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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549

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**FORM 8-K**

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**CURRENT REPORT**

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

**Date of Report (Date of earliest event reported): October 15, 2013**

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**SORRENTO THERAPEUTICS, INC.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction  
of incorporation or organization)

**000-52228**  
(Commission  
File Number)

**33-0344842**  
(IRS Employer  
Identification No.)

**6042 Cornerstone Ct. West, Suite B  
San Diego, CA 92121**  
(Address of principal executive offices)

**Registrant's telephone number, including area code: (858) 210-3700**

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

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

- Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 8.01 Other Events.**

Sorrento Therapeutics, Inc. (the “Company”) previously filed a Current Report on Form 8-K on October 2, 2013 disclosing its entry into a Loan and Security Agreement with Oxford Finance LLC and Silicon Valley Bank (the “Loan Agreement”). The Loan Agreement is attached hereto as Exhibit 10.1.

In addition, the Company previously filed a Current Report on Form 8-K on October 11, 2013 disclosing its merger with Sherrington Pharmaceuticals, Inc. In connection with such merger, attached hereto as Exhibit 2.1 and Exhibit 10.2, respectively, is the Agreement and Plan of Merger and Reorganization among Sorrento Therapeutics, Inc., SP Merger Sub, Inc., Sherrington Pharmaceuticals, Inc., Aceras Biomedical LLC, the stockholders of Sherrington Pharmaceuticals, Inc. and Cooley LLP, solely in its capacity as Escrow Agent dated as of October 9, 2013 and the Registration Rights Agreement by and among Sorrento Therapeutics, Inc. and the stockholders of Sherrington Pharmaceuticals, Inc. dated as of October 9, 2013.

**Item 9.01 Financial Statements and Exhibits.****(d) Exhibits**

<b>Exhibit No.</b>	<b>Description</b>
2.1	Agreement and Plan of Merger and Reorganization among Sorrento Therapeutics, Inc., SP Merger Sub, Inc., Sherrington Pharmaceuticals, Inc., Aceras Biomedical LLC, the stockholders of Sherrington Pharmaceuticals, Inc. and Cooley LLP, solely in its capacity as Escrow Agent dated as of October 9, 2013*
10.1	Loan and Security Agreement dated as of September 27, 2013 among Oxford Finance LLC, Silicon Valley Bank, Sorrento Therapeutics, Inc. and IgDraSol, Inc.*
10.2	Registration Rights Agreement by and among Sorrento Therapeutics, Inc. and the stockholders of Sherrington Pharmaceuticals, Inc. dated as of October 9, 2013*

\*Sorrento hereby undertakes to furnish supplementally a copy of any omitted schedule or exhibit to such agreement to the U.S. Securities and Exchange Commission upon request.

SIGNATURE

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

Dated: October 15, 2013

SORRENTO THERAPEUTICS, INC.

By: /s/ Richard Vincent

Name: Richard Vincent

Title: Chief Financial Officer and Secretary

**AGREEMENT AND PLAN OF  
MERGER AND REORGANIZATION**

among:

**SORRENTO THERAPEUTICS, INC.,**  
a Delaware corporation;

**SP MERGER SUB, INC.,**  
a Delaware corporation;

**SHERRINGTON PHARMACEUTICALS, INC.,**  
a Delaware corporation;

**ACERAS BIOMEDICAL LLC,**  
a Delaware limited liability company;

the stockholders of Sherrington Pharmaceuticals, Inc.;

and Cooley LLP, solely in its capacity as Escrow Agent

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Dated as of October 9, 2013

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## AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

**THIS AGREEMENT AND PLAN OF MERGER AND REORGANIZATION** (“Agreement”) is made and entered into as of October 9, 2013, by and among: Sorrento Therapeutics, Inc., a Delaware corporation (“Parent”); SP Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent (“Merger Sub”); Sherrington Pharmaceuticals, Inc., a Delaware corporation (the “Company”); Aceras BioMedical LLC, a Delaware limited liability company (the “Key Holder”), the Company Stockholders and Cooley LLP, solely in its capacity as Escrow Agent. Certain other capitalized terms used in this Agreement are defined in Exhibit A.

### RECITALS

**A.** Parent, Merger Sub and the Company intend to effect a merger of Merger Sub with and into the Company (the “Merger”) in accordance with this Agreement and the Delaware General Corporation Law (the “DGCL”). Upon consummation of the Merger, Merger Sub will cease to exist, and the Company will become a wholly owned subsidiary of Parent.

**B.** This Agreement has been approved by the respective boards of directors of Parent, Merger Sub and the Company. The respective boards of directors of Merger Sub and the Company have each determined that the Merger is advisable and in the best interests of their respective stockholders, and such boards of directors have approved the Merger, upon the terms and subject to the conditions set forth in this Agreement. The board of directors of Parent has determined that the issuance of shares of Parent pursuant to this Agreement is advisable and in the best interests of its stockholders, and has approved the transactions contemplated by this Agreement, upon the terms and subject to the conditions set forth in this Agreement.

**C.** Concurrently with the execution of this Agreement, Aceras Partners LLC is entering into a consulting agreement with Parent substantially in the form of Exhibit B (the “Consulting Agreement”), to become effective and contingent upon the Closing.

**D.** Concurrently with the execution of this Agreement, Parent is entering into a registration rights agreement with the stockholders of the Company substantially in the form of Exhibit C (the “Registration Rights Agreement”), to become effective and contingent upon the Closing.

**E.** Prior to or promptly following the execution of this Agreement certain stockholders of the Company will execute and deliver a written consent in the form of Exhibit D hereto (collectively, the “Written Consent”), which will constitute the Required Vote.

### AGREEMENT

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

#### 1. DESCRIPTION OF TRANSACTION

**1.1 Merger of Merger Sub into the Company.** Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, Merger Sub shall be merged with and into the Company, and the separate existence of Merger Sub shall cease. The Company will continue as the surviving corporation in the Merger (the “Surviving Corporation”).

**1.2 Effect of the Merger.** The Merger shall have the effects set forth in this Agreement, the Certificate of Merger and in the applicable provisions of the DGCL.

**1.3 Closing; Effective Time.** The consummation of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of Cooley LLP (“Cooley”), 3175 Hanover Street, Palo Alto, California 94304 at 10:00 a.m. on a date to be designated by Parent as soon as practicable, but no later than three (3) business days following satisfaction or waiver of the conditions set forth in Sections 7 and 8 herein (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions). (The date on which the Closing actually takes place is referred to in this Agreement as the “Closing Date.”) Contemporaneously with or as promptly as practicable after the Closing, a properly executed certificate of merger conforming to the requirements of the DGCL shall be filed with the Secretary of State of the State of Delaware (the “Certificate of Merger”). The Merger shall become effective at the time such Certificate of Merger is filed with the Secretary of State of the State of Delaware (the “Effective Time”).

**1.4 Certificate of Incorporation and Bylaws; Directors and Officers.** Unless otherwise determined by Parent and the Company prior to the Effective Time:

(a) the certificate of incorporation of the Surviving Corporation shall be as of the Effective Time the certificate of incorporation of Merger Sub as in effect immediately prior to the Effective Time (except that the name of the Surviving Corporation shall be such name as Parent may designate);

(b) the bylaws of the Surviving Corporation shall be as of the Effective Time the bylaws of Merger Sub as in effect immediately prior to the Effective Time; and

(c) the directors and officers of the Surviving Corporation immediately after the Effective Time shall be the individuals who are the directors and officers of Merger Sub immediately prior to the Effective Time, together with such additional individuals as Parent may designate.

**1.5 Effect on Company Capital Stock and Company Options.** At the Effective Time, by virtue of the Merger and without any further action on the part of Parent, Merger Sub, the Company or any stockholder of the Company:

(a) any shares of Company Capital Stock then held by the Company (or held in the Company’s treasury) shall be canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor;

(b) any shares of Company Capital Stock then held by Parent, Merger Sub or any other subsidiary of Parent shall be canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor;

(c) except as provided in subsections “(a)” and “(b)” of this Section 1.5, each share of Company Capital Stock issued and outstanding immediately prior to the Effective Time shall be canceled and automatically converted into the right of the holder to receive (subject to the terms of this Agreement): (i) the Closing Per Share Merger Consideration; and (ii) at such time and only to the extent incurred and distributable to the Non-Dissenting Stockholders pursuant and subject to the provisions of Section 1.9, the Future Per Share Consideration;

(d) each share of the common stock (par value \$0.0001 per share) of Merger Sub outstanding immediately prior to the Effective Time shall be converted into one share of common stock of the Surviving Corporation, such that immediately following the Effective Time, Parent shall become the sole and exclusive owner of all of the issued and outstanding capital stock of the Company as the Surviving Corporation; and

(e) upon the terms and subject to the conditions set forth in this Agreement, each Company Option that is outstanding and unexercised immediately prior to the Closing shall be canceled without payment of any consideration therefor and be of no further effect.

#### **1.6 Merger Consideration Distribution.**

(a) Closing Merger Consideration. Subject to and in accordance with Sections 1.5 and 1.8, within five (5) business days after the later of the Effective Time or the receipt of a Non-Dissenting Stockholder's duly executed Letter of Transmittal and such other documents as may be reasonably required by Parent, Parent shall deliver or cause to be delivered to the Non-Dissenting Stockholders (or their respective designees, as specified in the applicable Letter of Transmittal) one or more stock certificates representing the Closing Merger Consideration in accordance with the Merger Consideration Certificate.

(b) Future Shares. In the event that Future Shares becomes payable as provided in Sections 1.5 and 1.9, Parent shall, within five (5) business days after the filing of the Registration Statement in accordance with Section 6.9 hereof, deliver or cause to be delivered to the Non-Dissenting Stockholders (or their respective designees, as specified in the applicable Letter of Transmittal) one or more stock certificates representing the Future Shares in accordance with the Merger Consideration Certificate.

**1.7 Closing of the Company's Transfer Books.** At the Effective Time: (a) all shares of Company Capital Stock outstanding immediately prior to the Effective Time shall automatically be canceled and retired and shall cease to exist, and all holders of certificates representing shares of Company Capital Stock that were outstanding immediately prior to the Effective Time shall cease to have any rights as stockholders of the Company, and each certificate representing any such Company Capital Stock (a "Company Stock Certificate") shall thereafter represent the right to receive the consideration referred to in Section 1.5; and (b) the stock transfer books of the Company shall be closed with respect to all shares of such capital stock outstanding immediately prior to the Effective Time. No further transfer of any such shares of the Company Capital Stock shall be made on such stock transfer books after the Effective Time. If, after the Effective Time, a Company Stock Certificate is presented to the Surviving Corporation or Parent, such Company Stock Certificate shall be physically canceled and shall be exchanged as provided in Section 1.8.

#### **1.8 Exchange of Certificates; Holdback Shares.**

(a) As of the Effective Time, Parent shall have reserved for issuance in accordance with Section 1.5 the aggregate number of shares of Parent Common Stock issuable at the Effective Time pursuant to the Merger and shall reserve for issuance the aggregate number of shares of Parent Common Stock issuable as Future Shares, if any, as such Future Shares are accrued.

