptive rights), stock appreciation rights, phantom stock interests, or other arrangements or commitments obligating either Parent or Merger Sub to issue or dispose of any of its respective equity securities or any ownership interest therein. There are no existing agreements, subscriptions, options, warrants, calls, commitments, trusts (voting or otherwise), or rights of any kind whatsoever between Parent or a Merger Sub on the one hand and any Person on the other hand with respect to the capital stock of any Subsidiary of Parent or Merger Sub. Other than as listed in **Section 4.09(b)** of the Parent Disclosure Schedules, neither Parent nor Merger Sub owns, directly or indirectly, any stock of or any other equity interest in any other Person.

(c) The shares of Parent Common Stock to be issued pursuant to this Agreement will, upon issuance, be (i) duly authorized, validly issued, fully paid and non-assessable, and (ii) voting stock.

(d) There are no outstanding contractual obligations of Parent or any of its Subsidiaries to repurchase, redeem or otherwise acquire any capital stock of or other equity interests in Parent and/or any of its Subsidiaries.

Section 4.10. Non-Reliance on Company Estimates, Projections, Forecasts, Forward-Looking Statements and Business Plans. In connection with the due diligence investigation of the Company by Merger Sub and Parent and their respective Representatives, Parent, Merger Sub and their Representatives have received and may continue to receive after the date hereof from the Company and its Representatives certain estimates, projections, forecasts and other forward-looking information, as well as certain business plan information, regarding the Company and its business and operations. Merger Sub and Parent hereby acknowledge and agree that: (a) there are uncertainties inherent in attempting to make such estimates, projections, forecasts and other forward-looking statements, as well as in such business plans, with which Merger Sub and Parent are familiar; and (b) Merger Sub and Parent hereby waive any claim against the Company or its Representatives with respect to any information described in this **Section 4.10** unless any such information is expressly addressed or included in a representation or warranty contained in **ARTICLE III** of this Agreement, and have relied solely on the results of their own independent investigation and on the representations, warranties, agreements and covenants made by the Company and contained in this Agreement. Accordingly, Merger Sub and Parent hereby acknowledge and agree that neither the Company nor its Representatives, has made or is making any express or implied representation or warranty with respect to such estimates, projections, forecasts, forward-looking statements or business plans (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, forward-looking statements or business plans) unless any such information is expressly addressed or included in a representation or warranty contained in **ARTICLE III** of this Agreement.

Section 4.11. No Other Representations or Warranties . EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT AND ANY ANCILLARY DOCUMENT, NEITHER PARENT NOR MERGER SUB MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, INCLUDING WITH RESPECT TO VALUE, CONDITION, MERCHANTABILITY OR SUITABILITY, WITH RESPECT TO PARENT, MERGER SUB OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER RIGHTS OR OBLIGATIONS TO BE TRANSFERRED HEREUNDER OR PURSUANT HERETO.

ARTICLE V
COVENANTS

Section 5.01. Conduct of Business Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Parent (which consent shall not be unreasonably withheld or delayed), the Company shall (x) conduct the business of the Company in the ordinary course of business consistent with past practice; and (y) use reasonable best efforts to maintain and preserve intact the current organization, business and franchise of the Company and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having business relationships with the Company. Without limiting the foregoing, from the date hereof until the Closing Date, the Company shall:

(a) preserve and maintain all of its Permits;

(b) pay its debts and other obligations when due;

(c) maintain the properties and assets owned, operated or used by it in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;

(d) continue in full force and effect without modification all Insurance Policies, except as required by applicable Law;

(e) defend and protect its properties and assets from infringement or usurpation;

(f) perform all of its obligations under all Contracts relating to or affecting its properties, assets or business;

(g) maintain its books and records in accordance with past practice;

(h) comply in all material respects with all applicable Laws;

(i) not declare or pay any dividends or distributions on or in respect of any of its capital stock or redeem, purchase or acquire its membership units, or otherwise engage in any type of reorganization not contemplated by this Agreement; and

(j) not take or permit any action that would cause any of the changes, events or conditions described in **Section 3.07** to occur.

Section 5.02. Access to Information.

(a) From the date hereof until the Closing, the Company shall (a) afford Parent and its Representatives full and free access to and the right to inspect all of the Real Property, properties, assets, premises, books and records, Contracts and other documents and data related to the Company; (b) furnish Parent and its Representatives with such financial, operating and other data and information related to the Company as Parent or any of its Representatives may reasonably request; and (c) instruct the Representatives of the Company to cooperate with Parent in its investigation of the Company. Any investigation pursuant to this **Section 5.02** shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the Company. No investigation by Parent or other information received by Parent shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Company in this Agreement or Parent’s right to indemnification under this Agreement.

(b) Parent and the Company shall comply with, and shall cause their respective Representatives to comply with, all of their respective obligations under the Mutual Confidential Disclosure Agreement, dated February 5, 2015, between Parent and the Company (the “**Confidentiality Agreement**”), which shall survive the termination of this Agreement in accordance with the terms set forth therein.

Section 5.03. Intentionally Omitted.

Section 5.04. Member Consent. The Company shall use its reasonable best efforts to obtain, immediately following the execution and delivery of this Agreement, the Requisite Member Approval pursuant to written consents of the Members in the form attached hereto as Exhibit C (the "**Written Consent**"), which shall, among other things, specify that adoption of this Agreement shall constitute approval by the Members of: (i) the indemnification obligations of the Members set forth in **ARTICLE VIII** hereof; and (ii) the appointment of Paul A. Hawkins as the Member Representative, with the rights and responsibilities set forth in this Agreement. The materials submitted to the Members in connection with the Written Consent shall be subject to review and approval by Parent (which approval shall not be unreasonably withheld or delayed) and shall include information regarding the Company, the terms of the Merger, this Agreement and the Ancillary Agreements, and shall include the Managers Recommendation. Promptly following receipt of the Requisite Member Approval, the Company shall deliver a copy of such Written Consent to Parent.

Section 5.05. Notice of Certain Events.

(a) From the date hereof until the Closing, the Company shall promptly notify Parent in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect with regard to the Company, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by the Company hereunder not being true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in **Section 7.02** to be satisfied;

(ii) any notice or other communication from any Person alleging that the notice or consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(iv) any Actions commenced or, to the Company's Knowledge, threatened against, relating to or involving or otherwise affecting the Company that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to **Section 3.13** or that relates to the consummation of the transactions contemplated by this Agreement.

(b) Parent's receipt of information pursuant to this **Section 5.05** shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Company in this Agreement (including **Section 8.02** and **Section 9.01(b)**) and shall not be deemed to amend or supplement the Company Disclosure Schedules.

Section 5.06. Resignations. The Company shall deliver to Parent written resignations, effective as of the Closing Date, of the officers and directors of the Company requested by Parent at least two (2) Business Days prior to the Closing**.**

Section 5.07. Governmental Approvals and Consents.

(a) Each party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions required under any Law applicable to such party or any of its Affiliates; and (ii) use reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the Ancillary Documents. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) The Company and Parent shall use reasonable best efforts to give all notices to, and obtain all consents from, all third parties that are described in **Section 3.03** of the Company Disclosure Schedules.

(c) Without limiting the generality of the parties' undertakings pursuant to subsections (a) and (b) above, each of the parties hereto shall use all reasonable best efforts to:

(i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or any Ancillary Document;

(ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any Ancillary Document; and

(iii) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any Ancillary Document has been issued, to have such Governmental Order vacated or lifted.

(d) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between the Company and Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(e) Notwithstanding the foregoing, nothing in this **Section 5.07** shall require, or be construed to require, Parent or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Parent, the Company or any of their respective Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Parent of the transactions contemplated by this Agreement; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

Section 5.08. Directors' and Officers' Indemnification and Insurance.

(a) Parent and Merger Sub agree that all rights to indemnification, advancement of expenses and exculpation by the Company now existing in favor of each Person who is now, or has been at any time prior to the date hereof or who becomes prior to the Effective Time an officer or director of the Company (each an "**D&O Indemnified Party**") as provided in the Company Charter Documents, in each case as in effect on the date of this Agreement, or pursuant to any other Contracts in effect on the date hereof and disclosed in **Section 5.08** of the Company Disclosure Schedules, shall be assumed by the Surviving Entity in the Merger, without further action, at the Effective Time and shall survive the Merger and shall remain in full force and effect in accordance with their terms, and, in the event that any proceeding is pending or asserted or any claim made during such period, until the final disposition of such proceeding or claim.

(b) The parties agree to work together in good faith to obtain appropriate insurance policies for the Company and its directors, officers and managers for claims arising out of or relating to events which occurred before or at the Effective Time (including in connection with the transactions contemplated by this Agreement) (the "**D&O Insurance Policies**") and "tail" coverage for such D&O Insurance Policies with a claims period of at least six (6) years from the Effective Time with at least the same coverage and amount and containing terms and conditions that are not less advantageous to the directors, officers, and managers of the Company as the D&O Insurance Policies with respect to claims arising out of or relating to events which occurred before or at the Effective Time (including in connection with the transactions contemplated by this Agreement) (the "**D&O Tail Policy**"). The Company shall bear the cost of the D&O Tail Policy, and such costs, to the extent not paid prior to the Closing, shall be included in the determination of Transaction Expenses. During the term of the D&O Tail Policy, Parent shall not (and shall cause the Surviving Entity not to) take any action following the Closing to cause the D&O Tail Policy to be cancelled or any provision therein to be amended or waived; provided, that neither Parent, the Surviving Entity nor any Affiliate thereof shall be obligated to pay any premiums or other amounts in respect of such D&O Tail Policy.

(c) The obligations of Parent and the Surviving Entity under this **Section 5.08** shall survive the consummation of the Merger and shall not be terminated or modified in such a manner as to adversely affect any D&O Indemnified Party to whom this **Section 5.08** applies without the consent of such affected D&O Indemnified Party (it being expressly agreed that the D&O Indemnified Parties to whom this **Section 5.08** applies shall be third-party beneficiaries of this Section 5.08, each of whom may enforce the provisions of this **Section 5.08**).

Section 5.09. Closing Conditions. From the date hereof until the Closing, each party hereto shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in **ARTICLE VII** hereof.

Section 5.10. Public Announcements. Unless otherwise required by applicable Law or stock exchange requirements (based upon the reasonable advice of counsel), no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement.

Section 5.11. Use of Working Capital. (a) The Company agrees that, from and after the date of this Agreement until the Effective Date, it shall only use its Working Capital on MPS-IIIA or MPS-IIIB clinical program goals, including, but not limited to, completion of MPS-IIIA preclinical studies, manufacturing of clinical vector, regulatory filings, conducting MPS-IIIA or MPS-IIIB clinical trials, and licenses for use of intellectual property related to any purpose described in this **Section 5.11**. (b) Parent agrees that, from and after the Effective Time, so long as the MPS-IIIA and/or MPS-IIIB clinical programs are in effect, it will cause the Surviving Entity to spend the Closing Working Capital on MPS-IIIA or MPS-IIIB clinical program goals, including, but not limited to, completion of MPS-IIIA preclinical studies, manufacturing of clinical vector, regulatory filings, conducting MPS-IIIA or MPS-IIIB clinical trials, and licenses for use of intellectual property related to any purpose described in this **Section 5.11**.

Section 5.12. Rule 144 Obligations. With a view to making available to the Members the benefits of Rule 144 promulgated under the Securities Act or any other similar rule or regulation of the SEC that may at any time permit the Members to sell securities of Parent Common Stock issued pursuant to this Agreement to the public without registration ("**Rule 144**"), for a period of one year after the Closing, at all times during which there are shares of Parent Common Stock issued pursuant to this Agreement outstanding that have not been previously (i) sold to or through a broker or dealer or underwriter in a public distribution or (ii) sold in a transaction exempt from the registration and prospectus delivery requirements of the Securities Act under Section 4(a)(1) thereof, in the case of either clause (i) or clause (ii) in such a manner that, upon the consummation of such sale, all transfer restrictions and restrictive legends with respect to such shares are removed upon the consummation of such sale, Parent agrees to use commercially reasonable efforts to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) file with the SEC in a timely manner all reports and other documents required of Parent under the Exchange Act, so long as Parent remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

(c) furnish to each Member so long as such Member continues to owns Parent Common Stock issued pursuant to this Agreement, promptly upon request, (i) a written statement by Parent, if true, that it has complied with the reporting requirements of Rule 144 and the Exchange Act, and (ii) such other information as may be reasonably requested to permit the Members to sell such securities pursuant to Rule 144 without registration.

Section 5.13. Listing Compliance. Parent is in compliance with the requirements of the Exchange for continued listing of the Parent Common Stock thereon. For a period of one year after the Closing, Parent will not take any action designed to, or likely to have the effect of, terminating the registration of the Parent Common Stock under the Exchange Act or the listing of the Parent Common Stock on the Exchange and will take all appropriate actions to ensure that the Parent Common Stock remains listed on the Exchange. Notwithstanding the foregoing, Parent shall take any actions the board of directors of Parent determines to be in its best interests, including, but not limited to, matters with respect to its registration under the Exchange Act or the listing on the Exchange.