(b) Upon surrender of a Company Stock Certificate to Parent by a stockholder of the Company that does not perfect its appraisal rights and is otherwise entitled to receive shares of Parent

Common Stock pursuant to Section 1.5 (a “Non-Dissenting Stockholder”) for exchange, together with a duly executed letter of transmittal in the form of Exhibit E hereto (the “Letter of Transmittal”) and such other documents as may be reasonably required by Parent, Parent shall cause to be delivered to such Non-Dissenting Stockholder (or its designees, as specified in the applicable Letter of Transmittal) one or more stock certificates representing the Closing Merger Consideration that such Non-Dissenting Stockholder otherwise has the right to receive at the Closing pursuant to the provisions of Section 1.5.

(c) At the Closing, the Holdback Shares shall be withheld from the Closing Merger Consideration issuable to the Key Holder, and Parent shall deposit or cause to be deposited one or more stock certificates representing the Holdback Shares with Cooley LLP (the “Escrow Agent”) as security for the Parent Indemnitees’ rights to indemnification under this Agreement. The Holdback Shares: (i) shall be held by the Escrow Agent in accordance with the terms of this Agreement; (ii) shall be held as a trust fund and shall not be subject to any lien, attachment, trustee process or other judicial process of any creditor of any Person; and (iii) shall be held and disbursed solely for the purposes and in accordance with the terms of this Agreement. The Holdback Shares shall be treated for income tax purposes as owned by the Key Holder and the Key Holder shall have all the rights of a stockholder with respect to the Holdback Shares while they are held in escrow, including, without limitation, the right to vote the Holdback Shares and receive any dividends or distributions declared thereon.

(d) In the event any Company Stock Certificate representing shares of Company Capital Stock converted in connection with the Merger pursuant to Section 1.5 shall have been lost, stolen or destroyed, Parent may, in its discretion and as a condition precedent to the payment of any Merger Consideration with respect to the shares of Company Capital Stock previously represented by such Company Stock Certificate, require the owner of such lost, stolen or destroyed Company Stock Certificate to provide an appropriate affidavit including an indemnity against any claim that may be made against Parent, the Surviving Corporation or any affiliated party with respect to such Company Stock Certificate.

(e) No dividends or other distributions declared or made with respect to Parent Common Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered Company Stock Certificate with respect to the shares of Company Capital Stock represented thereby, until such holder surrenders such Company Stock Certificate, as applicable, in accordance with this Section 1.8 (at which time such holder shall be entitled to receive all such dividends and distributions).

(f) No fractional shares of Parent Common Stock shall be issued in connection with the Merger, and no certificates for any such fractional shares shall be issued. Any holder of shares of Company Common Stock who would otherwise be entitled to receive a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock issuable to such holder), shall receive, upon surrender of such holder’s Company Stock Certificate(s), a number of shares of Parent Common Stock rounded to the nearest whole number. Notwithstanding the foregoing, the maximum aggregate consideration payable by Parent or Merger Sub to the Company Stockholders (and their designees) in connection with the Closing shall in no event exceed the Closing Merger Consideration.

(g) The shares of Parent Common Stock to be issued in the Merger shall be characterized as “restricted securities” for purposes of Rule 144 under the Securities Act of 1933, as amended (the “Securities Act”), and each certificate representing any such shares shall, until such time that the shares are not so restricted under the Securities Act, bear a legend identical or similar in effect to

the following legend (together with any other legend or legends required by applicable state securities laws or otherwise, if any):

“THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE “ACT”) AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS REGISTERED UNDER THE ACT OR UNLESS AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE ACT IS AVAILABLE.”

(h) Parent and the Surviving Corporation shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable to any holder or former holder of capital stock of the Company pursuant to this Agreement such amounts as Parent or the Surviving Corporation may be required to deduct or withhold therefrom under the Code or under any provision of state, local or foreign Tax law. To the extent such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

(i) Neither Parent nor the Surviving Corporation shall be liable to any holder or former holder of Company Capital Stock for any shares of Parent Common Stock (or dividends or distributions with respect thereto), or for any cash amounts, delivered to any public official pursuant to any applicable abandoned property, escheat or similar law.

**1.9 Registration Statement Adjustment.** If Parent has not filed, on or prior to October 31, 2013 (the “Registration Statement Deadline”), a Registration Statement covering resale to the public, and distribution to the beneficial owners of the Company Stockholders, of the Closing Merger Consideration pursuant to the terms of this Agreement and the Registration Rights Agreement, then on November 1, 2013 and on each Monday following the Registration Statement Deadline, the Merger Consideration automatically shall be adjusted to include an additional 10,000 shares of Parent Common Stock (subject to adjustment in the event of stock splits, stock dividends, stock combinations and the like, the “Future Shares”); *provided, however*, that no shares shall become payable under this Section 1.9 if: (i) a written notice has been provided to either party stating that one of the parties is terminating the Agreement in accordance with the provisions of Section 9 hereof; or (ii) any Company Stockholder has delayed its performance of or failed to comply with or perform any material covenant or obligations set forth in this Agreement or any other agreement or instrument delivered or to be delivered to Parent in connection with the transactions contemplated by this Agreement and such failure has caused the Parent’s delay in filing a Registration Statement by the Registration Statement Deadline, and in such event the Registration Statement Deadline will be deemed extended only to the extent of such delay. Future Shares, if any, will be covered by such Registration Statement.

#### **1.10 Appraisal Rights.**

(a) Effect on Dissenting Shares. Notwithstanding any provisions of this Agreement to the contrary, shares of Company Capital Stock held by a holder who has demanded and perfected such demand for appraisal of such holder’s shares of Company Capital Stock in accordance with Section 262 of the DGCL, and as of the Closing has neither effectively withdrawn nor lost such holder’s right to such appraisal (the “Dissenting Shares”) shall not be converted into the applicable Merger Consideration, but shall be entitled to only such rights as are granted by the DGCL. Parent shall be entitled to retain any Merger Consideration not paid on account of such Dissenting Shares pending resolution of the claims of such holders, and the Non-Dissenting Stockholders shall not be entitled to any portion thereof.

**(b) Loss of Dissenting Share Status.** Notwithstanding the provisions of Section 1.10(a), if any holder of shares of Company Capital Stock who demands appraisal of such holder's shares under the DGCL, as applicable, shall effectively withdraw or lose (through the failure to perfect or otherwise) such holder's right to appraisal, then as of the Closing or the occurrence of such event, whichever later occurs, such holder's shares of Company Capital Stock shall automatically be converted into the right to receive the applicable Merger Consideration, if any, without interest thereon, promptly following the surrender of the certificate or certificates representing such shares of Company Capital Stock.

**(c) Notice of Dissenting Shares.** The Company shall give Parent: (i) prompt notice of any demands for appraisal of shares of Company Capital Stock received by the Company, withdrawals of any demands, and any other instruments served pursuant to the DGCL, as applicable, and received by the Company; and (ii) the opportunity to direct all negotiations and proceedings with respect to any such demands for appraisal. The Company shall not, except with the prior written consent of Parent, make any payment with respect to any demands for appraisal of shares of Company Capital Stock or offer to settle any such demands other than by operation of law or pursuant to a final order of a court of competent jurisdiction.

**1.11 Further Action.** If, at any time after the Effective Time, any further reasonable action is determined by Parent to be necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Corporation or Parent with full right, title and possession of and to all rights and property of Merger Sub and the Company, the officers and directors of the Surviving Corporation and Parent shall be fully authorized (in the name of Merger Sub, in the name of the Company and otherwise) to take such lawful and necessary action.

**1.12 Plan of Reorganization.** It is intended by the parties hereto that the Merger constitute a reorganization within the meaning of Section 368(a) of the Code, and this Agreement is intended to constitute a "plan of reorganization" within the meaning of Sections 1.368-2(g) and 1.368-3(a) of the Treasury Regulations. No party hereto shall take any action, or fail to take any action, which is inconsistent with such intent and the requirements for the Merger to qualify as a reorganization within the meaning of Section 368(a) of the Code, unless required by a Tax authority in connection with an audit or other Tax proceeding or pursuant to a change in other applicable Law, and each party's books and records shall be maintained, and all federal, state and local income tax returns and schedules thereto shall be filed, in a manner consistent with the Merger being qualified as a reorganization and nontaxable exchange under Section 368(a)(1)(A) of the Code (and comparable provisions of any applicable state or local laws). The parties make no representations or warranties to each other or to any holder of Company Capital Stock that the Merger will qualify as a tax-free "reorganization" under the Code, except for the specific representations, warranties or covenants set forth in this Agreement that might or could affect such treatment under the Code, including, without limitation, this Section 1.12.

### **1.13 Stockholder Representative.**

**(a)** Each Company Stockholder, by his, hers or its approval of the Merger and adoption of this Agreement, and by his, her or its acceptance of the consideration payable under the terms and conditions of this Agreement, hereby appoints the Key Holder, and the Key Holder hereby accepts such appointment, as his, hers or its agent and attorney-in-fact, to take any action or refrain from taking any action, to execute any documents or instruments deemed necessary or appropriate, and grants the Key Holder the power and authority to act on behalf of each such Company Stockholder with respect to (i) this Agreement, (ii) any document or instrument executed in connection with or relating to this

Agreement, and (iii) any disagreement, dispute, mediation, arbitration or litigation relating to this Agreement or any document or instrument relating to this Agreement. The power-of-attorney granted by this Section 1.13, being coupled with an interest, is irrevocable and shall survive the death, incapacity or incompetence of each such Company Stockholder. In connection with this Agreement and the documents and instruments executed in connection with or relating to this Agreement, the Company Stockholders may act only through the Key Holder. Parent shall be entitled reasonably to rely on the Key Holder's authority as the agent, representative and attorney-in-fact of the Company Stockholders for all purposes under this Agreement and such documents and instruments and shall have no liability for any such reliance.

(b) Each Company Stockholder agrees that the Key Holder has the power and authority to (i) execute and deliver any amendment, any waiver, and any supplemental or other ancillary agreement or document related to this Agreement and the transactions contemplated hereby, that are deemed necessary or appropriate by the Key Holder, including providing any notices required under this Agreement or any document or instrument executed in connection herewith, (ii) receive notice or service of process upon the Company Stockholders in connection with any dispute arising in connection with this Agreement or otherwise, (iii) negotiate, agree to and participate in the defense or prosecution of any settlement, amendment, compromise of any provision or Legal Proceeding, (iv) interpret all terms of this Agreement, (v) institute, prosecute and/or defend lawsuits, (vi) do or refrain from doing any further act or deed on behalf of the Company Stockholders that the Key Holder deems necessary or appropriate in its sole discretion relating to the subject matter of this Agreement as fully and completely as the Company Stockholders could do if personally present, and (vii) in connection with any of the foregoing actions, engaging and hiring accountants, auditors, appraisers, legal counsel and other legal and financial experts as may be necessary and appropriate properly to discharge the Key Holder's duties and obligations hereunder and under the documents and instruments contemplated hereby.