Section 5.14. Stockholder Approval. Parent will provide each stockholder entitled to vote at a special meeting of stockholders of Parent (the "**Stockholders Meeting**"), which will be promptly called and held no later than ninety (90) days following the Closing Date (subject to extension for any SEC review) (the "**Stockholder Meeting Deadline**"), a proxy statement meeting the requirements of Section 14 of the Exchange Act, and the related rules and regulations promulgated thereunder (the "**Proxy Statement**") soliciting each such stockholder's affirmative vote at the Stockholder Meeting for approval of resolutions approving Parent's ability to issue any of the Milestone Payments, or portions thereof, in shares of Parent Common Stock in accordance with applicable law, the rules and regulations of the Exchange, Parent's certificate of incorporation and by-laws and the DGCL ("**Stockholder Approval**"), and Parent will use its commercially reasonable efforts to solicit the Stockholder Approval of such resolutions and to cause the board of directors of Parent to recommend to the stockholders that they approve such resolutions. For the avoidance of doubt, none of the Members receiving Parent Common Stock as Closing Merger Consideration will be entitled to vote at any such Stockholders Meeting. Parent will keep Member Representative apprised of the status of matters relating to the Proxy Statement and the Stockholders Meeting, including promptly furnishing Member Representative and its counsel with copies of notices or other communications related to the Proxy Statement, the Stockholders Meeting or the transactions contemplated hereby received by Parent from the SEC or the Exchange. If, despite Parent's commercially reasonable efforts, Stockholder Approval is not obtained on or prior to the Stockholder Meeting Deadline, the Company shall not thereafter have any obligation to continue to try to obtain such approval.

Section 5.15. Financial Statements. On or before the Closing Date, the Company shall deliver to Parent audited financial statements consisting of the audited balance sheet of the Company as at December 31, 2014 and December 31, 2013, and the related statements of income, cash flows and members' equity for the years then ended, accompanied by the independent auditors' report of SS&G, Inc., the Company's certified public accountants (collectively, the "**Audited Financial Statements**").

Section 5.16. Further Assurances. At and after the Effective Time, the officers and directors of the Surviving Entity shall be authorized to execute and deliver, in the name and behalf of the Company or Merger Sub, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of the Company or Merger Sub, any other actions and things to vest, perfect or confirm of record or otherwise in the Surviving Entity any and all right, title and interest in, to and under any of the rights, properties or assets of the Company acquired or to be acquired by the Surviving Entity as a result of, or in connection with, the Merger.

ARTICLE VI
TAX MATTERS

Section 6.01. Tax Covenants.

(a) Without the prior written consent of Parent, prior to the Closing, the Company, its Representatives and the Members shall not make or change any election in respect of Taxes (other than the Tax Election), adopt or request permission of any Tax authority to change any accounting method in respect of Taxes, enter into any closing agreement in respect of Taxes, settle any claim or assessment in respect of Taxes, surrender or allow to expire any right to claim a refund of Taxes, file any amended Tax Return, consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes, or make any application for, negotiate or conclude a Tax ruling or arrangement with a Tax authority, whether or not in connection with the Merger, in each case, except as explicitly contemplated in this Agreement. The Company shall timely file all of its Tax Returns as they become due (taking all timely filed proper extension requests into account), all such Tax Returns to be true, correct and complete, and the Company shall timely pay and discharge as they become due and payable all Taxes (other than Taxes contested in good faith by the Company in appropriate proceedings), assessments and other governmental charges or levies imposed upon it or its income or any of its property as well as all claims of any kind (including claims for labor, materials and supplies) that, if unpaid, may by law become a lien or charge upon its properties.

(b) All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the Ancillary Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid by the Members when due. Member Representative shall timely file any Tax Return or other document with respect to such Taxes or fees (and Parent shall cooperate with respect thereto as necessary).

(c) For federal (and applicable state and local) income tax purposes, the parties shall report the Merger as a “reorganization” within the meaning of Section 368(a) of the Code unless otherwise required by applicable Law. This Agreement is intended to constitute a “plan of reorganization” within the meaning of Treasury Regulation Section 1.368-2(g).

Section 6.02. Termination of Existing Tax Sharing Agreements . Any and all existing Tax sharing agreements (whether written or not) binding upon the Company shall be terminated as of the Closing Date. After such date neither the Company nor any of its Representatives shall have any further rights or liabilities thereunder.

Section 6.03. Tax Indemnification. Except to the extent treated as a Current Liability in the calculation of Closing Working Capital, the Members shall, severally and not jointly (in accordance with their Pro Rata Interest), indemnify the Company, Parent, and each Parent Indemnitee and hold them harmless from and against (a) any Loss attributable to any breach of or inaccuracy in any representation or warranty made in **Section 3.18**; (b) any Loss attributable to any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation in this **ARTICLE VI**; (c) all Pre-Closing Taxes and any Taxes of the Company or relating to the business of the Company for all Pre-Closing Tax Periods; (d) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Company (including, without limitation, any predecessor of the Company) is or was a member on or prior to the Closing Date by reason of a liability under Treasury Regulation Section 1.1502-6 or any comparable provisions of foreign, state or local Law; and (e) any and all Taxes of any person imposed on the Company arising under the principles of transferee or successor liability or by contract, relating to an event or transaction (including, without limitation, the Tax Election) occurring before the Closing. In each of the above cases, together with any out-of-pocket fees and expenses (including attorneys' and accountants' fees) incurred in connection therewith, the Members shall, severally and not jointly (in accordance with their Pro Rata Interest), reimburse Parent for any Taxes of the Company that are the responsibility of the Members pursuant to this **Section 6.03** within ten (10) Business Days after payment of such Taxes by Parent or the Company.

Section 6.04. Tax Returns.

(a) The Company shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns required to be filed by it that are due on or before the Closing Date (taking into account any extensions), and shall timely pay all Taxes that are due and payable on or before the Closing Date (taking into account any extensions). Notwithstanding anything herein to the contrary, Member Representative shall prepare and timely file, or cause to be prepared and timely filed, any federal U.S. Return of Partnership Income, Forms 1065 and applicable schedules thereto, on behalf of the Company, with respect to any period prior to the effective date of the Tax Election, regardless of whether such partnership return is due on or before the Closing Date (taking into account any extensions); provided, that no such Tax Return shall be filed without Parent's consent (which may be given or withheld in Parent's absolute discretion) to the extent the Tax Return would be inconsistent in any respect with the representations and warranties in **Section 3.18** if those representations and warranties were made as of the filing date of that Tax Return (or would cause those representations and warranties to become incorrect or untrue in any respect), or with applicable past practice (unless otherwise required by Law or change in relevant facts). Any such Tax Return shall be prepared in a manner consistent with any applicable past practice (unless otherwise required by Law or by change in relevant facts).

(b) Parent shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns with respect to a Pre-Closing Tax Period not filed by the Company under **Section 6.04(a)** and for any Straddle Period. Any such Tax Return shall be prepared in a manner consistent with any applicable past practice (unless otherwise required by Law or a change in relevant facts) and, if it is an income Tax Return, shall be submitted by Parent to Member Representative (together with schedules, statements and, to the extent requested by Member Representative, supporting documentation) at least 45 days prior to the due date (including extensions) of such Tax Return. If Member Representative objects to any item on any such Tax Return that relates to a Pre-Closing Tax Period, it shall, within ten days after delivery of such Tax Return, notify Parent in writing that it so objects, specifying with particularity any such item and stating the specific factual or legal basis for any such objection. If a notice of objection shall be duly delivered, Parent and Member Representative shall negotiate in good faith and use their reasonable best efforts to resolve such items. If Parent and Member Representative are unable to reach such agreement within ten days after receipt by Parent of such notice, the disputed items shall be resolved by the Independent Accountant and any determination by the Independent Accountant shall be final. The Independent Accountant shall resolve any disputed items within 20 days of having the item referred to it pursuant to such procedures as it may require. If the Independent Accountant is unable to resolve any disputed items before the due date for such Tax Return, the Tax Return shall be filed as prepared by Parent and then amended to reflect the Independent Accountant's resolution. The costs, fees and expenses of the Independent Accountant shall be borne one half by Parent and one half by Member Representative on behalf of the Members. The preparation and filing of any Tax Return of the Company that does not relate to a Pre-Closing Tax Period or Straddle Period shall be exclusively within the control of Parent.

Section 6.05. Straddle Period. In the case of Taxes that are payable with respect to a taxable period that begins before and ends after the Closing Date (each such period, a "**Straddle Period**"), the portion of any such Taxes that are treated as Pre-Closing Taxes for purposes of this Agreement shall be:

(a) in the case of Taxes (i) based upon, or related to, income, receipts, profits, wages, other transactions, capital or net worth, (ii) imposed in connection with the sale, transfer or assignment of property, or (iii) required to be withheld, deemed equal to the amount which would be payable if the taxable year ended with the close of business on the Closing Date; and

(b) in the case of other Taxes, deemed to be the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of days in the period ending on and including the Closing Date and the denominator of which is the number of days in the entire period.

Section 6.06. Contests. Parent agrees to give written notice to Member Representative of the receipt of any written notice by the Company, Parent or any of Parent's Affiliates which involves the assertion of any claim, or the commencement of any Action, in respect of which an indemnity may be sought by Parent pursuant to this **ARTICLE VI** (a "**Tax Claim**"); *provided*, *that* failure to comply with this provision shall not affect Parent's right to indemnification hereunder. Parent shall control the contest or resolution of any Tax Claim; *provided, however*, that Parent shall obtain the prior written consent of Member Representative (which consent shall not be unreasonably withheld or delayed) before entering into any settlement of a claim or ceasing to defend such claim; and, *provided further*, that Member Representative shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose, the fees and expenses of which separate counsel shall be borne solely by Member Representative.

Section 6.07. Cooperation and Exchange of Information. Member Representative, the Company and Parent shall provide each other with such cooperation and information as either of them reasonably may request of the others in filing any Tax Return pursuant to this **ARTICLE VI** or in connection with any audit or other proceeding in respect of Taxes of the Company. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by Tax authorities.

Section 6.08. Tax Treatment of Indemnification Payments. Any indemnification payments pursuant to this **ARTICLE VI** shall be treated by the parties for Tax purposes as an adjustment to the consideration paid for the Shares, unless otherwise required by Law.

Section 6.09. FIRPTA Statement. The Company shall have delivered to Parent properly executed statements from the Company that meets the requirements of Treasury Regulation Sections 1.1445-2(c)(3) and 1.897-2(h)(1), dated as of the Closing Date and in the form and substance reasonably satisfactory to Parent, along with written authorization for Parent to deliver such notice form to the Internal Revenue Service on behalf of the Company upon Closing (the "**FIRPTA Statement**").

Section 6.10. Survival. Notwithstanding anything in this Agreement to the contrary, the provisions of **Section 3.18** and this **ARTICLE VI** shall terminate after the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days.

Section 6.11. Overlap. To the extent that any obligation or responsibility pursuant to **ARTICLE VIII** may overlap with an obligation or responsibility pursuant to this **ARTICLE VI**, the provisions of this **ARTICLE VI** shall govern and the corresponding provision in **ARTICLE VIII** shall not apply.

ARTICLE VII
CONDITIONS TO CLOSING

Section 7.01. Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) This Agreement shall have been duly adopted by the Requisite Member Approval.

(b) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(c) The Company shall have provided all notices and received all consents, authorizations, orders and approvals from the Governmental Authorities and other Persons referred to in **Section 3.03** in form and substance reasonably satisfactory to Parent, and no such consent, authorization, order and approval shall have been revoked.

Section 7.02. Conditions to Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Parent's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of the Company contained in **Section 3.01 (Organization and Qualification of the Company)**, **Section 3.02(a) (Authority)**, **Section 3.04 (Capitalization)**, and **Section 3.21 (Brokers)**, the representations and warranties of the Company contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of the Company contained in **Section 3.01 (Organization and Qualification of the Company)**, **Section 3.02(a) (Authority)**, **Section 3.04 (Capitalization)** and **Section 3.21 (Brokers)** shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) The Company shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by it prior to or on the Closing Date.

(c) No Action shall have been commenced against Parent, Merger Sub or the Company, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

(d) All approvals, consents and waivers that are listed on **Section 3.03** of the Company Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Parent at or prior to the Closing.

(e) From the date of this Agreement, there shall not have occurred any Material Adverse Effect with respect to the Company, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect with respect to the Company.