(c) Each Company Stockholder, by approving the Merger and adopting this Agreement, agrees that any decision or action, or any decision to refrain from taking an action made, by the Key Holder, shall be binding upon each Company Stockholder, and no Company Stockholder shall have the right to object, dissent, contest or otherwise challenge any such action or decision, notwithstanding any dispute or disagreement by, between or among the Company Stockholders. The Key Holder shall have no liability to any party to this Agreement, nor to any Company Stockholder, for any act taken or action omitted or any decision made in connection with the Key Holder's performance hereunder. The Company Stockholders, by approval of the Merger and adoption of this Agreement and in consideration of the consideration payable in connection with this Agreement shall indemnify the Key Holder and hold the Key Holder harmless from any loss, cost, expense, including reasonable attorneys' fees, suffered or incurred in connection with or arising out of the administration or performance of the Key Holder's duties under this Agreement. The Key Holder shall not be compensated for his or its efforts under this Agreement unless approved in advance by the Company Stockholders.

## **2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company represents and warrants, to and for the benefit of the Parent Indemnitees as follows, except as set forth in the Company Disclosure Schedule:

### **2.1 Due Organization; Etc.**

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware. The Company has all necessary power and authority: (i) to conduct its business in the manner in which its business is currently being conducted and is



currently proposed to be conducted; (ii) to own and use its assets in the manner in which its assets are currently owned and used; and (iii) to perform its obligations in all material respects under all Company Contracts.

(b) The Company is qualified or licensed to do business as a foreign corporation and is in good standing under the laws of each state or other jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification, except where the failure to be so qualified or licensed, individually or in the aggregate, has not had, and would not reasonably be expected to have, a Company Material Adverse Effect. Part 2.1(b) of the Company Disclosure Schedule identifies each such state or other jurisdiction. The Company has never conducted any business under or otherwise used, for any purpose or in any jurisdiction, any fictitious name, assumed name, trade name or other name other than the name under which the Company is currently incorporated.

(c) Part 2.1(c) of the Company Disclosure Schedule accurately sets forth: (i) the names of the members of the board of directors of the Company; (ii) the names of the members of each committee of the board of directors of the Company; and (iii) the names and titles of the officers of the Company.

(d) Neither the Company nor any of its stockholders has ever approved, or commenced any proceeding or made any election contemplating, the dissolution or liquidation of the Company or the winding up or cessation of the Company's business or affairs. No bankruptcy or judicial composition proceedings concerning the Company have been applied for and no circumstances exist which would require the application for any bankruptcy or judicial composition proceedings under mandatory law and no circumstances exist pursuant to any applicable bankruptcy laws which could justify avoidance of this Agreement or any agreement related thereto.

(e) The Company does not own any controlling interest in any Entity, and the Company has never owned, beneficially or otherwise, any shares or other securities of, or any direct or indirect equity interest in, any Entity. The Company has not agreed to, nor is obligated to, make any future investment in or capital contribution to any Entity. The Company has not guaranteed and is not responsible or liable for any obligation of any Entity in which it owns or has owned any equity interest. The Company does not have any subsidiaries.

**2.2 Certificate of Incorporation and Bylaws; Records.** The Company has delivered to Parent accurate and complete copies as of the date of this Agreement of: (i) the certificate of incorporation and bylaws of the Company, including all amendments thereto; (ii) the stock records of the Company; and (iii) the written minutes and other written records of the meetings and other proceedings (including any actions taken by written consent or otherwise without a meeting) of the stockholders of the Company, the board of directors of the Company and all committees of the board of directors of the Company. The Company is not in violation of any of the provisions of its certificate of incorporation or bylaws.

### **2.3 Capitalization, Etc.**

(a) The authorized capital stock of the Company consists of 50,000,000 shares of Company Common Stock, of which 18,448,419 shares have been issued and are outstanding as of the date of this Agreement. All of the outstanding shares of Company Common Stock have been duly authorized and validly issued, and are fully paid and non-assessable, and except as set forth on Part 2.3(a)

of the Company Disclosure Schedule, none of such shares is subject to any repurchase option, forfeiture provision or restriction on transfer (other than restrictions on transfer imposed by virtue of applicable federal and state securities laws). Part 2.3(a) of the Company Disclosure Schedule accurately states the ownership of the Company Capital Stock immediately prior to Closing.

**(b)** The Company has reserved 1,000,000 shares of Company Common Stock for issuance under the Company Stock Plan, of which options to purchase 549,917 shares are outstanding as of the date of this Agreement. Part 2.3(b)(1) of the Company Disclosure Schedule accurately sets forth, with respect to each Company Option that is outstanding as of the date of this Agreement: (i) the name of the holder of such Company Option; (ii) the total number of shares of Company Common Stock that are subject to such Company Option and the number of shares of Company Common Stock with respect to which such Company Option is immediately exercisable; (iii) the date on which such Company Option was granted and the term of such Company Option; (iv) the exercise price per share of Company Common Stock purchasable under such Company Option; and (v) whether such Company Option is an “incentive stock option” as defined in Section 422 of the Code or subject to Section 409A of the Code. Each grant of a Company Option was duly authorized no later than the date on which the grant of such Company Option was by its terms to be effective (the “Grant Date”) by all necessary corporate action, including, as applicable, approval by the board of directors of the Company (or a duly constituted and authorized committee thereof) and any required stockholder approval by the necessary number of votes or written consents, and the award agreement governing such grant (if any) was duly executed and delivered by each party thereto, each such grant was made in accordance with the terms of the applicable compensation plan or arrangement of the Company and all other applicable Legal Requirements, the per share exercise price of each Company Option was at least equal to the fair market value of a share of Company Common Stock on the applicable Grant Date and each such grant was properly accounted for in accordance with GAAP in the financial statements (including the related notes) of the Company.

**(c)** Except for the Company Options set forth in Parts 2.3(b) and 2.3(c) of the Company Disclosure Schedule, there is no: (i) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire any shares of the capital stock or other securities of the Company; (ii) outstanding security, instrument or obligation that is or may become convertible into or exchangeable for any shares of the capital stock or other securities of the Company; (iii) Contract under which the Company is or may become obligated to sell or otherwise issue any shares of its capital stock or other securities; (iv) condition or circumstance that may give rise to or provide a basis for the assertion of a claim by any Person to the effect that such Person is entitled to acquire or receive any shares of capital stock or other securities of the Company; or (v) hidden capital contributions in kind to the Company’s capital stock.

**(d)** All outstanding shares of Company Capital Stock and all outstanding Company Options have been issued and granted in compliance with: (i) all applicable securities laws and other applicable Legal Requirements; and (ii) all requirements set forth in applicable Contracts. Except as set forth in Part 2.3(d) of the Company Disclosure Schedule, there are no preemptive rights applicable to any shares of capital stock of the Company, nor other rights to subscribe for or purchase securities of the Company.

**(e)** The Company has not repurchased, redeemed or otherwise reacquired any shares of capital stock or other securities, other than a repurchase of unvested shares and shares subject to repurchase rights on the termination of employment or consulting services. All securities so reacquired by the Company were reacquired in compliance with: (i) all applicable Legal Requirements; and (ii) all requirements set forth in applicable Contracts.

(f) All of the information contained in the Merger Consideration Certificate will be complete and accurate immediately prior to the Effective Time (after giving effect to all exercises of Company Options prior to the Effective Time). The allocation of the Merger Consideration (including the Future Shares, if any) set forth in Sections 1.5 and 1.9 and the Merger Consideration Certificate comply with all applicable Legal Requirements, the Company's certificate of incorporation and bylaws and all other plans and Contracts to which the Company or any securityholder of the Company is party to or by which the Company or any securityholder is bound.

## **2.4 Financial Statements.**

(a) The Company has delivered to Parent the following financial statements and notes (collectively, the "Company Financial Statements"):

(i) The unaudited balance sheet of the Company as of December 31, 2012 (the "Balance Sheet Date"), and the related unaudited statement of operations, statement of stockholders' equity and statement of cash flows of the Company for the year then ended; and

(ii) The unaudited balance sheet of the Company (the "Unaudited Interim Balance Sheet") as of August 31, 2013 (the "Unaudited Interim Balance Sheet Date"), and the related unaudited statement of operations of the Company for the eight months then ended.

(b) The Company Financial Statements are accurate and complete in all material respects and present fairly the consolidated financial position of the Company as of the respective dates thereof and the consolidated results of operations and cash flows of the Company for the periods covered thereby. The Company Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered (except that the unaudited financial statements do not contain footnotes and are subject to normal and recurring year-end audit adjustments).

(c) The books, records and accounts of the Company accurately and fairly reflect, in reasonable detail and in all material respects, the transactions in and dispositions of the assets of the Company. The systems of internal accounting controls maintained by the Company are sufficient to provide reasonable assurance regarding the reliability of financial reporting and that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets. Part 2.4(c) of the Company Disclosure Schedule lists, and the Company has delivered to Parent accurate and complete copies of, all written descriptions of, and all policies, manuals and other documents promulgating, such internal accounting controls, as applicable.

(d) Part 2.4(d) of the Company Disclosure Schedule sets forth a true, correct and complete list of all Company Debt, including for each item of Company Debt and the Contract governing the Company Debt. All Company Debt, other than Permitted Company Debt, will be extinguished by the Company prior to Closing.

**2.5 Absence of Changes.** Since the Unaudited Interim Balance Sheet Date, the Company has conducted its business only in the ordinary course of business and consistent with past practices, and, without limiting the generality of the foregoing, except as set forth in Part 2.5 of the Company Disclosure Schedule:

(a) there has not been a Company Material Adverse Effect and no event has occurred that will, or could reasonably be expected to, have a Company Material Adverse Effect on the business, condition, assets, liabilities, operations or financial performance of the Company;

(b) there has not been any material loss, damage or destruction to, or any material interruption in the use of, any of the material assets (whether or not covered by insurance) of the Company;

(c) there has not been any resignation or termination of any employee of the Company;

(d) the Company has not (i) declared, accrued, set aside or paid any dividend or made any other distribution in respect of any shares of capital stock, or (ii) repurchased, redeemed or otherwise reacquired any shares of the Company's capital stock or other securities;

(e) the Company has not sold, issued or authorized the issuance of (i) any capital stock or other security, except pursuant to the exercise of options or other rights issued under the Company Stock Plan, (ii) any option or right to acquire any capital stock or any other security, other than options or other rights issued under the Company Stock Plan in the ordinary course of business and consistent with past practices, or (iii) any instrument convertible into or exchangeable for any capital stock or other security;

(f) the Company has not amended or waived any of its rights under, or permitted the acceleration of vesting under, (i) any provision of the Company Stock Plan, (ii) any provision of any agreement evidencing any outstanding Company Option, or (iii) any restricted stock purchase agreement;

(g) the Company has not amended its certificate of incorporation or bylaws, nor has effected or been a party to any Acquisition Transaction, recapitalization, reclassification of shares, stock split, reverse stock split or similar transaction;

(h) the Company has not formed any subsidiary or acquired any equity interest or other interest in any other Entity;

(i) the Company has not made any capital expenditure which, when added to all other capital expenditures made on behalf of the Company since the Unaudited Interim Balance Sheet Date, exceeds \$5,000;

(j) the Company has not (i) entered into or permitted any of the assets owned or used by it to become bound by any Contract that is or would constitute a Material Contract, or (ii) amended or prematurely terminated, or waived any right or remedy under, any Material Contract;

(k) the Company has not (i) acquired, leased, licensed or been granted any right or other asset from any other Person, (ii) sold, transferred, granted or otherwise disposed of, or leased or licensed, any right or other asset to any other Person, or (iii) waived or relinquished any right, except for rights or other assets acquired, leased, licensed or disposed of in the ordinary course of business and consistent with past practices;

(l) the Company has not written off as uncollectible, or established any extraordinary reserve with respect to, any account receivable or other indebtedness;

(m) the Company has not made any pledge or hypothecated any of its assets or otherwise permitted any of its assets to become subject to any Encumbrance;

(n) the Company has not (i) lent money to any Person (other than pursuant to routine travel and business advances made to employees in the ordinary course of business and consistent with past practices), or (ii) incurred or guaranteed any indebtedness for borrowed money;

(o) the Company has not (i) established or adopted any Company Employee Plan, or (ii) paid any bonus or made any profit-sharing or similar payment to, or (except in the ordinary course of business and consistent with past practices) increased the amount of the wages, salary, consulting fees, guaranteed payments, commissions, fringe benefits or other compensation or remuneration payable to, any of its directors, officers, employees, or independent contractors;

(p) the Company has not changed any of its methods of accounting or accounting practices in any respect;

(q) the Company has not filed any Tax election with the Internal Revenue Service or any other Tax authority outside of the ordinary course of business, consistent with its past practice;

(r) the Company has not commenced or settled any Legal Proceeding;

(s) the Company has not incurred, assumed or otherwise become subject to any Liability, other than accounts payable incurred by the Company in the ordinary course of business and consistent with past practices;

(t) the Company has not entered into any material transaction or taken any other material action, in each case, outside the ordinary course of business or inconsistent with its past practices; and

(u) the Company has not agreed or committed to take any of the actions referred to in clauses “(c)” through “(t)” above.

**2.6 Title to Assets.** The Company owns, and has good, valid and marketable title to, or a valid leasehold interest in: (i) all assets reflected on the Unaudited Interim Balance Sheet; (ii) all assets acquired by it since the Unaudited Interim Balance Sheet Date; and (iii) all other assets used by the Company or reflected in the books and records of the Company as being owned by the Company. All of said assets are owned by the Company free and clear of any liens or other Encumbrances, except for (x) any lien for current Taxes not yet due and payable, and (y) liens that have arisen in the ordinary course of business and consistent with past practices and that do not (in any case or in the aggregate) materially detract from the value of the assets subject thereto or materially impair the operations of the Company.

**2.7 Vote Required.** The affirmative vote of the holders of a majority of the outstanding shares of Company Common Stock (the “Required Vote”) is the only vote of the holders of any class or series of the Company Capital Stock necessary to adopt and approve this Agreement, the Merger, and the other transactions contemplated by this Agreement.

## **2.8 Equipment; Leasehold.**

(a) The Company does not own or lease any tangible property or assets.

(b) The Company does not own any real property or interests in real property other than leasehold interests in the real property lease identified in Part 2.8(b) of the Company Disclosure Schedule. Part 2.8(b) of the Company Disclosure Schedule sets forth a complete list of all real property and interest in real property leased or subleased by the Company (“Leased Real Property”). The Company has good and valid title to the leasehold interests in all Leased Real Property, in each case free and clear of all Encumbrances, except (i) liens that have arisen in the ordinary course of business and consistent with past practices and have been or will be paid promptly and that do not (in any case or in the aggregate) materially detract from the value of the assets subject thereto or materially impair the operations of the Company and (ii) any Encumbrance on the landlord’s interest in any Leased Real Property, including any deeds of trust, mortgages or other monetary liens.

## **2.9 Intellectual Property.**

(a) Part 2.9(a) of the Company Disclosure Schedule accurately identifies and describes:

(i) in Part 2.9 (a)(i) of the Company Disclosure Schedule, all of the patent rights and all registered trademark rights (or trademark rights for which applications for registration have been filed) owned solely by the Company as of the date of this Agreement, setting forth in each case the jurisdictions in which patents have been issued, patent applications have been filed, trademarks have been registered and trademark applications have been filed, along with the respective application, registration or filing number;

(ii) in Part 2.9(a)(ii) of the Company Disclosure Schedule, all of the Patent Rights and all registered trademark rights (or trademark rights for which applications for registration have been filed) in which the Company has any co-ownership interest, other than those owned solely by the Company, setting forth in each case the jurisdictions in which patents have been issued, patent applications have been filed, trademarks have been registered and trademark applications have been filed, along with the respective application, registration or filing number; and

(iii) in Part 2.9(a)(iii) of the Company Disclosure Schedule, all of the Patent Rights and all registered trademark rights (or trademark rights for which applications for registration have been filed) which comprise the Company’s Intellectual Property Rights that relate to the Company Products and which have been licensed, exclusively or non-exclusively, to the Company (indicating where that right, title or interest is exclusive to the Company).

(b) (i) Except as set forth in Part 2.9(b)(i)(x) of the Company Disclosure Schedule, the Company owns, co-owns or possesses legally enforceable license rights in and to all Company’s Intellectual Property Rights, free and clear of all Encumbrances, pledges, charges, leases, mortgages and other encumbrances (except that with respect to Company’s Intellectual Property Rights that are licensed to Company, other than Encumbrances arising by virtue of the Contract pursuant to which such license is granted and any Encumbrances granted or incurred by the licensor thereof).

(ii) To the Knowledge of the Company, except as set forth in Part 2.9(b)(ii) of the Company Disclosure Schedule, no third party which is not the U.S. Patent Office or any foreign equivalent governmental administrative agency for patent matters (“Governmental Patent Authority”) is overtly challenging in writing the right, title or interest of the Company or, to the Company’s Knowledge any licensor of the Company in, to or under the Company’s Intellectual Property Rights, or the validity,

enforceability or claim construction of any Patent Rights comprising the Company's Intellectual Property Rights that are owned or co-owned or exclusively licensed to the Company.

**(iii)** To the Knowledge of the Company, except as set forth in Part 2.9(b)(iii) of the Company Disclosure Schedule, there is no opposition, cancellation, proceeding, or objection involving a third party, other than a Governmental Patent Authority, pending with regard to any Company Intellectual Property Rights owned solely by the Company.

**(iv)** Except as set forth in Part 2.9(b)(i) of the Company Disclosure Schedule, none of the Company's Intellectual Property Rights owned solely by the Company are subject to any outstanding order of, judgment of, decree of or agreement with any Governmental Authority other than a Governmental Patent Authority.

**(v)** To the Knowledge of the Company with regard to any Company Intellectual Property Rights co-owned or exclusively licensed to the Company, except as set forth in Part 2.9(b)(v) of the Company Disclosure Schedule, there is no opposition, cancellation, proceeding, or objection involving a third party, other than a Governmental Patent Authority, pending with regard to any such Company Intellectual Property Rights, and such Company Intellectual Property Rights are not subject to any outstanding order of, judgment of, decree of or agreement with any Governmental Authority other than a Governmental Patent Authority.

**(vi)** To the Knowledge of the Company, no valid basis exists for any of such challenges as set forth in this Section 2.9(b).

**(c)** To the Knowledge of the Company, except as set forth in Part 2.9(c) of the Company Disclosure Schedule, as of the date of this Agreement, no Company Intellectual Property Rights are being infringed or misappropriated by any third party.

**(d)** To the Knowledge of the Company, except as set forth in Part 2.9(d) of the Company Disclosure Schedule, the conduct of the Company as it is currently conducted does not infringe, or constitute any contributory infringement, inducement to infringe, misappropriation or unlawful use of, any valid and enforceable Intellectual Property Rights of any other person.

**(e)** Part 2.9(e) of the Company Disclosure Schedule lists all Company IP Contracts.

**(f)** Part 2.9(f) of the Company Disclosure Schedule lists all written Contracts, licenses or other arrangements in effect as of the date of this Agreement under which the Company has licensed, granted or conveyed to any third party any right, title or interest in or to any Company Intellectual Property Rights.

**(g)** The Company is not obligated to pay any Person any royalties, fees, commissions or other amounts for use by the Company of Intellectual Property Rights, other than as provided in a Contract listed in Part 2.9(e) and Part 2.9(f) of the Company Disclosure Schedule.

**(h)** Except as set forth in the Company IP Contracts or as disclosed in Part 2.9(f) of the Company Disclosure Schedule, no Company Intellectual Property Right is subject to, any Contract containing any covenant or other provision that limits or restricts in any material manner the ability of the Company: (i) to make, use, import, sell, offer for sale or promote any product anywhere in the world, or (ii) to use, exploit, assert or enforce any Company Intellectual Property Right anywhere in the world.

(i) Each of the individuals identified in Part 2.9(i) of the Company Disclosure Schedule has executed and delivered to the Company an agreement regarding the protection of proprietary information and the assignment or license to the Company, of any Intellectual Property Rights arising from services performed for the Company. To the Knowledge of the Company, none of such individuals has materially breached any such agreements. All current and former officers and employees of, and consultants and independent contractors to, the Company who have contributed to the creation or development of any Intellectual Property Rights which relate to any Company Product or are used by the Company in its business as presently conducted or as presently proposed to be conducted, have assigned or licensed any and all such Intellectual Property Rights that such Person may have had to the Company, except to the extent an independent contractor licenses Intellectual Property Rights to the Company pursuant to a Company IP Contract.

(j) Neither the execution, delivery or performance of this Agreement by Company nor the consummation by Company of the transactions contemplated by this Agreement will: (i) contravene, conflict with or result in any limitation on the Company's right, title or interest in or to any of the Company Intellectual Property Rights, (ii) result in a breach of, default under or termination of any Company IP Contract, (iii) result in the release, disclosure or delivery of any Company Intellectual Property Rights by or to any escrow agent or other Person, (iv) cause the grant, assignment or transfer to any other Person of any license or other right or interest under, to or in any of the Company Intellectual Property Rights, (v) by the terms of any Contract, cause a reduction of any royalties or other payments the Company would otherwise be entitled to with respect to any Company Intellectual Property Rights, or (vi) by the terms of any Company IP Contract, an increase in any royalty or other payments the Company would otherwise be required to make under such Company IP Contract.