(f) The Company shall have delivered to Parent the following:

(i) resignations of the directors and officers of the Company pursuant to **Section 5.06**;

(ii) the Audited Financial Statements pursuant to **Section 5.15**;

(iii) a certificate, dated the Closing Date and signed by a duly authorized officer of the Company, that each of the conditions set forth in **Section 7.02(a)** and **Section 7.02(b)** have been satisfied;

(iv) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying that (A) attached thereto are true and complete copies of (1) all resolutions adopted by the Company Board authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby and (2) resolutions of the Members approving the Merger and adopting this Agreement, and (B) all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby;

(v) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying that attached thereto are (A) true and complete copies of all required approvals and consents authorizing the execution, delivery and performance of the Tax Election and (B) copies of filings made in connection with the Tax Election;

(vi) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying the names and signatures of the officers of the Company authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder;

(vii) at least three (3) Business Days prior to the Closing, the Closing Transaction Expenses and Indebtedness Certificate, and, evidence that, immediately prior to Closing, of the payment to third parties by wire transfer of immediately available funds that amount of money due and owing from the Company to such third parties as Transaction Expenses or Indebtedness as set forth on the Closing Transaction Expenses and Indebtedness Certificate;

(viii) a good standing certificate (or its equivalent) from the secretary of state or similar Governmental Authority of the jurisdiction under the Laws in which the Company is organized;

(ix) evidence reasonably satisfactory to Parent that the Company's Working Capital as of the close of business on the day before the Closing Date is at least equal to $3,300,000 (the "**Closing Working Capital**"), taking into account the Company's covenant in **Section 5.11** of this Agreement, together with the calculation of the Closing Working Capital (the " **Closing Working Capital Statement**"), and a certificate of the President and Chief Executive Officer that the Closing Working Capital Statement was prepared in accordance with GAAP, applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such Closing Working Capital Statement was being prepared and audited as of a fiscal year end;

(x) the Consideration Spreadsheet contemplated in **Section 2.16**;

(xi) the FIRPTA Statement; and

(xii) such other documents or instruments as Parent reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

(g) Members of no more than 5% of the outstanding Membership Interests as of immediately prior to the Effective Time, in the aggregate, shall have exercised, or remain entitled to exercise, statutory dissenters rights pursuant to Section 1705.41 of the Ohio Act with respect to such Membership Interests.

Section 7.03. Conditions to Obligations of the Company. The obligations of the Company to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or the Company's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Parent and Merger Sub contained in **Section 4.01 (Organization and Authority of Parent and Merger Sub)** and **Section 4.06 (Brokers)**, the representations and warranties of Parent and Merger Sub contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Parent and Merger Sub contained in **Section 4.01 (Organization and Authority of Parent and Merger Sub)** and **Section 4.06 (Brokers)** shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.

(b) Parent and Merger Sub shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by them prior to or on the Closing Date; *provided, that*, with respect to agreements, covenants and conditions that are qualified by materiality, Parent and Merger Sub shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

(d) From the date of this Agreement, there should not have occurred any Material Adverse Effect with regard to Parent, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect with regard to Parent.

(e) Parent shall have delivered to the Company (or such other Person as may be specified herein) the following:

(i) a certificate, dated the Closing Date and signed by a duly authorized officer of Parent, that each of the conditions set forth in **Section 7.03(a)** and **Section 7.03(b)** have been satisfied;

(ii) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Parent and Merger Sub certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Parent and Merger Sub authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby;

(iii) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Parent and Merger Sub certifying the names and signatures of the officers of Parent and Merger Sub authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder;

(iv) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Parent setting forth the issued and outstanding shares capital stock of Parent as of the Closing Date.

(f) such other documents or instruments as the Company reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

ARTICLE VIII
INDEMNIFICATION

Section 8.01. Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein (other than any representations or warranties contained in **Section 3.18**, whose survival period is set out in **ARTICLE VI**) shall survive the Closing and shall remain in full force and effect until the date that is fifteen (15) months following the Closing Date; *provided, that* the representations and warranties in (a) **Section 3.01** (Organization and Qualification of Company), **Section 3.02(a)** (Authority), **Section 3.03** (No Conflict), **Section 3.04** (Capitalization), **Section 3.11** (Intellectual Property), **Section 3.21** (Brokers), **Section 4.01** (Organization and Authority of Parent and Merger Sub) and **Section 4.06** (Brokers) shall survive indefinitely, (b) **Section 3.15** (Environmental Matters) shall terminate 6 years after the Closing, and (c) **Section 3.16** (Employee Benefit Matters) shall terminate after the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days. All covenants and agreements of the parties contained herein (other than any covenants or agreements contained in **ARTICLE VI**, whose survival period is set out in **ARTICLE VI**) shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the Indemnified Party to the Indemnifying Party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

Section 8.02. Indemnification by Members. Subject to the other terms and conditions of this **ARTICLE VIII**, the Members shall severally and not jointly (in accordance with their Pro Rata Interest) indemnify and defend each of Parent and its Affiliates (including the Company) and their respective Representatives (collectively, the "**Parent Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Parent Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of the Company contained in this Agreement or in any certificate or instrument delivered by or on behalf of the Company pursuant to this Agreement (other than in respect of **Section 3.18**, it being understood that the sole remedy for any such inaccuracy in or breach thereof shall be pursuant to **ARTICLE VI**), as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by the Company pursuant to this Agreement (other than any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation in **ARTICLE VI**, it being understood that the sole remedy for any such breach, violation or failure shall be pursuant to **ARTICLE VI**);

(c) any claim made by any Member relating to such Person's rights with respect to the Merger Consideration, or the calculations and determinations set forth on the Consideration Spreadsheet; or

(d) any amounts paid to the holders of Dissenting Membership Interests, including any interest required to be paid thereon, that are in excess of what such holders would have received hereunder had such holders not been holders of Dissenting Membership Interests.

Section 8.03. Indemnification By Parent. Subject to the other terms and conditions of this **ARTICLE VIII**, Parent shall indemnify and defend each of the Members and their Affiliates and their respective Representatives (collectively, the "**Member Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Member Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Parent and Merger Sub contained in this Agreement or in any certificate or instrument delivered by or on behalf of Parent or Merger Sub pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date); or

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Parent or Merger Sub pursuant to this Agreement (other than **ARTICLE VI**, it being understood that the sole remedy for any such breach thereof shall be pursuant to **ARTICLE VI**).

Section 8.04. Certain Limitations.

(a) For purposes of this **ARTICLE VIII**, the amount of any Losses, but not for the purpose of determining whether there has been any inaccuracy in or breach of any representation or warranty, shall be determined without regard to any materiality, Material Adverse Effect or similar qualification contained in or otherwise applicable to a representation or warranty.

(b) The Members shall have no liability for indemnification pursuant to **Section 8.02(a)** with respect to Losses for which indemnification is provided unless the aggregate of all Losses exceeds One Hundred Fifty Thousand Dollars ($150,000) (the "**Basket**"), in which case the Members shall be liable for all such Losses from the first dollar. The aggregate liability of the Members under **Section 8.02(a)** shall not exceed the amount of the Holdback Amount.

(c) Parent shall have no liability for indemnification pursuant to **Section 8.03(a)** with respect to Losses for which indemnification is provided unless the aggregate of all Losses exceeds the Basket, in which case Parent shall be liable for all such Losses from the first dollar. The aggregate liability of Parent under **Section 8.03(a)** shall not exceed the amount of the Holdback Amount.

(d) Notwithstanding the foregoing, the limitations set forth in **Section 8.04(b)** and **Section 8.04(c)** shall not apply to Losses based upon, arising out of, with respect to or by reason of any for and any claims arising from fraud, criminal activity or willful misconduct, or for any inaccuracy in or breach of any representation or warranty in **Section 3.01**, **Section 3.02(a)**, **Section 3.03**, **Section 3.04**, **Section 3.11**, **Section 3.21**, **Section 4.01** and **Section 4.06**.

(e) The amount of any Losses for which indemnification is provided under this **ARTICLE VIII** shall be net of any amounts actually recovered by the Indemnified Party under insurance policies with respect to such Losses (net of any costs to recover such insurance payments and any increased premiums resulting therefrom). Each Indemnified Party shall act in good faith and a commercially reasonable manner to mitigate any Losses they may pay, incur, suffer or sustain for which indemnification is available hereunder to the extent required by applicable Law. Notwithstanding the foregoing or anything in this Agreement to the contrary, no Indemnified Party shall have any obligation to seek recovery from any third party or pursue recovery under any insurance policy with respect to any Losses.

Section 8.05. Indemnification Procedures. The party making a claim under this **ARTICLE VIII** is referred to as the "**Indemnified Party**", and the party against whom such claims are asserted under this **ARTICLE VIII** is referred to as the "**Indemnifying Party**". For purposes of this **ARTICLE VIII**, (i) if Parent (or any other Parent Indemnitee) comprises the Indemnified Party, any references to Indemnifying Party (except provisions relating to an obligation to make payments) shall be deemed to refer to Member Representative, and (ii) if Parent comprises the Indemnifying Party, any references to the Indemnified Party shall be deemed to refer to Member Representative. Any payment received by Member Representative as the Indemnified Party shall be distributed to the Members in accordance with this Agreement.

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a "**Third Party Claim**") against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this **ARTICLE VIII**, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* if the Indemnifying Party is a Member, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Company, or (y) seeks an injunction or other equitable relief against the Indemnified Parties. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to **Section 8.05(b)**, it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided, that* if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to **Section 8.05(b)**, pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Member Representative and Parent shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this **Section 8.05(b)**. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to **Section 8.05(a)**, it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) Tax Claims. Notwithstanding any other provision of this Agreement, the control of any claim, assertion, event or proceeding in respect of Taxes of the Company (including, but not limited to, any such claim in respect of a breach of the representations and warranties in **Section 3.18** hereof or any breach or violation of or failure to fully perform any covenant, agreement, undertaking or obligation in **ARTICLE VI**) shall be governed exclusively by **ARTICLE VI** hereof.

Section 8.06. Payments; Holdback.

(a) Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this **ARTICLE VIII**, the Indemnifying Party shall satisfy its obligations within fifteen (15) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such 15 Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to the date such payment has been made at a rate per annum equal to the prime lending rate prevailing during such period as published in The Wall Street Journal. Any interest payable hereunder shall be calculated on a daily basis from the date such amounts were required to be paid until (but excluding) the date of actual payment, and on the basis of a 360-day year.

(b) Member Representative shall have the option to satisfy any Losses payable to a Parent Indemnitee pursuant to **ARTICLE VIII** (i) by the payment of such Losses to Parent by wire transfer of immediately available funds or (ii) the directing the Parent to deduct such number of shares of Parent Company Stock from the Holdback Amount as determined by dividing (A) the amount of such Losses by (B) the Parent Share Value. Notwithstanding anything to the contrary in this Agreement, the aggregate liability of each Member under this Agreement shall not exceed such Member's Pro Rata Interest multiplied by the sum of the Closing Merger Consideration plus the portion of the Holdback Amount actually received by the Members plus any satisfied Milestones actually received by the Members.

Section 8.07. Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties for tax purposes as an adjustment to the consideration for the Membership Interests, unless otherwise required by Law.

Section 8.08. Effect of Investigation. The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its Representatives) or by reason of the fact that the Indemnified Party or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Party's waiver of any condition set forth in **Section 7.02** or **Section 7.03**, as the case may be.

Section 8.09. Exclusive Remedies. Subject to **Section 10.12**, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or willful misconduct on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in **ARTICLE VI** and this **ARTICLE VIII**. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in **ARTICLE VI** and this **ARTICLE VIII**. Nothing in this **Section 8.09** shall (i) limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal or intentional misconduct (ii) or operate as a waiver of any right that a Person may have as a shareholder of Parent from and after the Closing.

ARTICLE IX
TERMINATION

Section 9.01. Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of the Company and Parent;

(b) by Parent by written notice to the Company if:

(i) neither Parent nor Merger Sub is then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by the Company pursuant to this Agreement that would give rise to the failure of any of the conditions specified in **ARTICLE VII** and such breach, inaccuracy or failure has not been cured by the Company within ten days of the Company's receipt of written notice of such breach from Parent; or

(ii) any of the conditions set forth in **Section 7.01** or **Section 7.02** shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by July 31, 2015, subject to extension at the Parent's election, unless such failure shall be due to the failure of Parent to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(c) by the Company by written notice to Parent if:

(i) the Company is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Parent or Merger Sub pursuant to this Agreement that would give rise to the failure of any of the conditions specified in **ARTICLE VII** and such breach, inaccuracy or failure has not been cured by Parent or Merger Sub within ten days of Parent's or Merger Sub's receipt of written notice of such breach from the Company; or

(ii) any of the conditions set forth in **Section 7.01** or **Section 7.03** shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by July 31, 2015, subject to extension at the Company's election, unless such failure shall be due to the failure of the Company to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(d) by Parent or the Company if there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

Section 9.02. Effect of Termination. In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

(a) as set forth in this **ARTICLE IX**, **Section 5.02(b)** and **ARTICLE X** hereof; and

(b) that nothing herein shall relieve any party hereto from liability for any willful breach of any provision hereof.

ARTICLE X
MISCELLANEOUS

Section 10.01. Member Representative.

(a) By approving this Agreement and the transactions contemplated hereby or by executing and delivering a Letter of Transmittal, each Member shall have irrevocably authorized and appointed Member Representative as such Person's representative and attorney-in-fact to act on behalf of such Person with respect to this Agreement and to take any and all actions and make any decisions required or permitted to be taken by Member Representative pursuant to this Agreement, including the exercise of the power to:

(i) give and receive notices and communications;

(ii) agree to, negotiate, enter into settlements and compromises of, and comply with orders or otherwise handle any other matters described in **Section 2.15**;

(iii) agree to, negotiate, enter into settlements and compromises of, and comply with orders of courts with respect to claims for indemnification made by Parent pursuant to **ARTICLE VI** and **ARTICLE VIII**;

(iv) litigate, arbitrate, resolve, settle or compromise any claim for indemnification pursuant to **ARTICLE VI** and **ARTICLE VIII**;

(v) execute and deliver all documents necessary or desirable to carry out the intent of this Agreement and any Ancillary Document;

(vi) make all elections or decisions contemplated by this Agreement and any Ancillary Document;

(vii) engage, employ or appoint any agents or representatives (including attorneys, accountants and consultants) to assist Member Representative in complying with its duties and obligations; and

(viii) take all actions necessary or appropriate in the good faith judgment of Member Representative for the accomplishment of the foregoing.