## **2.10 Contracts.**

(a) Part 2.10(a) of the Company Disclosure Schedule identifies:

(i) (A) each Company Contract relating to the employment of, or the performance of services by, any Company Employee, officer, director, independent contractors and consultant (other than at-will employment offer letters that do not contain severance, change in control benefits, guaranteed term or payment, or restrictive covenants); (B) any Company Contract pursuant to which the Company is or may become obligated to make any severance, termination, settlement or similar payment to any Company Employee; and (C) any Company Contract pursuant to which the Company is or may become obligated to make any bonus or similar payment (other than payment in respect of salary) to any Company Employee;

(ii) each Company Contract which provides for indemnification of any officer, director, Company Employee, independent contractor, consultant or agent;

(iii) each Company Contract relating to the voting and any other rights or obligations of a stockholder of the Company;

(iv) each Company Contract relating to the merger, consolidation, reorganization or any similar transaction with respect to the Company;

(v) each Company Contract relating to the acquisition, ownership, transfer, research, development or sharing of any technology, or material Company IP (including any joint



development agreement, technical collaboration agreement or similar agreement entered into by the Company);

(vi) each Company Contract relating to the license of any patent, copyright, trade secret, utility models, designs, trademarks, know-how or other immaterial Company IP to or from the Company;

(vii) each Company Contract relating to research, development, testing, manufacturing or commercialization of any Product Candidate, including clinical trial agreements, consulting agreements, distribution agreements, supply and contract manufacturing agreements (but excluding purchase orders and confidentiality agreements);

(viii) each Company Contract for the purchase of inventory, spare parts, other materials or personal property with any supplier or for the furnishing of services to the Company under the terms of which the Company: (A) paid or otherwise gave consideration of more than \$25,000 in the aggregate during fiscal year 2012; (B) is likely to pay or otherwise give consideration of more than \$25,000 in the aggregate during fiscal year 2013; (C) is likely to pay or otherwise give consideration of more than \$25,000 in the aggregate over the remaining term of such contract; or (D) cannot be canceled by the Company without penalty or further payment of less than \$25,000;

(ix) each Company Contract pursuant to which the Company (A) is obligated to pay to any other person royalties or development or similar milestone payments with respect to any Product Candidate, (B) is obligated to provide to any other Person a percentage interest in the sales or revenues of any Product Candidate, or (C) to which the Company has agreed to supply products to a customer at specified prices, whether directly or through a specific distributor, manufacturer's representative or dealer and each Company Contract including a most-favored-nation provision or other guarantee with respect to pricing;

(x) each Company Contract that requires or obligates the Company to purchase specified minimum amounts of any product or to perform or conduct research, clinical trials or development for any person other than the Company;

(xi) each Company Contract relating to the acquisition, sale, spin-off or outsourcing of any Subsidiary or business unit or operation of the Company;

(xii) each Company Contract creating or relating to any partnership or joint venture or any sharing of revenues, profits, losses, costs or liabilities;

(xiii) each Company Contract imposing any restriction on the Company: (A) to compete with any other Person; (B) to acquire any product or other asset or any services from any other Person, to sell any product or other asset to or perform any services for any other Person or to transact business or deal in any other manner with any other Person; (C) to develop or distribute any technology; or (D) otherwise on the conduct of its business as currently conducted or as proposed to be conducted;

(xiv) each Company Contract: (A) granting or obligating the Company to grant exclusive rights for the research, clinical trial, development, distribution, sale, supply, license, marketing, co-promotion or manufacturing of any product, patent or other Intellectual Property Right of

the Company; or (B) otherwise contemplating an exclusive relationship between the Company and any other Person;

(xv) each Company Contract creating or involving any: (A) distributor, manufacturer's representative, broker, franchise, agency or dealer relationship (specifying on a matrix, in the case of distributor agreements, the name of the distributor, product, territory, termination date and exclusivity provisions); or (B) sales promotion, market research, marketing and advertising services;

(xvi) each Company Contract regarding the acquisition, issuance or transfer of any securities and each Company Contract affecting or dealing with any securities of the Company including any restricted share agreements or escrow agreements;

(xvii) each Company Contract involving any loan, guaranty, pledge, performance or completion bond or indemnity or surety arrangement;

(xviii) each Company Contract relating to the purchase or sale of any asset by or to, or the performance of any services by or for, any Company Related Party;

(xix) each Company Contract relating to any liquidation or dissolution of the Company;

(xx) any other Company Contract that contemplates or involves: (A) the payment or delivery of cash or other consideration by the Company in an amount or having a value in excess of US \$20,000 individually, or US \$100,000 in the aggregate; or (B) the performance of services having a value in excess of US \$20,000 individually, or US \$100,000 in the aggregate; and

(xxi) any other Company Contract that: (A) was entered into outside the ordinary course of business or was inconsistent with the past practices of the Company; (B) that is material to the Company or the conduct of its business; (C) the absence of which could reasonably be expected to have a Company Material Adverse Effect; or (D) that is reasonably believed by the Company to be of unique value even if not material to the business of the Company.

(Contracts in the respective categories described in clauses "(i)" through "(xxi)" above and all Contracts identified, or required to be identified, in Part 2.10(a) of the Company Disclosure Schedule are referred to in this Agreement as "Material Contracts.")

(b) The Company has delivered or made available to Parent accurate and complete copies of all written Material Contracts identified in Part 2.10(a) of the Company Disclosure Schedule, including all amendments thereto. Part 2.10(a) of the Company Disclosure Schedule provides a complete and accurate description of the terms of each Material Contract that is not in written form. Each Company Contract identified in Part 2.10(a) of the Company Disclosure Schedule is valid and in full force and effect, and is enforceable against the Company, and to the Knowledge of the Company, by the Company in accordance with its terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

(c) Except as set forth in Part 2.10(c) of the Company Disclosure Schedule:

(i) the Company has not in any material respect violated or breached, or committed any default under, any Company Contract, and, to the Knowledge of the Company, no other Person has in any material respect violated or breached, or committed any default under, any Company Contract;

(ii) to the Knowledge of the Company, no event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will, or could reasonably be expected to, (A) result in a material violation or breach of any of the provisions of any Company Contract, (B) give any Person the right to declare a material default or exercise any material remedy under any Company Contract, (C) give any Person the right to accelerate the maturity or performance of any Company Contract, or (D) give any Person the right to cancel, terminate or materially modify any Company Contract;

(iii) the Company has never received any notice or other communication regarding any actual or possible material violation or breach of, or default under, any Company Contract that has not been cured or otherwise resolved in a manner that maintains the Company Contract in effect without the assumption of additional obligations or the reduction of previously existing rights under such Company Contract prior to the date of this Agreement; and

(iv) the Company has not waived any of its material rights under any Company Contract.

## **2.11 Liabilities.**

(a) The Company has no accrued, contingent or other Liabilities of any nature, either matured or unmatured (whether or not required to be reflected in financial statements in accordance with GAAP, and whether due or to become due), except for: (i) Liabilities and obligations reflected in the Company Financial Statements; (ii) accounts payable that have been incurred by the Company since the Unaudited Interim Balance Sheet Date in the ordinary course of business and consistent with the past practices of the Company; (iii) Liabilities under the Company Contracts identified in Part 2.10(a) of the Company Disclosure Schedule, to the extent the nature and magnitude of such Liabilities can be specifically ascertained by reference to the text of such Company Contracts; (iv) the liabilities identified in Part 2.11(a) of the Company Disclosure Schedule; and (v) liabilities or obligations incurred in connection with this Agreement, the Merger, or the other documents or instruments contemplated hereby which will be paid in full at or prior to the Closing Date or otherwise in accordance with the requirements of this Agreement.

(b) The Company has never effected or otherwise been involved in any “off-balance sheet arrangements” (as defined in Item 303(a)(4)(ii) of Regulation S-K under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Without limiting the generality of the foregoing, the Company has never guaranteed any debt or other obligation of any other Person.

(c) Part 2.11(c) of the Company Disclosure Schedule accurately identifies, and provides an accurate and complete breakdown of the amounts paid to, each supplier or other Person that received more than \$30,000 from the Company since January 1, 2012.

## **2.12 Compliance with Legal Requirements.**

**(a)** The Company does not possess (or has ever possessed) or have any rights or interests with respect to (or has ever had any rights or interests with respect to) any grants, incentives or subsidies from any Governmental Body.

**(b)** Part 2.12(b) of the Company Disclosure Schedule identifies each material Governmental Authorization held by the Company, and the Company has delivered to Parent accurate and complete copies of all Governmental Authorizations identified in Part 2.12(b) of the Company Disclosure Schedule.

**(c)** The Governmental Authorizations identified in Part 2.12(b) of the Company Disclosure Schedule are valid and in full force and effect, and collectively constitute all Governmental Authorizations necessary to enable the Company to conduct its business in the manner in which it currently is conducted. The Company is, and at all times has been, in compliance in all material respects with the terms and requirements of the respective Governmental Authorizations identified in Part 2.12(b) of the Company Disclosure Schedule and, to the Knowledge of the Company, no event has occurred, and no condition or circumstance exists, that might (with or without notice or lapse of time) constitute or result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Governmental Authorization identified or required to be identified in Part 2.12(b) of the Company Disclosure Schedule. The Company has never received any notice or other communication (written or otherwise) from any Governmental Body regarding (a) any actual, alleged, potential or possible violation of or failure to comply with any material term or requirement of any Governmental Authorization, or (b) any actual or possible revocation, withdrawal, suspension, cancellation, termination or material modification of any Governmental Authorization.

**(d)** Without limiting the foregoing, except as set forth on Part 2.12(d) of the Company Disclosure Schedule, the Company has conducted, and continues to conduct, the business of the Company in material compliance in all material respects with all statutes, rules and regulations enforced or administered by FDA, including with respect to the collection, manufacture, processing, holding, storing, testing, distribution and marketing of products.

**(i)** Except as set forth in Part 2.12(d)(i) of the Company Disclosure Schedule, the Company has adhered in all material respects, and continue to adhere in all material respects, to the provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301 et seq.) and all applicable regulations and guidance thereunder, including, but not limited to the following, to the extent applicable: (A) the requirement for all necessary approvals, permits, and licenses, (B) any requirements required under the statutes enforced by or regulations promulgated by the FDA, (C) Good Manufacturing Practices, (D) establishment registration and product listing, and (E) label, labeling and advertising requirements.

**(ii)** Except as set forth in Part 2.12(d)(ii) of the Company Disclosure Schedule, (A) the Company is not in receipt of any FDA notice of, or to the Knowledge of the Company, subject to, any FDA adverse inspection, finding of any material deficiency, finding of any material non-compliance, compelled or voluntary recall, investigation, penalty for corrective or remedial action or other compliance or enforcement action, in each case related to the Company's business or to the facilities in which products for the Company's business are manufactured, collected or handled, (B) no product at the time sold or distributed by or on behalf of the Company has been recalled, suspended or discontinued as a result of any action by the FDA or by the Company, and (C) to the Knowledge of Company, no claims in the United States or outside the United States (whether completed or pending)

seeking the recall, withdrawal, suspension or seizure of any product are pending or threatened against the Company or any product that uses the Intellectual Property Rights of the Company.

(e) Except as set forth in Part 2.12(e) of the Company Disclosure Schedule, the Company has not received any written notification of any pending or, to the Knowledge of Company, threatened, claim, suit, proceeding, hearing, enforcement, audit, investigation, warning letter, consent decree, consent agreement, corporate integrity agreement, arbitration or other action from any Governmental Authority, including, the FDA, the Drug Enforcement Administration, the Centers for Medicare & Medicaid Services, the U.S. Department of Health and Human Services Office of Inspector General and the U.S. Department of Veterans Affairs Office of Inspector General, alleging potential or actual material non-compliance by, or material liability of, the Company under any applicable Laws. The Company is not a party to a corporate integrity agreement with the Office of the Inspector General of the Department of Health and Human Services or a consent decree with any Governmental Authority.

(f) Part 2.12(f) of the Company Disclosure Schedule lists (i) all Notices of Inspectional Observations (Form 483), (ii) all establishment inspection reports, (iii) all recall letters and warning letters, in each case (clauses (i), (ii) and (iii)), received by the Company from the FDA, and the responses thereto submitted by the Company relating to the products manufactured or distributed by or for the Company and (iv) all written communications (including by email) between the FDA and the Company or third parties authorized to communicate on behalf of the Company. A copy of all of the items listed in Part 2.12(f) of the Company Disclosure Schedule has been made available or provided to Parent. To the extent not legally prohibited, the Company shall promptly provide to Parent all written communications and information and records regarding all of the items set forth in this Part 2.12 arising after the date hereof through the Closing Date that are material, but in no event later than two (2) business days after receipt or production thereof.

### **2.13 Tax Matters.**

(a) All income and other material Tax Returns required to be filed by or on behalf of the Company with any Governmental Body with respect to any taxable period ending on or before the Closing Date (each a “Company Return,” and together, the “Company Returns”) (i) have been or will be filed on or before the applicable due date (taking into account any extensions), and (ii) have been, or will be when filed, accurately and completely prepared in all material respects in compliance with all applicable Legal Requirements. All material Taxes due and owing by the Company (whether or not shown on any Company Return) on or before the Closing Date have been or will be paid on or before the Closing Date. The Company has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to any Tax assessment or deficiency.

(b) The Financial Statements of the Company fully accrue all actual and contingent Liabilities for Taxes with respect to all periods through the dates thereof in accordance with GAAP. The Company has not incurred any liability for Taxes since the date of the Company Balance Sheet other than in the ordinary course of business.

(c) Except as set forth in Part 2.13(c) of the Company Disclosure Schedule, there have been no examinations or audits of any Company Return.

(d) Except as set forth in Part 2.13(d) of the Company Disclosure Schedule, no claim or Legal Proceeding is pending or has been threatened against or with respect to the Company in respect of any Tax. There are no unsatisfied Liabilities for Taxes (including liabilities for interest,

additions to tax and penalties thereon and related expenses) with respect to any notice of deficiency or similar document received by the Company with respect to any Tax (other than liabilities for Taxes asserted under any such notice of deficiency or similar document which are being contested in good faith by the Company and with respect to which adequate reserves for payment have been established). There are no liens or other Encumbrances for Taxes upon any of the assets of the Company except liens for current Taxes not yet due and payable.

(e) The Company is and has at all times been resident for Tax purposes in its country of incorporation or formation, and is not and has not been treated as resident in any other country for any Tax purpose (including any arrangement for the avoidance of double taxation). The Company is not subject to Tax in any jurisdiction other than its place of incorporation or formation by virtue of having a branch or permanent establishment in that jurisdiction. No written claim has ever been made by a Governmental Body that the Company is or may be subject to taxation by a jurisdiction in which it does not file a Company Return.

(f) The Company is not a party to any Contract that has resulted or would reasonably be expected to result, separately or in the aggregate, in the payment of any “excess parachute payment” within the meaning of Section 280G of the Code (or any corresponding provisions of state, local or foreign Tax law). The Company is not, and has never been, a party to or bound by any tax indemnity agreement, tax sharing agreement, tax allocation agreement or similar Contract.

(g) The Company has not entered into or become bound by any agreement or consent pursuant to Section 341(f) of the Code. The Company has not been, and will not be, required to include any adjustment in taxable income for any tax period (or portion thereof) pursuant to Section 481 or 263A of the Code or any comparable provision under state or foreign Tax laws as a result of transactions or events occurring, or accounting methods employed prior to the Closing. The Company has never made any distribution to any of its shareholders of stock or securities of a controlled corporation within the meaning of Section 355 of the Code.

(h) The Company is not and has not been (and has not owned an interest in) (i) a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during any applicable period of determination specified in Section 879(c) of the Code, (ii) a passive foreign investment company within the meaning of Section 1297 of the Code, or (iii) a controlled foreign corporation within the meaning of Section 957 of the Code. The Company (i) has not been a member of an affiliated consolidated, combined, unitary or similar group for Tax purposes (other than a group the common parent of which was the Company), and (ii) is not and could not be liable for the Taxes of any Person (other than under Treasury Regulations Section 1.1502-6 or any similar provision of state, local or foreign law, as applicable), or as a transferee or successor, by contract, or otherwise.

(i) The Company is not a party to any joint venture, partnership or other Contract that would reasonably be expected to be treated as a partnership for any income Tax purposes.

(j) All material elections with respect to income Taxes affecting the Company as of the date hereof, to the extent such elections are not shown on the Company Returns that have been delivered or made available to Parent, are set forth in Part 2.13(h) of the Company Disclosure Schedule. The Company has not engaged in a “listed transaction” as set forth in Treasury Regulations Section 1.6011-4(b)(2).

(k) The Company will not be required to include any item of income in, or exclude any deduction or loss from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any (i) installment sale or open transaction disposition made on or prior to the Closing Date; (ii) “closing agreement” as described in section 7121 of the Code executed on or prior to the Closing Date; or (iii) prepaid amount received on or prior to the Closing Date, other than in the ordinary course of business in accordance with past practice.

(l) The Company has timely withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party and has otherwise complied in all material respects with all information reporting and other Legal Requirements related to such Tax withholding requirements.

## **2.14 Employee and Labor Matters.**

### **(a) Employees.**

(i) Part 2.14(a) of the Company Disclosure Schedule contains a list, as of the date of this Agreement, of all current Company Employees, including part-time employees and correctly reflects: (i) their dates of employment or service with the Company; (ii) their positions or titles; (iii) their salaries, wages or other compensation (including fringe benefits and commission arrangements); (iv) target bonus/commission compensation and total compensation actually paid in 2012; (v) their work location; (vi) each Company Employee Plan in which they participate or are eligible to participate; and (vii) any promises made to them with respect to changes or additions to their compensation or benefits by any Person that could reasonably be expected to have authority with respect thereto. The Company has provided to Parent a complete and correct copy of each Company Contract disclosed under this Section 2.14 or Sections 2.10(a)(i)-(ii). The Company does not now and has never had any temporary or leased employees.

(ii) Except as set forth in Part 2.14(a)(ii) of the Company Disclosure Schedule, the employment of each current employee of the Company is terminable without prior notice and without the payment of compensation following, or as a result of, such termination (other than earned and accrued salary, wages and paid time off, as applicable).

(iii) The Company is not delinquent in any payments to any of its employees for any wages, salaries, commissions, bonuses, fees or other direct compensation for any services performed for the Company. The Company is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Body with respect to unemployment compensation benefits, or other benefits or obligations for Company Employees (other than routine payments to be made in the ordinary course of business and consistent with past practices). There are no pending or, to the best of the Knowledge of the Company, threatened or reasonably anticipated claims or Legal Proceedings against the Company under any worker’s compensation policy or long-term disability policy.

(iv) To the Knowledge of the Company, as of the date of this Agreement, no current Company Employee: (i) intends to terminate his employment with the Company; (ii) has received an offer to join a business that may be competitive with the Company’s business; or (iii) is a party to or is bound by any confidentiality agreement, noncompetition agreement or other Contract (with any Person) that may have an adverse effect on: (A) the performance by such individual of any of his duties or responsibilities as a service provider to the Company; or (B) the Company’s business or operations.

(v) The Company is not, and has never been, bound by or a party to, or has a duty to bargain for, any collective bargaining agreement or other Contract with a labor organization representing any Company Employees and there are no labor organizations representing, purporting to represent or, to the Knowledge of the Company, seeking to represent any current Company Employees.

(vi) The Company is, and at all times has been, in material compliance with all applicable Legal Requirements respecting employment, employment practices, terms and conditions of employment and wages and hours, including but not limited to Legal Requirements relating to discrimination, disability, labor relations, hours of work, payment of wages and overtime wages, pay equity, immigration, workers compensation, working conditions, occupational safety and health, family and medical leave, and has not engaged in any unfair labor practices or similar prohibited practices. There is no Legal Proceeding, claim, labor dispute or grievance pending or, to the Knowledge of the Company, threatened or reasonably anticipated, brought by or on behalf of any applicant for employment, any current or former employee, any person alleging to be a current or former employee, any class of the foregoing or any Governmental Body, relating to any such Legal Requirements, or alleging breach of any express or implied contract of employment, wrongful termination of employment, or alleging any other discriminatory, wrongful or tortious conduct in connection with the employment relationship.

**(b) Independent Contractors.**

(i) Section 2.14(b) of the Company Disclosure Schedule accurately sets forth, with respect to each independent contractor of the Company: (1) the name of such independent contractor and the date as of which such independent contractor was originally hired by the Company; (2) a brief description of such independent contractor's duties and responsibilities; and (3) the terms of compensation of such independent contractor.

(ii) Except as set forth in Part 2.14(b) of the Company Disclosure Schedule, the engagement of each independent contractor or consultant is terminable without prior notice and without the payment of compensation following, or as a result of, such termination (other than earned and accrued salary, wages and paid time off, as applicable).

(iii) The Company is not delinquent in any payments to any of its independent contractors for any wages, commissions, bonuses, fees or other direct compensation for any services performed for the Company.

(c) No Misclassified Employees. No current or former independent contractor, consultant or similar non-employee third party of the Company could be deemed to be a misclassified employee. No independent contractor, consultant or similar non-employee third party is eligible to participate in any Company Employee Plan.

**2.15 Company Employee Plans.**

(a) Other than the Company Stock Plan, the Company has never sponsored any Company Employee Plan. The Company has delivered or made available to Parent correct and complete copies of all documents setting forth the terms of the Company Stock Plan, including all amendments thereto.



(b) The Company has not taken any material steps to adopt or approve any new Company Employee Plan. No event has occurred and there currently exists no condition or circumstances that would reasonably subject the Company to (i) any Liability with respect to any Company Employee Plan, or (ii) any Controlled Group Liability with respect to any benefit plan that is not a Company Employee Plan.

**2.16 Environmental Matters.** The Company has, and has been at all time, in compliance in all material respects with all applicable Environmental Laws, which compliance includes the possession by the Company of all material permits and other Governmental Authorizations required under applicable Environmental Laws, and material compliance with the terms and conditions thereof. The Company has not received any notice or other communication (in writing or otherwise), whether from a Governmental Body, citizens group, employee or otherwise, that alleges that the Company is not in compliance with any Environmental Law, and, to the Knowledge of the Company, there are no circumstances that may prevent or interfere with the compliance of the Company with any Environmental Law in the future. To the Knowledge of the Company, no current or prior owner of any property leased or controlled by the Company has received any notice or other communication (in writing or otherwise), whether from a Governmental Body, citizens group, employee or otherwise, that alleges that such current or prior owner lessee, operator, or the Company is not in compliance with any Environmental Law. All Governmental Authorizations currently held by the Company pursuant to Environmental Laws are identified in Part 2.16 of the Company Disclosure Schedule.

**2.17 Insurance.** The Company does not maintain, nor has ever maintained, any insurance policies.

**2.18 Related Party Transactions.** Except as set forth in Part 2.18 of the Company Disclosure Schedule and except for or as a result of the ownership of Company Common Stock or Company Options: (a) no Company Related Party has, and no Company Related Party has at any time had, any direct or indirect interest in any material asset used in or otherwise relating to the Company's business; (b) no Company Related Party is, or has at any time been, indebted to the Company; (c) no Company Related Party has entered into, or has had any direct or indirect financial interest in, any material Contract, transaction or business dealing involving the Company; (d) no Company Related Party is competing, or has at any time competed, directly or indirectly, with the Company; and (e) no Company Related Party has any claim or right against the Company that will not be released in connection with Closing of the Merger.