Parent shall be entitled to deal exclusively with Member Representative on all matters relating to this Agreement (including **ARTICLE VIII**) and shall be entitled to rely conclusively (without further evidence of any kind whatsoever) on any document executed or purported to be executed on behalf of any Member by Member Representative, and on any other action taken or purported to be taken on behalf of any Member by Member Representative, as being fully binding upon such Person. Notices or communications to or from Member Representative shall constitute notice to or from each of the Members. Any decision or action by Member Representative hereunder, including any agreement between Member Representative and Parent relating to the defense, payment or settlement of any claims for indemnification hereunder, shall constitute a decision or action of all Members and shall be final, binding and conclusive upon each such Person. No Member shall have the right to object to, dissent from, protest or otherwise contest the same. The provisions of this Section, including the power of attorney granted hereby, are independent and severable, are irrevocable and coupled with an interest and shall not be terminated by any act of any one or Members, or by operation of Law, whether by death or other event.

(b) Member Representative may resign at any time, and may be removed for any reason or no reason by the vote or written consent of a majority in interest of the Members according to each Member's Pro Rata Interest (the "**Majority Holders**"); *provided, however*, in no event shall Member Representative resign or be removed without the Majority Holders having first appointed a new Member Representative who shall assume such duties immediately upon the resignation or removal of Member Representative. In the event of the death, incapacity, resignation or removal of Member Representative, a new Member Representative shall be appointed by the vote or written consent of the Majority Holders. Notice of such vote or a copy of the written consent appointing such new Member Representative shall be sent to Parent, such appointment to be effective upon the later of the date indicated in such consent or the date such notice is received by Parent; provided, that until such notice is received, Parent, Merger Sub and the Surviving Entity shall be entitled to rely on the decisions and actions of the prior Member Representative as described in **Section 10.01(a)** above.

(c) Member Representative shall not be liable to the Members for actions taken pursuant to this Agreement, except to the extent such actions shall have been determined by a court of competent jurisdiction to have constituted gross negligence or involved fraud, intentional misconduct or bad faith (it being understood that any act done or omitted pursuant to the advice of counsel, accountants and other professionals and experts retained by Member Representative shall be conclusive evidence of good faith). The Members shall severally and not jointly (in accordance with their Pro Rata Interest), indemnify and hold harmless Member Representative from and against, compensate it for, reimburse it for and pay any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising out of and in connection with its activities as Member Representative under this Agreement (the "**Representative Losses**"), in each case as such Representative Loss is suffered or incurred; *provided*, that in the event it is finally adjudicated that a Representative Loss or any portion thereof was primarily caused by the gross negligence, fraud, intentional misconduct or bad faith of Member Representative, Member Representative shall reimburse the Members the amount of such indemnified Representative Loss attributable to such gross negligence, fraud, intentional misconduct or bad faith. Parent will, or will cause the Surviving Entity to, promptly reimburse Member Representative for any reasonable out-of-pocket administrative expenses up to a maximum of one hundred thousand dollars ($100,000) (the "**Representative Fund**") reasonably incurred by Member Representative in the course of performing such Member Representative duties necessary to effect the transactions contemplated by this Agreement, against appropriate receipts or other supporting documentation, as may be requested by Parent or the Surviving Entity. All requests for reimbursement from the Representative Fund by Member Representative must be received, together with the appropriate receipts and supporting documentation, by Parent no later than the earlier of (i) the Third Milestone Date and (ii) the Satisfaction Date of the Third Milestone.

Section 10.02. Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 10.03. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 10.03**):

If to the Company:	Abeona Therapeutics LLC 10000 Cedar Avenue Cleveland, Ohio 44106 E-mail: tmiller@abeonatherapeutics.com Attention: Tim Miller, PhD
with a copy to:	Ulmer & Berne LLP Skylight Office Tower 1660 West 2nd Street, Suite 1100 Cleveland, Ohio 44113-1448 Facsimile: (216) 583-7001 E-mail: speppard@ulmer.com Attention: Sean T. Peppard
If to Parent or Merger Sub:	PlasmaTech Biopharmaceuticals, Inc. 1325 Avenue of the Americas, 27th Floor New York, New York 10019 Facsimile: (214) 905-5101 E-mail: srouhandeh@plasmatechbio.com Attention: Steven Rouhandeh 4848 Lemmon Avenue, Suite 517 Dallas, TX 75219 E-mail: sthompson@plasmatechbio.com Attention: Stephen B. Thompson
with a copy to:	Morgan, Lewis & Bockius LLP One Federal Street Boston, MA 02110 Facsimile: (617) 951-8736 E-mail: jack.concannon@morganlewis.com Attention: John J. Concannon, III
If to Member Representative:	Paul A. Hawkins 11471 Euclid Avenue Apt. 214B Cleveland, OH 44106 E-mail: paulallenhawkins@yahoo.com

Section 10.04. Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 10.05. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 10.06. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 10.07. Entire Agreement. This Agreement and the Ancillary Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 10.08. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 10.09. No Third-Party Beneficiaries. Except as provided in **Section 5.08**, **Section 6.03** and **ARTICLE VIII**, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 10.10. Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by Parent, Merger Sub and the Company at any time prior to the Effective Time; *provided, however*, that after the Requisite Member Approval is obtained, there shall be no amendment or waiver that, pursuant to applicable Law, requires further approval of the Members, without the receipt of such further approvals. Any failure of Parent or Merger Sub, on the one hand, or the Company, on the other hand, to comply with any obligation, covenant, agreement or condition herein may be waived by the Company (with respect to any failure by Parent or Merger Sub) or by Parent or Merger Sub (with respect to any failure by the Company), respectively, only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 10.11. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF NEW YORK IN EACH CASE LOCATED IN THE CITY OF NEW YORK AND COUNTY OF NEW YORK, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE ANCILLARY DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11(c).

Section 10.12. Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 10.13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

ABEONA THERAPEUTICS LLC

By /s/ Timothy J. Miller
Name: Timothy J. Miller
Title: CEO

PLASMATECH BIOPHARMACEUTICALS, INC.

By /s/ Steven H. Rouhandeh
Name: Steven H. Rouhandeh
Title: Executive Chairman

PLASMATECH MERGER SUB, INC.

By /s/ Steven H. Rouhandeh
Name: Steven H. Rouhandeh
Title: President

MEMBER REPRESENTATIVE

/s/ Paul Hawkins
Paul A. Hawkins, solely in his capacity as Member Representative

EXHIBIT 10.4

PLASMATECH BIOPHARMACEUTICALS, INC.
COMMON STOCK PURCHASE AGREEMENT

This COMMON STOCK PURCHASE AGREEMENT (this "**Agreement**") is dated as of April 1, 2015 by and between PlasmaTech Biopharmaceuticals, Inc., a Delaware corporation (the "**Company**") and , (the "**Purchaser**").

WHEREAS, the Company desires to issue and sell to the Purchaser, and the Purchaser desires to purchase from the Company __________ shares of common stock, par value $0.01 per share ("**Common Stock**"), of the Company (the "**Shares**") at a purchase price per share of $3.00 for an aggregate purchase price of $__________ (the "**Purchase Price**").

NOW THEREFORE, in consideration of the mutual agreements, representations, warranties and covenants contained herein, the parties hereto agree as follows:

1. Purchase and Sale of shares. Subject to the terms and conditions set forth in this Agreement, the Company hereby sells, conveys and transfers to the Purchaser, and the Purchaser hereby purchases and accepts from the Company, the Shares.

2. The Closing. The closing of the purchase and sale of the Shares (the "**Closing**") shall take place on the date hereof at 5:00 pm (Eastern Time) at the offices of Morgan, Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110 (or remotely via exchange of documents and signatures), or on such other date and at such time as may be agreed upon between the Company and the Purchaser. At the Closing, against payment of the Purchase Price therefor by wire transfer to a bank account designated by the Company, the Company shall deliver to the Purchaser an original stock certificate registered in the name of the Purchaser, representing the Shares purchased by the Purchaser. The date on which the Closing actually occurs is the "**Closing Date**."

3. Representations and Warranties of the Company. The Company represents and warrants to the Purchaser that:

3.1. Authorization. The Company has full power and authority to enter into this Agreement, and this Agreement constitutes the valid and legally binding obligation of the Company, enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of a specific performance, injunctive relief, or other equitable remedies.

3.2. Valid Issuance of Shares. The Shares have been duly authorized and, when issued, delivered and paid for in the manner set forth in this Agreement, will be validly issued, fully paid and nonassessable.

3.3. No General Solicitation. The Company has not, either directly or indirectly, engaged in any general solicitation, or published any advertisement in connection with the offer and sale of the Shares.

4. Representations and Warranties of the Purchaser. The Purchaser hereby represents and warrants to and covenants with the Company that:

4.1. Authorization. The Purchaser has full power and authority to enter into this Agreement, and this Agreement constitutes the valid and legally binding obligation of the Purchaser, enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of a specific performance, injunctive relief, or other equitable remedies.

4.2. Purchase Entirely for Own Account. The Purchaser hereby confirms, that the Shares are being acquired by the Purchaser for investment for the Purchaser's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, the Purchaser further represents that the Purchaser does not presently have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Shares. The Purchaser has not been formed for the specific purpose of acquiring the Shares.

4.3. Restricted Securities. The Purchaser understands that the Shares have not been, and will not be, registered under the Securities Act of 1933, as amended (the "**Securities Act**"), by reason of a specific exemption from the registration provisions of the Securities Act. The Purchaser understands that the Shares are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, the Purchaser must hold the Shares indefinitely unless they are registered with the Shares and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available.

4.4. Accredited Investor. The Purchaser is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Shares Act. The Purchaser agrees to furnish any additional information requested by the Company or any of its affiliates to assure compliance with applicable U.S. federal and state Shares laws in connection with the purchase and sale of the Shares. The Purchaser has such knowledge, skill and experience in business, financial and investment matters that the Purchaser is capable of evaluating the merits and risks of an investment in the Shares. With the assistance of the Purchaser's own professional advisors, to the extent that the Purchaser has deemed appropriate, the Purchaser has made its own legal, tax, accounting and financial evaluation of the merits and risks of an investment in the Shares and the consequences of this Agreement. The Purchaser has considered the suitability of the Shares as an investment in light of its own circumstances and financial condition and the Purchaser is able to bear the risks associated with an investment in the Shares and its authority to invest in the Shares.

4.5. No General Solicitation. Neither the Purchaser, nor any of its officers, directors, employees, agents, stockholders or partners has either directly or indirectly engaged in any general solicitation, or published any advertisement in connection with the offer and sale of the Shares.

4.6. Non-Reliance. The Purchaser confirms that the Company has not (A) given any guarantee or representation as to the potential success, return, effect or benefit (either legal, regulatory, tax, financial, accounting or otherwise) of an investment in the Shares or (B) made any representation to the Purchaser regarding the legality of an investment in the Shares under applicable legal investment or similar laws or regulations. In deciding to purchase the Shares, the Purchaser is not relying on the advice or recommendations of the Company and the Purchaser has made its own independent decision that the investment in the Shares is suitable and appropriate for the Purchaser.

4.7. Information. The Purchaser and its advisors, if any, have been furnished with all publicly available materials (or such materials are available to the Purchaser) relating to the business, finances and operations of the Company and such other publicly available materials as have been requested by the Purchaser. The Purchaser acknowledges that it has read and understands the risk factors set forth in such filings. The Purchaser and its advisors, if any, have been afforded the opportunity to ask questions of the Company. The Purchaser understands that its investment in the Shares involves a high degree of risk.

5. Miscellaneous.

5.1. Transfer; Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective authorized successors and permitted assigns of the parties. Nothing in this Agreement, nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by either the Company or the Purchaser without the prior written consent of the other party.

5.2. Waiver, Amendment. Neither this Agreement nor any provisions hereof shall be modified, changed, discharged or terminated except by an instrument in writing, signed by the Company and the Purchaser.

5.3. Section and Other Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

5.4. Legends. The certificates representing the Shares sold pursuant to this Agreement will be endorsed with a legend in substantially the following form:

"THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. THE SHARES MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (1) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OR (2) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE STATE SECURITIES LAWS AND THE SECURITIES LAWS OF OTHER JURISDICTIONS, AND IN THE CASE OF A TRANSACTION EXEMPT FROM REGISTRATION, UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO IT THAT SUCH TRANSACTION DOES NOT REQUIRE REGISTRATION UNDER THE SECURITIES ACT AND SUCH OTHER APPLICABLE LAWS."

5.5. Waiver of Jury Trial. THE PARTIES HERETO IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

5.6. Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York, without giving effect to conflict of laws principles thereof. The parties hereby agree that any action, proceeding or claim against it arising out of, or relating in any way to this Agreement shall be brought and enforced in the New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York, and irrevocably submits to such jurisdiction, which jurisdiction shall be exclusive.

5.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement.