**2.19 Legal Proceedings; Orders.**

(a) Legal Proceedings. There is no pending Legal Proceeding and, to the Knowledge of the Company, no Person has threatened to commence any Legal Proceeding: (i) that involves the Company or any of the assets owned or used by the Company; (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Merger or any of the other transactions contemplated by this Agreement; or (iii) that relates to the ownership of any capital stock of the Company, or any option or other right to the capital stock of the Company, or right to receive consideration as a result of this Agreement. To the Knowledge of the Company, no event has occurred, and no claim, dispute or other condition or circumstance exists, that will or could reasonably be expected to, give rise to or serve as a basis for the commencement of any such Legal Proceeding. Except as set forth in Part 2.19(a) of the Company Disclosure Schedule, no Legal Proceeding involving claims in excess of \$25,000 has been commenced by, and no Legal Proceeding involving claims in excess of \$25,000 has been pending against the Company.

(b) Orders. There is no order, writ, injunction, judgment or decree to which the Company, or any of the assets owned or used by the Company, is subject. To the Knowledge of the Company, no officer of the Company is subject to any order, writ, injunction, judgment or decree that prohibits such officer from engaging in or continuing any conduct, activity or practice relating to the Company's business.

**2.20 Bank Accounts.** Part 2.20 of the Company Disclosure Schedule accurately sets forth, with respect to each account maintained by or for the benefit of the Company at any bank or other financial institution:

- (a) the name and location of the institution at which such account is maintained;
- (b) the name in which such account is maintained and the account number of such account;
- (c) a description of such account and the purpose for which such account is used;
- (d) the current balance in such account; and
- (e) the names of all individuals authorized to draw on or make withdrawals from such account.

**2.21 Authority; Binding Nature of Agreement.**

(a) The Company has the absolute and unrestricted right, power and authority to enter into and, subject to receipt of the Required Vote, to perform its obligations under this Agreement; and the execution, delivery and performance by the Company of this Agreement have been duly authorized by all necessary action on the part of the Company and its board of directors. This Agreement constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

(b) The Company's board of directors has: (i) unanimously determined that the Merger is advisable and fair and in the best interests of the Company and its stockholders; and (ii) unanimously recommended the adoption of this Agreement by the holders of Company Capital Stock and directed that this Agreement (including the Merger) be submitted for consideration by the Company's stockholders.

**2.22 Non-Contravention; Consents.** Except as set forth in Part 2.22 of the Company Disclosure Schedule, neither (1) the execution, delivery or performance of this Agreement or any of the other agreements referred to in this Agreement, nor (2) the consummation of the Merger or any of the other transactions contemplated by this Agreement, will directly or indirectly (with or without notice or lapse of time):

(a) contravene, conflict with or result in a violation of (i) any of the provisions of the certificate of incorporation or bylaws (or similar organizational documents) of the Company, or (ii) any resolution adopted by the stockholders of the Company, the board of directors of the Company or any committee of the board of directors of the Company;

(b) contravene, conflict with or result in a violation of, or give any Governmental Body or other Person the right to challenge any of the transactions contemplated by this Agreement or to exercise any remedy or obtain any relief under, any Legal Requirement or any order, writ, injunction, judgment or decree to which the Company, or any of the assets owned or used by the Company, is subject;

(c) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by the Company or that otherwise relates to the business of the Company or to any of the assets owned or used by the Company;

(d) contravene, conflict with or result in a violation or breach of, or result in a default under, any provision of any Contract, or give any Person the right to (i) declare a default or exercise any remedy under any such Company Contract, (ii) accelerate the maturity or performance of any such Company Contract, or (iii) cancel, terminate or modify any such Company Contract; or

(e) result in the imposition or creation of any lien or other Encumbrance upon or with respect to any asset owned or used by the Company (except for minor liens that will not, in any case or in the aggregate, materially detract from the value of the assets subject thereto or materially impair the operations of the Company).

Except as set forth in Part 2.22 of the Company Disclosure Schedule and except for the Required Vote and the filing of the Certificate of Merger, the Company is not, nor will it be, required to make any filing with or give any notice to, or to obtain any Consent from, any Person in connection with (x) the execution, delivery or performance of this Agreement or any of the other agreements referred to in this Agreement, or (y) the consummation of the Merger or any of the other transactions contemplated by this Agreement.

**2.23 Full Disclosure.** This Agreement (including, and as modified by the Company Disclosure Schedule) does not, and the Company Closing Certificate will not, (i) contain any representation, warranty or information that is false or misleading with respect to any material fact, or (ii) omit to state any material fact necessary in order to make the representations, warranties and information contained and to be contained herein and therein (in the light of the circumstances under which such representations, warranties and information were or will be made or provided) not false or misleading. The Company has not made and is not making any representation or warranties whatsoever regarding the subject matter of this Agreement, express or implied, unless specifically stated in this Agreement.

**2.24 Brokers; Other Service Providers.** Except as set forth in Part 2.24 of the Company Disclosure Schedule, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Merger or any of the other transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company. Except as set forth in Part 2.24 of the Company Disclosure Schedule, no Person is or may become entitled to receive any fee or other amount from the Company for professional services performed or to be performed in connection with the Merger or any of the other transactions contemplated by this Agreement.

**2.25 Complete Copies of Materials.** The Company has delivered or made available true and complete copies of each document which has been requested by Parent or its counsel in connection with their legal and accounting review of the Company.

**2.26 No Existing Discussions.** As of the date hereof, the Company nor any Representative of the Company is currently engaged, directly or indirectly, in any discussions with any Person (other than Parent and Merger Sub) relating to any Acquisition Transaction.

### **3. REPRESENTATIONS AND WARRANTIES OF EACH STOCKHOLDER**

Each Stockholder, severally and not jointly, represents and warrants to each of Parent and Merger Sub that the following statements are true, correct and complete as of the date of this Agreement, and will be true, correct and complete as of the Effective Time:

**3.1 Organization.** If such Stockholder is not a natural person, such Stockholder: (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized; and (b) has the organizational power and authority to own the shares of Company Capital Stock listed next to such Stockholder's name on Part 2.3(a) of the Company Disclosure Schedule, to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby.

**3.2 Authorization.** If such Stockholder is not a natural person, the execution and delivery of this Agreement, the performance by such Stockholder of its obligations under this Agreement and the consummation by such Stockholder of the transactions contemplated hereby have been duly authorized by all necessary organizational action on the part of such Stockholder. This Agreement has been duly executed and delivered by such Stockholder and is the valid and binding obligation of such Stockholder enforceable against him, her or it in accordance with its terms, except as enforcement may be limited by equitable principles limiting the right to obtain specific performance or other equitable remedies, or by applicable bankruptcy or insolvency Legal Requirements and related decisions affecting creditors' rights generally.

**3.3 No Conflict.** None of the execution and delivery of this Agreement by such Stockholder, the performance by such Stockholder of his, her or its obligations hereunder or the consummation by such Stockholder of the transactions contemplated hereby (with or without the giving of notice or the passage of time, or both), will (i) conflict with or violate any Legal Requirement or governmental order to which such Stockholder is subject or by which such Stockholder or any of his, her or its assets is bound, (ii) if such Stockholder is not a natural person, conflict with, violate, result in a breach of or constitute a default under any provision of the organizational documents of such Stockholder, or (iii) conflict with, violate, result in a breach of or constitute a default under, or result in the creation of any lien under, any Contract or material Liability to which such Stockholder is a party or by which he, she or it is bound or to which any of his, her or its assets is subject.

**3.4 No Consent.** No consent, approval, governmental order or authorization of, or registration, qualification, declaration or filing with, any Governmental Body or any other Person, is required by or with respect to such Stockholder in connection with any of the execution and delivery by such Stockholder of this Agreement or any other instrument or agreement contemplated hereby, the performance by such Stockholder of his, her or its obligations hereunder or thereunder, or the consummation by such Stockholder of the transactions contemplated hereby or thereby (with or without the giving of notice or the passage of time, or both), except for the filing of the Certificate of Merger with the Delaware Secretary of State.

**3.5 Ownership of Securities.** Such Stockholder holds and owns of record and beneficially all right, title and interest in and to the shares of Company Capital Stock and Company Options listed

opposite the name of such Stockholder on Part 2.3(a) of the Company Disclosure Schedule free and clear of all liens and other Encumbrances. The Stockholder owns no, and has no right or obligation to acquire any, other or additional shares of capital stock or other securities of any type or nature of the Company.

**3.6 Litigation.** There is no claim, action, suit, proceeding (at law or in equity), arbitration or investigation pending or, to the Knowledge of such Stockholder, threatened against such Stockholder or relating to or affecting the shares of Company Capital Stock or Company Options held by such Stockholder, and there are no governmental orders against such Stockholder relating to or affecting the shares of Company Capital Stock or Company Options held by such Stockholder.

**3.7 No Broker's or Finder's Fees.** No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses, in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of such Stockholder.

#### **4. REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB**

Except as disclosed in any Parent SEC Filing and publicly available on EDGAR (excluding any disclosures set forth in any section of any Parent SEC Filing entitled "Risk Factors" or "Forward-Looking Statements"), Parent and Merger Sub, jointly and severally, represent and warrant to the Company as follows:

##### **4.1 Due Organization; Etc.**

(a) Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware. Each of Parent and Merger Sub has all necessary power and authority: (i) to conduct its business in the manner in which its business is currently being conducted; (ii) to own and use its assets in the manner in which its assets are currently owned and used; and (iii) to perform its obligations in all material respects under all Parent and Merger Sub Contracts.

(b) Parent is qualified to do business in California and Delaware and is not required to be qualified, authorized, registered or licensed to do business as a foreign corporation in any other jurisdiction, except in those jurisdictions where the failure to be so qualified or in good standing, when taken together with all other failures by Parent to be so qualified or in good standing, would not have a material adverse effect on the ability of Parent to perform its obligations under this Agreement or consummate the transactions contemplated by this Agreement. Parent and Merger Sub have never conducted any business under or otherwise used, for any purpose or in any jurisdiction, any fictitious name, assumed name, trade name or other name other than the names under which Parent and Merger Sub are currently incorporated.

##### **4.2 Capitalization, Etc.**

(a) The authorized capital stock of Parent consists of 750,000,000 shares of Parent Common Stock and 100,000,000 shares of Parent preferred stock. As of the date of this Agreement, 16,479,734 shares of Parent Common Stock have been issued and are outstanding and no shares of Parent preferred stock have been issued and are outstanding. All of the outstanding shares of capital stock of Parent have been duly authorized and validly issued, and are fully paid and non-assessable, and, except as set forth in the Parent SEC Filings, none of such shares is subject to any repurchase option, forfeiture

provision or restriction on transfer (other than restrictions on transfer imposed by virtue of applicable federal and state securities laws).

(b) Except as set forth on Schedule 4.2(b) hereto, there is no: (i) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire any shares of the capital stock or other securities of Parent; (ii) outstanding security, instrument or obligation that is or may become convertible into or exchangeable for any shares of the capital stock or other securities of Parent; (iii) Contract under which Parent is or may become obligated to sell or otherwise issue any shares of its capital stock or other securities; (iv) condition or circumstance that may give rise to or provide a basis for the assertion of a claim by any Person to the effect that such Person is entitled to acquire or receive any shares of capital stock or other securities of Parent; or (v) hidden capital contributions in kind to Parent's capital stock.