5.8. Notices. All notices and other communications provided for herein shall be in writing and shall be deemed to have been duly given if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid to the following addresses (or such other address as either party shall have specified by notice in writing to the other):

If to the Company:

PlasmaTech Biopharmaceuticals, Inc.
4848 Lemmon Avenue, Suite 517
Dallas, TX 75219
Facsimile: [(214) 905-5101]
E-mail: sthompson@plasmatechbio.com
Attention: Stephen Thompson, Chief Accounting Officer

with a copy to:

Morgan, Lewis & Bockius LLP
One Federal Street
Boston, MA 02110
Facsimile: 617-428-6330
E-mail: jack.concannon@morganlewis.com
Attention: John J. Concannon III, Esq.

If to the Purchaser:

____

Facsimile:[_________________]
E-mail: [_________________]
Attention: [_________________]

with a copy to:

[_________________]
Facsimile:[_________________]
E-mail: [_________________]
Attention: [_________________]

5.9. Survival. Unless otherwise set forth in this Agreement, the representations, warranties and covenants contained in this Agreement shall survive the execution and delivery of this Agreement and the Closing.

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

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Common Stock Purchase Agreement as of the date first written above.

PLASMATECH BIOPHARMACEUTICALS, INC.

By ______________________________
Name:
Title:

EUROPA INTERNATIONAL INC.

By ______________________________
Name:
Title:

EXHIBIT 10.5

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this "Agreement") is dated as of May 6, 2015, between PlasmaTech Biopharmaceuticals, Inc., a Delaware corporation (the "Company"), and each purchaser identified on the signature pages hereto (each, including its successors and assigns, a "Purchaser" and collectively, the "Purchasers").

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), and Rule 506 promulgated thereunder, the Company desires to issue and sell to each Purchaser, and each Purchaser, severally and not jointly, desires to purchase from the Company, securities of the Company as more fully described in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and each Purchaser agree as follows:

ARTICLE I.
DEFINITIONS

1 . 1 Definitions. In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings set forth in this Section 1.1:

"Acquiring Person" shall have the meaning ascribed to such term in Section 4.5.

"Action" shall have the meaning ascribed to such term in Section 3.1(j).

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

"Board of Directors" means the board of directors of the Company.

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Closing" means the closing of the purchase and sale of the Securities pursuant to Section 2.1.

"Closing Date" means the Trading Day on which all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all conditions precedent to (i) the Purchasers' obligations to pay the Subscription Amount and (ii) the Company's obligations to deliver the Securities, in each case, have been satisfied or waived.

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the common stock of the Company, par value $0.01 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

"Common Stock Equivalents" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Company Counsel" means Morgan Lewis & Bockius LLP.

"Disclosure Schedules" shall have the meaning ascribed to such term in Section 3.1.

"EGS" means Ellenoff Grossman & Schole LLP, with offices located at 1345 Avenue of the Americas, New York, New York 10105-0302.

"Effective Date" means the earliest of the date that (a) the initial Registration Statement has been declared effective by the Commission, (b) all of the Shares and Warrant Shares have been sold pursuant to Rule 144 or may be sold pursuant to Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 and without volume or manner-of-sale restrictions or (c) following the one year anniversary of the Closing Date provided that a holder of Shares or Warrant Shares is not an Affiliate of the Company, all of the Shares and Warrant Shares may be sold pursuant to an exemption from registration under Section 4(1) of the Securities Act without volume or manner-of-sale restrictions and Company Counsel has delivered to such holders a standing written unqualified opinion that resales may then be made by such holders of the Shares and Warrant Shares pursuant to such exemption which opinion shall be in form and substance reasonably acceptable to such holders.

"Escrow Agent" means Signature Bank, a New York State chartered bank, with offices at 261 Madison Avenue, New York, New York 10016.

"Escrow Agreement" means the escrow agreement entered into prior to the date hereof, by and among the Company, the Escrow Agent and the Placement Agent pursuant to which the Purchasers shall deposit Subscription Amounts with the Escrow Agent to be applied to the transactions contemplated hereunder.

"Evaluation Date" shall have the meaning ascribed to such term in Section 3.1(s).

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

"Exempt Issuance" means the issuance of (a) shares of Common Stock or options to employees, officers or directors of the Company pursuant to any stock or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose for services rendered to the Company, (b) securities upon the exercise or exchange of or conversion of any Securities issued hereunder and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities (other than in connection with stock splits or combinations) or to extend the term of such securities, and (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company, provided that any such issuance shall only be to a Person (or to the equityholders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities.

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended.

"FDA" shall have the meaning ascribed to such term in Section 3.1(kk).

"FDCA" shall have the meaning ascribed to such term in Section 3.1(kk).

"GAAP" shall have the meaning ascribed to such term in Section 3.1(h).

"Indebtedness" shall have the meaning ascribed to such term in Section 3.1(bb).

"Intellectual Property Rights" shall have the meaning ascribed to such term in Section 3.1(p).

"Legend Removal Date" shall have the meaning ascribed to such term in Section 4.1(c).

"Liens" means a lien, charge pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

"Material Adverse Effect" shall have the meaning assigned to such term in Section 3.1(b).

"Material Permits" shall have the meaning ascribed to such term in Section 3.1(n).

"Per Share Purchase Price" equals $8.00, subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Pharmaceutical Product" shall have the meaning ascribed to such term in Section 3.1(jj).

"Placement Agent" means H. C. Wainwright & Co., LLC.

"Proceeding" means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"Public Information Failure" shall have the meaning ascribed to such term in Section 4.2(b).

"Public Information Failure Payments" shall have the meaning ascribed to such term in Section 4.2(b).

"Purchaser Party" shall have the meaning ascribed to such term in Section 4.8.

"Registration Rights Agreement" means the Registration Rights Agreement, dated the date hereof, among the Company and the Purchasers, in the form of Exhibit A attached hereto.

"Registration Statement" means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale by the Purchasers of the Shares and the Warrant Shares.

"Required Approvals" shall have the meaning ascribed to such term in Section 3.1(e).

"Rule 144" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"Rule 424" means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"SEC Reports" shall have the meaning ascribed to such term in Section 3.1(h).

"Securities" means the Shares, the Warrants and the Warrant Shares.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Shares" means the shares of Common Stock issued or issuable to each Purchaser pursuant to this Agreement.

"Short Sales" means all "short sales" as defined in Rule 200 of Regulation SHO under the Exchange Act (but shall not be deemed to include the location and/or reservation of borrowable shares of Common Stock).

"Subscription Amount" means, as to each Purchaser, the aggregate amount to be paid for Shares and Warrants purchased hereunder as specified below such Purchaser's name on the signature page of this Agreement and next to the heading "Subscription Amount," in United States dollars and in immediately available funds.

"Subsidiary" means any subsidiary of the Company as set forth on Schedule 3.1(a) and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

"Trading Day" means a day on which the principal Trading Market is open for trading.

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

"Transaction Documents" means this Agreement, the Warrants, the Registration Rights Agreement, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder.

"Transfer Agent" means American Stock Transfer & Trust Company, and any successor transfer agent of the Company.

"Variable Rate Transaction" shall have the meaning ascribed to such term in Section 4.12(b).

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the "Pink Sheets" published by OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

"Warrants" means, collectively, the Common Stock purchase warrants delivered to the Purchasers at the Closing in accordance with Section 2.2(a) hereof, which Warrants shall be exercisable immediately Closing Date and have a term of exercise equal to 30 months from the Closing Date, in the form of Exhibit C attached hereto.

"Warrant Shares" means the shares of Common Stock issuable upon exercise of the Warrants.

ARTICLE II.
PURCHASE AND SALE

2.1 Closing. On the Closing Date, upon the terms and subject to the conditions set forth herein, substantially concurrent with the execution and delivery of this Agreement by the parties hereto, the Company agrees to sell, and the Purchasers, severally and not jointly, agree to purchase, up to an aggregate of $10,000,000 of Shares and Warrants. Each Purchaser shall deliver to the Escrow Agent, via wire transfer or a certified check, immediately available funds equal to such Purchaser's Subscription Amount as set forth on the signature page hereto executed by such Purchaser, and the Company shall deliver to each Purchaser its respective Shares and a Warrant, as determined pursuant to Section 2.2(a), and the Company and each Purchaser shall deliver the other items set forth in Section 2.2 deliverable at the Closing. Upon satisfaction of the covenants and conditions set forth in Sections 2.2 and 2.3, the Closing shall occur at the offices of EGS or such other location as the parties shall mutually agree.

2.2 Deliveries.

(a) On or prior to the Closing Date, the Company shall deliver or cause to be delivered to each Purchaser the following:

(i) this Agreement duly executed by the Company;

(ii) a legal opinion of Company Counsel, substantially in the form of Exhibit B attached hereto;

(iii) a copy of the irrevocable instructions to the Transfer Agent instructing the Transfer Agent to deliver, on an expedited basis, a certificate evidencing a number of Shares equal to such Purchaser's Subscription Amount divided by the Per Share Purchase Price, registered in the name of such Purchaser;

(iv) a Warrant registered in the name of such Purchaser to purchase up to a number of shares of Common Stock equal to 50% of such Purchaser's Shares, with an exercise price equal to $10.00, subject to adjustment therein (such Warrant certificate may be delivered within three Trading Days of the Closing Date); and

(v) the Registration Rights Agreement duly executed by the Company.

(b) On or prior to the Closing Date, each Purchaser shall deliver or cause to be delivered to the Company or the Escrow Agent, as applicable, the following:

(i) this Agreement duly executed by such Purchaser;

(ii) to Escrow Agent, such Purchaser's Subscription Amount by wire transfer to the account specified in the Escrow Agreement; and

(iii) the Registration Rights Agreement duly executed by such Purchaser.

2.3 Closing Conditions.

(a) The obligations of the Company hereunder in connection with the Closing are subject to the following conditions being met:

(i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) on the Closing Date of the representations and warranties of the Purchasers contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements of each Purchaser required to be performed at or prior to the Closing Date shall have been performed; and

(iii) the delivery by each Purchaser of the items set forth in Section 2.2(b) of this Agreement.

(b) The respective obligations of the Purchasers hereunder in connection with the Closing are subject to the following conditions being met:

(i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) when made and on the Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein);

(ii) all obligations, covenants and agreements of the Company required to be performed at or prior to the Closing Date shall have been performed;

(iii) the delivery by the Company of the items set forth in Section 2.2(a) of this Agreement;

(iv) there shall have been no Material Adverse Effect with respect to the Company since the date hereof; and

(v) from the date hereof to the Closing Date, trading in the Common Stock shall not have been suspended by the Commission or the Company's principal Trading Market, and, at any time prior to the Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable judgment of such Purchaser, makes it impracticable or inadvisable to purchase the Securities at the Closing.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. Except as set forth in the Disclosure Schedules, which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation or otherwise made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules, the Company hereby makes the following representations and warranties to each Purchaser:

(a) Subsidiaries. All of the direct and indirect subsidiaries of the Company are set forth in the SEC Reports. The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities. If the Company has no subsidiaries, all other references to the Subsidiaries or any of them in the Transaction Documents shall be disregarded.

(b) Organization and Qualification. The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a "Material Adverse Effect") and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of each of this Agreement and the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection herewith or therewith other than in connection with the Required Approvals. This Agreement and each other Transaction Document to which it is a party has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(d) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a party, the issuance and sale of the Securities and the consummation by it of the transactions contemplated hereby and thereby do not and will not: (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

(e) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filings required pursuant to Section 4.4 of this Agreement, (ii) the filing with the Commission pursuant to the Registration Rights Agreement, (iii) the notice and/or application(s) to each applicable Trading Market for the issuance and sale of the Securities and the listing of the Shares and Warrant Shares for trading thereon in the time and manner required thereby, and (iv) the filing of Form D with the Commission and such filings as are required to be made under applicable state securities laws (collectively, the "Required Approvals").

(f) Issuance of the Securities. The Securities are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Warrant Shares, when issued in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Company has reserved from its duly authorized capital stock the maximum number of shares of Common Stock issuable pursuant to this Agreement and the Warrants.

(g) Capitalization. The capitalization of the Company is as set forth in the SEC Reports. The Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of employee stock options under the Company's stock option plans, the issuance of shares of Common Stock to employees pursuant to the Company's employee stock purchase plans and pursuant to the conversion and/or exercise of Common Stock Equivalents outstanding as of the date of the most recently filed periodic report under the Exchange Act. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as a result of the purchase and sale of the Securities, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire any shares of Common Stock or the capital stock of any Subsidiary, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents or capital stock of any Subsidiary. The issuance and sale of the Securities will not obligate the Company or any Subsidiary to issue shares of Common Stock or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. There are no outstanding securities or instruments of the Company or any Subsidiary that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to redeem a security of the Company or such Subsidiary. The company does not have any stock appreciation rights or "phantom stock" plans or any similar plan or agreement. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(h) SEC Reports; Financial Statements. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "SEC Reports") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a 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. The Company has never been an issuer subject to Rule 144(i) under the Securities Act. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved ("GAAP"), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(i) Material Changes; Undisclosed Events, Liabilities or Developments. Since the date of the latest audited financial statements included within the SEC Reports, except as specifically disclosed in a subsequent SEC Report filed prior to the date hereof: (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Securities contemplated by this Agreement or as set forth in the SEC Reports, no event, liability, fact, circumstance, occurrence or development has occurred or exists, or is reasonably expected to occur or exist, with respect to the Company or its Subsidiaries or their respective businesses, properties, operations, assets or financial condition, that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed at least 1 Trading Day prior to the date that this representation is made.

(j) Litigation. There is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "Action") which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(k) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company, which could reasonably be expected to result in a Material Adverse Effect. None of the Company's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. To the knowledge of the Company, no executive officer of the Company or any Subsidiary is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(l) Compliance. Neither the Company nor any Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree, or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

(m) Environmental Laws. The Company and its Subsidiaries (i) are in compliance with all federal, state, local and foreign laws relating to pollution or protection of human health or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), including laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "Hazardous Materials") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands, or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations, issued, entered, promulgated or approved thereunder ("Environmental Laws"); (ii) have received all permits licenses or other approvals required of them under applicable Environmental Laws tic induct their respective businesses; and (iii) are in compliance with all terms and conditions of any such permit, license or approval where in each clause (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(n) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the SEC Reports, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect ("Material Permits"), and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit.

(o) Title to Assets. The Company and the Subsidiaries have good and marketable title in fee simple to all real property owned by them and good and marketable title in all personal property owned by them that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for (i) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries and (ii) Liens for the payment of federal, state or other taxes, for which appropriate reserves have been made therefor in accordance with GAAP and the payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance.

(p) Intellectual Property. The Company and the Subsidiaries have, or have rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights as described in the SEC Reports as necessary or required for use in connection with their respective businesses and which the failure to so have could have a Material Adverse Effect (collectively, the "Intellectual Property Rights"). None of, and neither the Company nor any Subsidiary has received a notice (written or otherwise) that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement. Neither the Company nor any Subsidiary has received, since the date of the latest audited financial statements included within the SEC Reports, a written notice of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person, except as could not have or reasonably br expected to not have a Material Adverse Effect. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(q) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged, including, but not limited to, directors and officers insurance coverage. Neither the Company nor any Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

(r) Transactions With Affiliates and Employees. Except as set forth in the SEC Reports, none of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, providing for the borrowing of money from or lending of money to or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, in each case in excess of $120,000 other than for: (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

(s) Sarbanes-Oxley; Internal Accounting Controls. The Company and the Subsidiaries are in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the Commission thereunder that are effective as of the date hereof and as of the Closing Date. The Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company and the Subsidiaries have established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and the Subsidiaries and designed such disclosure controls and procedures to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. The Company's certifying officers have evaluated the effectiveness of the disclosure controls and procedures of the Company and the Subsidiaries as of the end of the period covered by the most recently filed periodic report under the Exchange Act (such date, the "Evaluation Date"). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no changes in the internal control over financial reporting (as such term is defined in the Exchange Act) of the Company and its Subsidiaries that have materially affected, or is reasonably likely to materially affect, the internal control over financial reporting of the Company or its Subsidiaries.

(t) Certain Fees. No brokerage or finder's fees or commissions are or will be payable by the Company or any Subsidiary to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents other than to the Placement Agent. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by the Transaction Documents.

(u) Private Placement. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchasers as contemplated hereby. The issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Trading Market.

(v) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Securities, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an "investment company" subject to registration under the Investment Company Act of 1940, as amended.

(w) Registration Rights. Other than each of the Purchasers, no Person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company or any Subsidiary.

(x) Listing and Maintenance Requirements. The Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. The Company has not, in the 12 months preceding the date hereof, received notice from any Trading Market on which the Common Stock is or has been listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Trading Market. The Company is, and has no reason to believe that it will not in the foreseeable future continue to be, in compliance with all such listing and maintenance requirements. The Common Stock is currently eligible for electronic transfer through the Depository Trust Company or another established clearing corporation and the Company is current in payment of the fees to the Depository Trust Company (or such other established clearing corporation) in connection with such electronic transfer.

(y) Application of Takeover Protections. The Company and the Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's certificate of incorporation (or similar charter documents) or the laws of its state of incorporation that is or could become applicable to the Purchasers as a result of the Purchasers and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including without limitation as a result of the Company's issuance of the Securities and the Purchasers' ownership of the Securities.

(z) Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided any of the Purchasers or their agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that the Purchasers will rely on the foregoing representation in effecting transactions in securities of the Company. All of the disclosure furnished by or on behalf of the Company to the Purchasers regarding the Company and its Subsidiaries, their respective businesses and the transactions contemplated hereby, including the Disclosure Schedules to this Agreement, is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The press releases disseminated by the Company during the twelve months preceding the date of this Agreement taken as a whole do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made and when made, not misleading. The Company acknowledges and agrees that no Purchaser makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof.

(aa) No Integrated Offering. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, neither the Company, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of (i) the Securities Act which would require the registration of any such securities under the Securities Act, or (ii) any applicable shareholder approval provisions of any Trading Market on which any of the securities of the Company are listed or designated.

(bb) Solvency. Based on the consolidated financial condition of the Company as of the Closing Date, after giving effect to the receipt by the Company of the proceeds from the sale of the Securities hereunder: (i) the fair saleable value of the Company's assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they mature, (ii) the Company's assets do not constitute unreasonably small capital to carry on its business as now conducted and as proposed to be conducted including its capital needs taking into account the particular capital requirements of the business conducted by the Company, consolidated and projected capital requirements and capital availability thereof, and (iii) the current cash flow of the Company, together with the proceeds the Company would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its liabilities when such amounts are required to be paid. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the Closing Date. The SEC Reports set forth all outstanding secured and unsecured Indebtedness of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments. For the purposes of this Agreement, "Indebtedness" means (x) any liabilities for borrowed money or amounts owed in excess of $100,000 (other than trade accounts payable incurred in the ordinary course of business), (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (z) the present value of any lease payments in excess of $100,000 due under leases required to be capitalized in accordance with GAAP. Neither the Company nor any Subsidiary is in default with respect to any Indebtedness.

(cc) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary know of no basis for any such claim.

(dd) No General Solicitation. Neither the Company nor any Person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising. The Company has offered the Securities for sale only to the Purchasers and certain other "accredited investors" within the meaning of Rule 501 under the Securities Act.

(ee) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, to the knowledge of the Company or any Subsidiary, any agent or other person acting on behalf of the Company or any Subsidiary, has: (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of FCPA.

(ff) Accountants. The Company's accounting firm is set forth in the SEC Reports. To the knowledge and belief of the Company, such accounting firm: (i) is a registered public accounting firm as required by the Exchange Act and (ii) is expected express its opinion with respect to the financial statements to be included in the Company's Annual Report for the fiscal year ending December 31, 2015.

(gg) No Disagreements with Accountants and Lawyers. There are no disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and the Company is current with respect to any fees owed to its accountants and lawyers which could affect the Company's ability to perform any of its obligations under any of the Transaction Documents.

(hh) Acknowledgment Regarding Purchasers' Purchase of Securities. The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchasers' purchase of the Securities. The Company further represents to each Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(ii) Acknowledgment Regarding Purchaser's Trading Activity. Anything in this Agreement or elsewhere herein to the contrary notwithstanding (except for Sections 3.2(g) and 4.14 hereof), it is understood and acknowledged by the Company that: (i) none of the Purchasers has been asked by the Company to agree, nor has any Purchaser agreed, to desist from purchasing or selling, long and/or short, securities of the Company, or "derivative" securities based on securities issued by the Company or to hold the Securities for any specified term, (ii) past or future open market or other transactions by any Purchaser, specifically including, without limitation, Short Sales or "derivative" transactions, before or after the closing of this or future private placement transactions, may negatively impact the market price of the Company's publicly-traded securities, (iii) any Purchaser, and counter-parties in "derivative" transactions to which any such Purchaser is a party, directly or indirectly, may presently have a "short" position in the Common Stock and (iv) each Purchaser shall not be deemed to have any affiliation with or control over any arm's length counter-party in any "derivative" transaction. The Company further understands and acknowledges that (y) one or more Purchasers may engage in hedging activities at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value of the Warrant Shares deliverable with respect to Securities are being determined, and (z) such hedging activities (if any) could reduce the value of the existing stockholders' equity interests in the Company at and after the time that the hedging activities are being conducted. The Company acknowledges that such aforementioned hedging activities do not constitute a breach of any of the Transaction Documents.

(jj) Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company, other than, in the case of clauses (ii) and (iii), compensation paid to the Company's placement agent in connection with the placement of the Securities.

(kk) FDA. As to each product subject to the jurisdiction of the U.S. Food and Drug Administration ("FDA") under the Federal Food, Drug and Cosmetic Act, as amended, and the regulations thereunder ("FDCA") that is manufactured, packaged, labeled, tested, distributed, sold, and/or marketed by the Company or any of its Subsidiaries (each such product, a "Pharmaceutical Product"), such Pharmaceutical Product is being manufactured, packaged, labeled, tested, distributed, sold and/or marketed by the Company in compliance with all applicable requirements under FDCA and similar laws, rules and regulations relating to registration, investigational use, premarket clearance, licensure, or application approval, good manufacturing practices, good laboratory practices, good clinical practices, product listing, quotas, labeling, advertising, record keeping and filing of reports, except where the failure to be in compliance would not have a Material Adverse Effect. There is no pending, completed or, to the Company's knowledge, threatened, action (including any lawsuit, arbitration, or legal or administrative or regulatory proceeding, charge, complaint, or investigation) against the Company or any of its Subsidiaries, and none of the Company or any of its Subsidiaries has received any notice, warning letter or other communication from the FDA or any other governmental entity, which (i) contests the premarket clearance, licensure, registration, or approval of, the uses of, the distribution of, the manufacturing or packaging of, the testing of, the sale of, or the labeling and promotion of any Pharmaceutical Product, (ii) withdraws its approval of, requests the recall, suspension, or seizure of, or withdraws or orders the withdrawal of advertising or sales promotional materials relating to, any Pharmaceutical Product, (iii) imposes a clinical hold on any clinical investigation by the Company or any of its Subsidiaries, (iv) enjoins production at any facility of the Company or any of its Subsidiaries, (v) enters or proposes to enter into a consent decree of permanent injunction with the Company or any of its Subsidiaries, or (vi) otherwise alleges any violation of any laws, rules or regulations by the Company or any of its Subsidiaries, and which, either individually or in the aggregate, would have a Material Adverse Effect. The properties, business and operations of the Company have been and are being conducted in all material respects in accordance with all applicable laws, rules and regulations of the FDA. The Company has not been informed by the FDA that the FDA will prohibit the marketing, sale, license or use in the United States of any product proposed to be developed, produced or marketed by the Company nor has the FDA expressed any concern as to approving or clearing for marketing any product being developed or proposed to be developed by the Company.

(ll) Form S-3 Eligibility. The Company is eligible to register the resale of the Securities for resale by the Purchaser on Form S-3 promulgated under the Securities Act.

(mm) Stock Option Plans. Each stock option granted by the Company under the Company's stock option plan was granted (i) in accordance with the terms of the Company's stock option plan and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under GAAP and applicable law. No stock option granted under the Company's stock option plan has been backdated. The Company has not knowingly granted, and there is no and has been no Company policy or practice to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.

(nn) Office of Foreign Assets Control. Neither the Company nor any Subsidiary nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC").

(oo) U.S. Real Property Holding Corporation. The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon Purchaser's request.

(pp) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries or Affiliates is subject to the Bank Holding Company Act of 1956, as amended (the "BHCA") and to regulation by the Board of Governors of the Federal Reserve System (the "Federal Reserve"). Neither the Company nor any of its Subsidiaries or Affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or Affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(qq) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and no Action or Proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company or any Subsidiary, threatened.

(rr) No Disqualification Events. With respect to the Securities to be offered and sold hereunder in reliance on Rule 506 under the Securities Act, none of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering hereunder, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity at the time of sale (each, an "Issuer Covered Person" and, together, "Issuer Covered Persons") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Purchasers a copy of any disclosures provided thereunder.

(ss) Other Covered Persons. Other than the Placement Agent, the Company is not aware of any person (other than any Issuer Covered Person) that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of any Regulation D Securities.

(tt) Notice of Disqualification Events. The Company will notify the Purchasers and the Placement Agent in writing, prior to the Closing Date of (i) any Disqualification Event relating to any Issuer Covered Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Issuer Covered Person.

3.2 Representations and Warranties of the Purchasers. Each Purchaser, for itself and for no other Purchaser, hereby represents and warrants as of the date hereof and as of the Closing Date to the Company as follows (unless as of a specific date therein):

(a) Organization; Authority. Such Purchaser is either an individual or an entity duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents and performance by such Purchaser of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of such Purchaser. Each Transaction Document to which it is a party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, enforceable against it in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) Own Account. Such Purchaser understands that the Securities are "restricted securities" and have not been registered under the Securities Act or any applicable state securities law and is acquiring the Securities as principal for its own account and not with a view to or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities law, has no present intention of distributing any of such Securities in violation of the Securities Act or any applicable state securities law and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Securities in violation of the Securities Act or any applicable state securities law (this representation and warranty not limiting such Purchaser's right to sell the Securities pursuant to the Registration Statement or otherwise in compliance with applicable federal and state securities laws). Such Purchaser is acquiring the Securities hereunder in the ordinary course of its business.

(c) Purchaser Status. At the time such Purchaser was offered the Securities, it was, and as of the date hereof it is, and on each date on which it exercises any Warrants, it will be either: (i) an "accredited investor" as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Securities Act or (ii) a "qualified institutional buyer" as defined in Rule 144A(a) under the Securities Act.

(d) Experience of Such Purchaser. Such Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Purchaser is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

(e) General Solicitation. Such Purchaser is not, to such Purchaser's knowledge, purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general solicitation or general advertisement.

(f) Access to Information. Such Purchaser acknowledges that it has had the opportunity to review the Transaction Documents (including all exhibits and schedules thereto) and the SEC Reports and has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Shares and the merits and risks of investing in the Shares; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. Such Purchaser acknowledges and agrees that neither the Placement Agent nor any Affiliate of the Placement Agent has provided such Purchaser with any information or advice with respect to the Securities nor is such information or advice necessary or desired. Neither the Placement Agent nor any Affiliate has made or makes any representation as to the Company or the quality of the Securities and the Placement Agent and any Affiliate may have acquired non-public information with respect to the Company which such Purchaser agrees need not be provided to it. In connection with the issuance of the Securities to such Purchaser, neither the Placement Agent nor any of its Affiliates has acted as a financial advisor or fiduciary to such Purchaser.

(g) Certain Transactions and Confidentiality. Other than consummating the transactions contemplated hereunder, such Purchaser has not directly or indirectly, nor has any Person acting on behalf of or pursuant to any understanding with such Purchaser, executed any purchases or sales, including Short Sales, of the securities of the Company during the period commencing as of the time that such Purchaser first received a term sheet (written or oral) from the Company or any other Person representing the Company setting forth the material terms of the transactions contemplated hereunder and ending immediately prior to the execution hereof. Notwithstanding the foregoing, in the case of a Purchaser that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser's assets, the representation set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement. Other than to other Persons party to this Agreement or to such Purchaser's representatives, including, without limitation, its officers, directors, partners, legal and other advisors, agents and Affiliates, such Purchaser has maintained the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction). Notwithstanding the foregoing, for avoidance of doubt, nothing contained herein shall constitute a representation or warranty, or preclude any actions, with respect to the identification of the availability of, or securing of, available shares to borrow in order to effect Short Sales or similar transactions in the future.

The Company acknowledges and agrees that the representations contained in this Section 3.2 shall not modify, amend or affect such Purchaser's right to rely on the Company's representations and warranties contained in this Agreement or any representations and warranties contained in any other Transaction Document or any other document or instrument executed and/or delivered in connection with this Agreement or the consummation of the transaction contemplated hereby.

ARTICLE IV.
OTHER AGREEMENTS OF THE PARTIES

4.1 Transfer Restrictions.

(a) The Securities may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of Securities other than pursuant to an effective registration statement or Rule 144, to the Company or to an Affiliate of a Purchaser or in connection with a pledge as contemplated in Section 4.1(b), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. As a condition of transfer, any such transferee shall agree in writing to be bound by the terms of this Agreement and the Registration Rights Agreement and shall have the rights and obligations of a Purchaser under this Agreement and the Registration Rights Agreement.

(b) The Purchasers agree to the imprinting, so long as is required by this Section 4.1, of a legend on any of the Securities in the following form:

THIS SECURITY HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER-DEALER OR OTHER LOAN WITH A FINANCIAL INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT OR OTHER LOAN SECURED BY SUCH SECURITIES.

The Company acknowledges and agrees that a Purchaser may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of the Securities to a financial institution that is an "accredited investor" as defined in Rule 501(a) under the Securities Act and who agrees to be bound by the provisions of this Agreement and the Registration Rights Agreement and, if required under the terms of such arrangement, such Purchaser may transfer pledged or secured Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At the appropriate Purchaser's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities, including, if the Securities are subject to registration pursuant to the Registration Rights Agreement, the preparation and filing of any required prospectus supplement under Rule 424(b)(3) under the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of Selling Stockholders (as defined in the Registration Rights Agreement) thereunder.

(c) Certificates evidencing the Shares and Warrant Shares shall not contain any legend (including the legend set forth in Section 4.1(b) hereof), (i) while a registration statement (including the Registration Statement) covering the resale of such security is effective under the Securities Act, (ii) following any sale of such Shares or Warrant Shares pursuant to Rule 144, (iii) if such Shares or Warrant Shares are eligible for sale under Rule 144, without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Shares and Warrant Shares and without volume or manner-of-sale restrictions, or (iv) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission). The Company shall cause its counsel to issue a legal opinion to the Transfer Agent if required by the Transfer Agent to effect the removal of the legend hereunder. If all or any portion of a Warrant is exercised at a time when there is an effective registration statement to cover the resale of the Warrant Shares, or if such Shares or Warrant Shares may be sold under Rule 144 and the Company is then in compliance with the current public information required under Rule 144, or if the Shares or Warrant Shares may be sold under Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Shares or Warrant Shares or if such legend is not otherwise required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) then such Warrant Shares shall be issued free of all legends. The Company agrees that following the Effective Date or at such time as such legend is no longer required under this Section 4.1(c), it will, no later than three Trading Days following the delivery by a Purchaser to the Company or the Transfer Agent of a certificate representing Shares or Warrant Shares, as the case may be, issued with a restrictive legend (such third Trading Day, the "Legend Removal Date"), deliver or cause to be delivered to such Purchaser a certificate representing such shares that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Section 4. Certificates for Securities subject to legend removal hereunder shall be transmitted by the Transfer Agent to the Purchaser by crediting the account of the Purchaser's prime broker with the Depository Trust Company System as directed by such Purchaser.

(d) In addition to such Purchaser's other available remedies, the Company shall pay to a Purchaser, in cash, the greater of (i) as partial liquidated damages and not as a penalty, for each $1,000 of Underlying Shares (based on the VWAP of the Common Stock on the date such Securities are submitted to the Transfer Agent) delivered for removal of the restrictive legend and subject to Section 4.1(c), $10 per Trading Day (increasing to $20 per Trading Day five (5) Trading Days after such damages have begun to accrue) for each Trading Day after the Legend Removal Date until such certificate is delivered without a legend and (ii) if the Company fails to (i) issue and deliver (or cause to be delivered) to a Purchaser by the Required Delivery Date a certificate representing the Securities so delivered to the Company by such Purchaser that is free from all restrictive and other legends or (ii) if after the Required Delivery Date such Purchaser purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Purchaser of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock that such Purchaser anticipated receiving from the Company without any restrictive legend, then, an amount equal to the excess of such Purchaser's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including brokerage commissions and other out-of-pocket expenses, if any) (the "Buy-In Price") over the product of (A) such number of Underlying Shares that the Company was required to deliver to such Purchaser by the Legend Removal Date multiplied by (B) the lowest closing sale price of the Common Stock on any Trading Day during the period commencing on the date of the delivery by such Purchaser to the Company of the applicable Underlying Shares (as the case may be) and ending on the date of such delivery and payment under this clause (ii).

(e) Each Purchaser, severally and not jointly with the other Purchasers, agrees with the Company that such Purchaser will sell any Securities pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if Securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein, and acknowledges that the removal of the restrictive legend from certificates representing Securities as set forth in this Section 4.1 is predicated upon the Company's reliance upon this understanding.

4.2 Furnishing of Information; Public Information.

(a) Until the earliest of the time that (i) no Purchaser owns Securities or (ii) the Warrants have expired, the Company covenants to maintain the registration of the Common Stock under Section 12(b) or 12(g) of the Exchange Act and to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act even if the Company is not then subject to the reporting requirements of the Exchange Act.

(b) At any time during the period commencing from the six (6) month anniversary of the date hereof and ending at such time that all of the Securities may be sold without the requirement for the Company to be in compliance with Rule 144(c)(1) and otherwise without restriction or limitation pursuant to Rule 144, if the Company (i) shall fail for any reason to satisfy the current public information requirement under Rule 144(c) or (ii) has ever been an issuer described in Rule 144(i)(1)(i) or becomes an issuer in the future, and the Company shall fail to satisfy any condition set forth in Rule 144(i)(2) (a "Public Information Failure") then, in addition to such Purchaser's other available remedies, the Company shall pay to a Purchaser, in cash, as partial liquidated damages and not as a penalty, by reason of any such delay in or reduction of its ability to sell the Securities, an amount in cash equal to two percent (2.0%) of the aggregate Subscription Amount of such Purchaser's Securities on the day of a Public Information Failure and on every thirtieth (30th) day (pro rated for periods totaling less than thirty days) thereafter until the earlier of (a) the date such Public Information Failure is cured and (b) such time that such public information is no longer required for the Purchasers to transfer the Shares and Warrant Shares pursuant to Rule 144. The payments to which a Purchaser shall be entitled pursuant to this Section 4.2(b) are referred to herein as "Public Information Failure Payments." Public Information Failure Payments shall be paid on the earlier of (i) the last day of the calendar month during which such Public Information Failure Payments are incurred and (ii) the third (3rd) Business Day after the event or failure giving rise to the Public Information Failure Payments is cured. In the event the Company fails to make Public Information Failure Payments in a timely manner, such Public Information Failure Payments shall bear interest at the rate of 1.5% per month (prorated for partial months) until paid in full. Nothing herein shall limit such Purchaser's right to pursue actual damages for the Public Information Failure, and such Purchaser shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

4 . 3 Integration. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market such that it would require shareholder approval prior to the closing of such other transaction unless shareholder approval is obtained before the closing of such subsequent transaction.

4 . 4 Securities Laws Disclosure; Publicity. The Company shall (a) by 9:30 a.m. (New York City time) on the Trading Day immediately following the date hereof, issue a press release disclosing the material terms of the transactions contemplated hereby, and (b) file a Current Report on Form 8-K, including the Transaction Documents as exhibits thereto, with the Commission within the time required by the Exchange Act. From and after the issuance of such press release, the Company represents to the Purchasers that it shall have publicly disclosed all material, non-public information delivered to any of the Purchasers by the Company or any of its Subsidiaries, or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon the issuance of such press release, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, agents, employees or Affiliates on the one hand, and any of the Purchasers or any of their Affiliates on the other hand, shall terminate. The Company and each Purchaser shall consult with each other in issuing any other press releases with respect to the transactions contemplated hereby, and neither the Company nor any Purchaser shall issue any such press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of any Purchaser, or without the prior consent of each Purchaser, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Purchaser, or include the name of any Purchaser in any filing with the Commission or any regulatory agency or Trading Market, without the prior written consent of such Purchaser, except: (a) as required by federal securities law in connection with (i) any registration statement contemplated by the Registration Rights Agreement and (ii) the filing of final Transaction Documents with the Commission and (b) to the extent such disclosure is required by law or Trading Market regulations, in which case the Company shall provide the Purchasers with prior notice of such disclosure permitted under this clause (b).

4.5 Shareholder Rights Plan. No claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that any Purchaser is an "Acquiring Person" under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that any Purchaser could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities under the Transaction Documents or under any other agreement between the Company and the Purchasers.

4.6 Non-Public Information. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, which shall be disclosed pursuant to Section 4.4, the Company covenants and agrees that neither it, nor any other Person acting on its behalf will provide any Purchaser or its agents or counsel with any information that constitutes, or the Company reasonably believes constitutes, material non-public information, unless prior thereto such Purchaser shall have consented to the receipt of such information and agreed with the Company to keep such information confidential. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company. To the extent that the Company delivers any material, non-public information to a Purchaser without such Purchaser's consent, the Company hereby covenants and agrees that such purchaser shall not have any duty of confidentiality to Company, any of its Subsidiaries, or any of their respective officers, directors, agents, employees or Affiliates, or a duty to the Company, and of its Subsidiaries or any of their respective officers, directors, agents, employees or Affiliates not to trade on the basis of, such material, non-public information, provided that the Purchaser shall remain subject to applicable law. To the extent that any notice provided pursuant to any Transaction Document constitutes, or contains, material, non-public information regarding the Company or any Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

4.7 Use of Proceeds. Except as set forth on Schedule 4.7 attached hereto, the Company shall use the net proceeds from the sale of the Securities hereunder for working capital purposes and shall not use such proceeds: (a) for the satisfaction of any portion of the Company's debt (other than payment of trade payables in the ordinary course of the Company's business and prior practices), (b) for the redemption of any Common Stock or Common Stock Equivalents, (c) for the settlement of any outstanding litigation or (d) in violation of FCPA or OFAC regulations.

4.8 Indemnification of Purchasers. Subject to the provisions of this Section 4.8, the Company will indemnify and hold each Purchaser and its directors, officers, shareholders, members, partners, employees and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title), each Person who controls such Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, partners or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) of such controlling persons (each, a "Purchaser Party") harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any such Purchaser Party may suffer or incur as a result of or relating to (a) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents or (b) any action instituted against the Purchaser Parties in any capacity, or any of them or their respective Affiliates, by any stockholder of the Company who is not an Affiliate of such Purchaser Parties, with respect to any of the transactions contemplated by the Transaction Documents (unless such action is based upon a breach of such Purchaser Party's representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Purchaser Parties may have with any such stockholder or any violations by such Purchaser Parties of state or federal securities laws or any conduct by such Purchaser Parties which constitutes fraud, gross negligence, willful misconduct or malfeasance). If any action shall be brought against any Purchaser Party in respect of which indemnity may be sought pursuant to this Agreement, such Purchaser Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing reasonably acceptable to the Purchaser Party. Any Purchaser Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Purchaser Party except to the extent that (i) the employment thereof has been specifically authorized by the Company in writing, (ii) the Company has failed after a reasonable period of time to assume such defense and to employ counsel or (iii) in such action there is, in the reasonable opinion of counsel, a material conflict on any material issue between the position of the Company and the position of such Purchaser Party, in which case the Company shall be responsible for the reasonable fees and expenses of no more than one such separate counsel. The Company will not be liable to any Purchaser Party under this Agreement (y) for any settlement by a Purchaser Party effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed; or (z) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to any Purchaser Party's breach of any of the representations, warranties, covenants or agreements made by such Purchaser Party in this Agreement or in the other Transaction Documents. The indemnification required by this Section 4.8 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or are incurred. The indemnity agreements contained herein shall be in addition to any cause of action or similar right of any Purchaser Party against the Company or others and any liabilities the Company may be subject to pursuant to law.

4.9 Reservation of Common Stock. As of the date hereof, the Company has reserved and the Company shall continue to reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to issue Shares pursuant to this Agreement and Warrant Shares pursuant to any exercise of the Warrants.

4.10 Listing of Common Stock. The Company hereby agrees to use best efforts to maintain the listing or quotation of the Common Stock on the Trading Market on which it is currently listed, and concurrently with the Closing, the Company shall apply to list or quote all of the Shares and Warrant Shares on such Trading Market and promptly secure the listing of all of the Shares and Warrant Shares on such Trading Market. The Company further agrees, if the Company applies to have the Common Stock traded on any other Trading Market, it will then include in such application all of the Shares and Warrant Shares, and will take such other action as is necessary to cause all of the Shares and Warrant Shares to be listed or quoted on such other Trading Market as promptly as possible. The Company will then take all action reasonably necessary to continue the listing or quotation and trading of its Common Stock on a Trading Market and will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the Trading Market. The Company agrees to maintain the eligibility of the Common Stock for electronic transfer through the Depository Trust Company or another established clearing corporation, including, without limitation, by timely payment of fees to the Depository Trust Company or such other established clearing corporation in connection with such electronic transfer.

4.11 RESERVED.

4.12 Subsequent Equity Sales.

(a) From the date hereof until forty five (45) days after the Effective Date, neither the Company nor any Subsidiary shall issue, enter into any agreement to issue or announce the issuance or proposed issuance of any shares of Common Stock or Common Stock Equivalents.

(b) From the date hereof until such time as no Purchaser holds any of the Warrants, the Company shall be prohibited from effecting or entering into an agreement to effect any issuance by the Company or any of its Subsidiaries of Common Stock or Common Stock Equivalents (or a combination of units thereof) involving a Variable Rate Transaction. "Variable Rate Transaction" means a transaction in which the Company (i) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive, additional shares of Common Stock either (A) at a conversion price, exercise price or exchange rate or other price that is based upon, and/or varies with, the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such debt or equity securities or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock or (ii) enters into any agreement, including, but not limited to, an equity line of credit, whereby the Company may issue securities at a future determined price. Any Purchaser shall be entitled to obtain injunctive relief against the Company to preclude any such issuance, which remedy shall be in addition to any right to collect damages.

(c) Notwithstanding the foregoing, this Section 4.12 shall not apply in respect of an Exempt Issuance, except that no Variable Rate Transaction shall be an Exempt Issuance.

4.13 Equal Treatment of Purchasers. No consideration (including any modification of any Transaction Document) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of the Transaction Documents unless the same consideration is also offered to all of the parties to the Transaction Documents. For clarification purposes, this provision constitutes a separate right granted to each Purchaser by the Company and negotiated separately by each Purchaser, and is intended for the Company to treat the Purchasers as a class and shall not in any way be construed as the Purchasers acting in concert or as a group with respect to the purchase, disposition or voting of Securities or otherwise.

4.14 Certain Transactions and Confidentiality. Each Purchaser, severally and not jointly with the other Purchasers, covenants that neither it, nor any Affiliate acting on its behalf or pursuant to any understanding with it will execute any purchases or sales, including Short Sales, of any of the Company's securities during the period commencing with the execution of this Agreement and ending at such time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.4. Each Purchaser, severally and not jointly with the other Purchasers, covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company pursuant to the initial press release as described in Section 4.4, such Purchaser will maintain the confidentiality of the existence and terms of this transaction and the information included in the Transaction Documents and the Disclosure Schedules. Notwithstanding the foregoing, and notwithstanding anything contained in this Agreement to the contrary, the Company expressly acknowledges and agrees that (i) no Purchaser makes any representation, warranty or covenant hereby that it will not engage in effecting transactions in any securities of the Company after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.4, (ii) no Purchaser shall be restricted or prohibited from effecting any transactions in any securities of the Company in accordance with applicable securities laws from and after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.4 and (iii) no Purchaser shall have any duty of confidentiality or duty not to trade in the securities of the Company to the Company or its Subsidiaries after the issuance of the initial press release as described in Section 4.4. Notwithstanding the foregoing, in the case of a Purchaser that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser's assets, the covenant set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement.

4.15 Form D; Blue Sky Filings. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof, promptly upon request of any Purchaser. The Company shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to qualify the Securities for, sale to the Purchasers at the Closing under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of such actions promptly upon request of any Purchaser.

4.16 Acknowledgment of Dilution. The Company acknowledges that the issuance of the Securities may result in dilution of the outstanding shares of Common Stock, which dilution may be substantial under certain market conditions. The Company further acknowledges that its obligations under the Transaction Documents, including, without limitation, its obligation to issue the Shares and Warrant Shares pursuant to the Transaction Documents, are unconditional and absolute and not subject to any right of set off, counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim the Company may have against any Purchaser and regardless of the dilutive effect that such issuance may have on the ownership of the other stockholders of the Company.

ARTICLE V.
MISCELLANEOUS

5.1 Termination. This Agreement may be terminated by any Purchaser, as to such Purchaser's obligations hereunder only and without any effect whatsoever on the obligations between the Company and the other Purchasers, by written notice to the other parties, if the Closing has not been consummated on or before May 13, 2015; provided, however, that such termination will not affect the right of any party to sue for any breach by any other party (or parties).

5.2 Fees and Expenses. Except as expressly set forth in the Transaction Documents to the contrary, each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company and any exercise notice delivered by a Purchaser), stamp taxes and other taxes and duties levied in connection with the delivery of any Securities to the Purchasers.

5.3 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

5.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment as set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment as set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the second (2nd) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto. To the extent that any notice provided pursuant to any Transaction Document constitutes, or contains material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

5.5 Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Purchasers holding at least a majority in interest of the Shares then outstanding or, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought; provided, that if any amendment, modification or waiver disproportionately and adversely impacts a Purchaser (or group of Purchasers), the consent of such disproportionately impacted Purchaser (or group of Purchasers) shall also be required. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

5.6 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

5.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of each Purchaser (other than by merger). Any Purchaser may assign any or all of its rights under this Agreement to any Person to whom such Purchaser assigns or transfers any Securities, provided that such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions of the Transaction Documents that apply to the "Purchasers."

5.8 No Third-Party Beneficiaries. The Placement Agent shall be the third party beneficiary of the representations and warranties of the Company in Section 3.1 and the representations and warranties of the Purchasers in Section 3.2. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.8 and this Section 5.8.

5.9 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such Action or Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If any party hereto shall commence an Action or Proceeding to enforce any provisions of the Transaction Documents, then, in addition to the obligations of the Company under Section 4.8, the prevailing party in such Action or Proceeding shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Action or Proceeding.

5.10 Survival. The representations and warranties contained herein shall survive the Closing and the delivery of the Securities.

5.11 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

5.12 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

5.13 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) any of the other Transaction Documents, whenever any Purchaser exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Purchaser may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights; provided, however, that in the case of a rescission of an exercise of a Warrant, the applicable Purchaser shall be required to return any shares of Common Stock subject to any such rescinded exercise notice concurrently with the return to such Purchaser of the aggregate exercise price paid to the Company for such shares and the restoration of such Purchaser's right to acquire such shares pursuant to such Purchaser's Warrant (including, issuance of a replacement warrant certificate evidencing such restored right).

5.14 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Securities.

5.15 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Purchasers and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any Action for specific performance of any such obligation the defense that a remedy at law would be adequate.

5.16 Payment Set Aside. To the extent that the Company makes a payment or payments to any Purchaser pursuant to any Transaction Document or a Purchaser enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

5.17 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance or non-performance of the obligations of any other Purchaser under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Purchaser pursuant hereof or thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Purchaser shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose. Each Purchaser has been represented by its own separate legal counsel in its review and negotiation of the Transaction Documents. For reasons of administrative convenience only, each Purchaser and its respective counsel have chosen to communicate with the Company through EGS. EGS does not represent any of the Purchasers and only represents . The Company has elected to provide all Purchasers with the same terms and Transaction Documents for the convenience of the Company and not because it was required or requested to do so by any of the Purchasers.

5.18 Liquidated Damages. The Company's obligations to pay any partial liquidated damages or other amounts owing under the Transaction Documents is a continuing obligation of the Company and shall not terminate until all unpaid partial liquidated damages and other amounts have been paid notwithstanding the fact that the instrument or security pursuant to which such partial liquidated damages or other amounts are due and payable shall have been canceled.

5.19 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

5.20 Construction. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto. In addition, each and every reference to share prices and shares of Common Stock in any Transaction Document shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

5.21 **WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.**

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

PLASMATECH BIOPHARMACEUTICALS, INC.

Address for Notice:

By: ____

Fax:

Name:

Title:

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOR PURCHASER FOLLOWS]

[PURCHASER SIGNATURE PAGES TO PTBI SECURITIES PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the undersigned have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

Name of Purchaser: ____

Signature of Authorized Signatory of Purchaser: ____

Name of Authorized Signatory: ____

Title of Authorized Signatory: ____

Email Address of Authorized Signatory: ____

Facsimile Number of Authorized Signatory: ____

Address for Notice to Purchaser:

Address for Delivery of Securities to Purchaser (if not same as address for notice):

Subscription Amount: $_________________

Shares: _________________

Warrant Shares: __________________

EIN Number: _______________________

[SIGNATURE PAGES CONTINUE]

PRINCIPAL EXECUTIVE OFFICER CERTIFICATION PURSUANT TO 18 U.S.C.
SECTION 1350, AS ADOPTED PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002

I, Steven H. Rouhandeh, certify that:

1. I have reviewed this report on Form 10-Q of Abeona Therpeutics Inc.

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Dated: August 14, 2015

/s/ Steven H. Rouhandeh
Steven H. Rouhandeh
Executive Chairman
Principal Executive Officer

EXHIBIT 31.2

PRINCIPAL FINANCIAL OFFICER CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Stephen B. Thompson, certify that:

1. I have reviewed this report on Form 10-Q of Abeona Therapeutics Inc.

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Dated: August 14, 2015

/s/ Stephen B. Thompson

Stephen B. Thompson
Vice President Finance
Principal Financial and
Accounting Officer

EXHIBIT 32.1

CERTIFICATION PURSUANT TO 18 U.S.C.
SECTION 1350 AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002

This certification set forth below is hereby made solely for the purposes of satisfying the requirements of Section 906 of the Sarbanes-Oxley Act of 2002 and may not be relied upon or used for any other purposes.

A signed original of this written statement required by Section 906 has been provided to Abeona Therapeutics Inc. and will be retained by Abeona Therapeutics Inc. and furnished to the SEC or its staff upon its request.

Pursuant to Section 906 of the Public Company Accounting Reform and Investor Act of 2002 (18 U.S.C. 1350, as adopted, the "Sarbanes-Oxley Act"), Steven H. Rouhandeh, Executive Chairman of Abeona Therapeutics Inc. (the "Company") hereby certifies that to his knowledge the report on Form 10-Q for the period ended June 30, 2015 of the Company filed with the Securities and Exchange Commission on the date hereof (the "Report") fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the period specified.

Signed at the City of Dallas, in the State of Texas, this 14th day of August, 2015.

/s/ Steven H. Rouhandeh
Steven H. Rouhandeh
Executive Chairman
Principal Executive Officer

EXHIBIT 32.2

CERTIFICATION PURSUANT TO 18 U.S.C.
SECTION 1350 AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002

This certification set forth below is hereby made solely for the purposes of satisfying the requirements of Section 906 of the Sarbanes-Oxley Act of 2002 and may not be relied upon or used for any other purposes.

A signed original of this written statement required by Section 906 has been provided to Abeona Therapeutics Inc. and will be retained by Abeona Therapeutics Inc. and furnished to the SEC or its staff upon its request.

Pursuant to Section 906 of the Public Company Accounting Reform and Investor Act of 2002 (18 U.S.C. 1350, as adopted, the "Sarbanes-Oxley Act"), Stephen B. Thompson, Vice President Finance of the Company hereby certifies that to his knowledge the report on Form 10-Q for the period ended June 30, 2015 of the Company filed with the Securities and Exchange Commission on the date hereof (the "Report") fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the period specified.

Signed at the City of Dallas, in the State of Texas, this 14th day of August, 2015.

/s/ Stephen B. Thompson
Stephen B. Thompson
Vice President Finance
Principal Financial and Accounting Officer