(c) All outstanding securities of Parent and Merger Sub have been issued and granted in compliance with (i) all applicable securities laws and other applicable Legal Requirements, and (ii) all requirements set forth in applicable Contracts. There are no preemptive rights applicable to any shares of capital stock of Parent or Merger Sub, nor other rights to subscribe for or purchase securities of Parent or Merger Sub.

**4.3 Parent Common Stock.** The shares of Parent Common Stock to be issued pursuant to this Agreement have been, or shall have been prior to Closing, duly and validly authorized and will be duly and validly issued at Closing or at such later date of the issuance of such shares, and when issued at the Closing or such later issuance, will be validly issued, fully paid and non-assessable, free and clear of all liens and other Encumbrances and not subject to any preemptive rights created by statute, the certificate of incorporation or bylaws of Parent or any Contracts to which Parent is or shall at such time be a party or by which it is or may at such time be bound.

**4.4 Parent SEC Filings.** Parent has timely filed with the SEC all registration statements, prospectuses, reports, schedules, forms, statements and other documents (including schedules and exhibits and all other information incorporated by reference) required to be filed by it with the SEC since October 1, 2011. The Parent SEC Filings have been made available to the Company or are readily available for download from the SEC's online EDGAR system. As of their respective filing dates (or, if amended or superseded by a subsequent filing, as of the date of the last such amendment or superseding filing prior to the date hereof), each of the Parent SEC Filings complied as to form in all material respects with the applicable requirements of the Securities Act and the Exchange Act, and the rules and regulations of the SEC thereunder applicable to such Parent SEC Filings. None of the Parent SEC Filings, including any financial statements, schedules or exhibits included or incorporated by reference therein at the time they were filed (or, if amended or superseded by a subsequent filing, as of the date of the last such amendment or superseding filing prior to the date hereof), 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.

**4.5 Registration Rights.** To the Knowledge of Parent, no Effect has occurred that (considered together with all other Effects) is, or could reasonably be expected to be or to become, materially adverse to Parent's ability to fulfill its obligations in full under Section 6.9 hereof and the Registration Rights Agreement. As of the date hereof, Parent meets the requirements, and intends to apply, to list the Parent Common Stock on the NASDAQ stock exchange.

**4.6 Financial Statements.** The financial statements of Parent, including the notes thereto, included in the Parent SEC Filings (the “Parent Financial Statements”) comply as to form in all material respects with the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP consistently applied and Regulation S-X of the SEC (except as may be indicated in the notes thereto or, in the case of unaudited financial statements, as permitted by Form 10-Q under the Exchange Act) and present fairly, in all material respects, the consolidated financial position of Parent and its consolidated Subsidiaries at the dates thereof and the consolidated results of its operations, changes in shareholders’ equity and cash flows for the periods then ended (subject, in the case of unaudited financial statements, to normal year-end adjustments). There has been no change in Parent’s accounting policies except as described in the notes to the Parent Financial Statements. The Parent Financial Statements fully and accurately accrue all actual and contingent Liabilities for Taxes with respect to all periods through the dates thereof in accordance with GAAP.

#### **4.7 Legal Proceedings.**

(a) Legal Proceedings. There is no pending Legal Proceeding and, to the Knowledge of Parent, no Person has threatened to commence any Legal Proceeding: (i) that involves Parent, any of its Subsidiaries or any of the assets owned or used by Parent or its Subsidiaries; (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Merger or any of the other transactions contemplated by this Agreement; or (iii) that relates to the ownership of any capital stock of Parent or its Subsidiaries, or any option or other right to the capital stock of Parent or its Subsidiaries. To the Knowledge of Parent, no event has occurred, and no claim, dispute or other condition or circumstance exists, that will or could reasonably be expected to, give rise to or serve as a basis for the commencement of any such Legal Proceeding.

(b) Orders. There is no order, writ, injunction, judgment or decree to which the Parent or its Subsidiaries, or any of the assets owned or used by the Parent or its Subsidiaries, is subject. To the Knowledge of the Parent, no officer or other employee of the Parent or its Subsidiaries is subject to any order, writ, injunction, judgment or decree that prohibits such officer or other employee from engaging in or continuing any conduct, activity or practice relating to the Parent’s business or the business of its Subsidiaries.

**4.8 Merger Sub.** Merger Sub is a direct wholly-owned subsidiary of Parent and: (a) was formed solely for the purpose of engaging in the transactions contemplated by this Agreement; (b) has engaged in no other business activities; and (c) has conducted its operations only as contemplated by this Agreement. All of the issued and outstanding equity of Merger Sub is validly issued, fully paid and non-assessable and is owned, beneficially and of record, by Parent free and clear of all Encumbrances, options, rights of first refusal, stockholder agreements, limitations on Parent’s voting rights and other encumbrances of any nature whatsoever.

**4.9 Absence of Certain Changes.** Except as expressly contemplated by this Agreement, between the date of Parent’s most recent quarterly report on Form 10-Q required to be filed with the SEC and the date of this Agreement, there has not occurred any change, effect or event that has had or, with notice or lapse of time or both, would reasonably be expected to have a Parent Material Adverse Effect.

**4.10 Tax Matters.** Neither Parent nor any of its Subsidiaries has taken or agreed to take any action, or failed to take any action, that would prevent the Merger from constituting a reorganization within the meaning of Section 368(a) of the Code.

#### **4.11 Authority; Binding Nature of Agreement.**

(a) Parent and Merger Sub have the absolute and unrestricted right, power and authority to enter into and to perform their obligations under this Agreement; and the execution, delivery and performance by Parent and Merger Sub of this Agreement have been duly authorized by all necessary action on the part of the Parent and Merger Sub and their respective board of directors. This Agreement constitutes the legal, valid and binding obligation of Parent and Merger Sub, enforceable against Parent and Merger Sub in accordance with its terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

(b) Each of Parent and Merger Sub's board of directors has unanimously determined that the Merger is advisable and fair and in the best interests of Parent and Merger Sub and their respective stockholders.

**4.12 Non-Contravention; Consents.** Neither (1) the execution, delivery or performance of this Agreement or any of the other agreements referred to in this Agreement, nor (2) the consummation of the Merger or any of the other transactions contemplated by this Agreement, will directly or indirectly (with or without notice or lapse of time):

(a) contravene, conflict with or result in a violation of (i) any of the provisions of the certificate of incorporation or bylaws (or similar organizational documents) of the Parent or Merger Sub, or (ii) any resolution adopted by the stockholders of Parent or Merger Sub, the board of directors of Parent or Merger Sub or any committee of the board of directors of the Parent or Merger Sub;

(b) contravene, conflict with or result in a violation of, or give any Governmental Body or other Person the right to challenge any of the transactions contemplated by this Agreement or to exercise any remedy or obtain any relief under, any Legal Requirement or any order, writ, injunction, judgment or decree to which Parent or any of its Subsidiaries, or any of the assets owned or used by Parent or any of its Subsidiaries, is subject;

(c) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by Parent or any of its Subsidiaries or that otherwise relates to the business of Parent or any of its Subsidiaries to any of the assets owned or used by Parent or any of its Subsidiaries;

(d) contravene, conflict with or result in a violation or breach of, or result in a default under, any provision of any Contract, or give any Person the right to (i) declare a default or exercise any remedy under any such Parent Contract, (ii) accelerate the maturity or performance of any such Parent Contract, or (iii) cancel, terminate or modify any such Parent Contract; or

(e) result in the imposition or creation of any lien or other Encumbrance upon or with respect to any asset owned or used by Parent or any of its Subsidiaries (except for minor liens that will not, in any case or in the aggregate, materially detract from the value of the assets subject thereto or materially impair the operations of Parent or any of its Subsidiaries).

Except for the filing of the Certificate of Merger and the Registration Statement, neither Parent nor any of its Subsidiaries is, or will it be, required to make any filing with or give any notice to, or to obtain any



Consent from, any Person in connection with (x) the execution, delivery or performance of this Agreement or any of the other agreements referred to in this Agreement, or (y) the consummation of the Merger or any of the other transactions contemplated by this Agreement.

**4.13 Full Disclosure.** This Agreement does not, and the Parent Closing Certificate will not, (i) contain any representation, warranty or information that is false or misleading with respect to any material fact, or (ii) omit to state any material fact necessary in order to make the representations, warranties and information contained and to be contained herein and therein (in the light of the circumstances under which such representations, warranties and information were or will be made or provided) not false or misleading. Parent has not made and is not making any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, unless specifically stated in this Agreement.

**4.14 Brokers; Other Service Providers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Merger or any of the other transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent. No Person is or may become entitled to receive any fee or other amount from Parent for professional services performed or to be performed in connection with the Merger or any of the other transactions contemplated by this Agreement.

**4.15 Complete Copies of Materials.** Parent has delivered or made available true and complete copies of each material document that has been requested by the Company, the Company Stockholders or their counsel in connection with their legal and accounting review of the Company.

## 5. CERTAIN COVENANTS OF THE COMPANY

**5.1 Access and Investigation.** During the period from the date of this Agreement through the Closing Date or earlier termination of this Agreement in accordance with the terms of this Agreement (the "Pre-Closing Period"), the Company shall, and shall cause its Representatives to: (a) provide Parent and Parent's Representatives with reasonable access to the Company's Representatives, personnel and assets and to all existing books, records, Tax Returns, work papers and other documents and information relating to the Company; and (b) provide Parent and Parent's Representatives with copies of such existing books, records, Tax Returns, work papers and other documents and information relating to the Company, and with such additional financial, operating and other data and information regarding the Company, as Parent may reasonably request, including data and information required by Parent to remain in compliance with its SEC and stock exchange listing requirement.

**5.2 Operation of the Company's Business.** During the Pre-Closing Period, and except as otherwise may be approved by Parent, in its sole discretion, in writing:

(a) the Company shall conduct its business and operations in the ordinary course and in substantially the same manner as such business and operations have been conducted prior to the date of this Agreement;

(b) the Company shall use commercially reasonable efforts to preserve intact its current business organization, keep available the services of its current officers and employees and maintain its relations and good will with all suppliers, customers, landlords, creditors, employees and other Persons having business relationships with the Company;

(c) the Company shall not declare, accrue, set aside or pay any dividend or make any other distribution in respect of any shares of capital stock, and the Company shall not repurchase, redeem or otherwise reacquire any shares of capital stock or other securities;

(d) except for the issuance of shares of Company Common Stock upon exercise or conversion of presently outstanding Company Options, the Company shall not sell, issue or authorize the issuance of (i) any capital stock or other security, (ii) any option or right to acquire any capital stock or other security, or (iii) any instrument convertible into or exchangeable for any capital stock or other security;

(e) except as contemplated by this Agreement, the Company shall not amend or permit the adoption of any amendment to the certificate of incorporation or bylaws of the Company, or effect the Company to become a party to any recapitalization, reclassification of shares, stock split, reverse stock split or similar transaction;

(f) the Company shall not form any subsidiary or acquire any equity interest or other interest in any other Entity;

(g) the Company shall not make any capital expenditure, except for capital expenditures that, when added to all other capital expenditures made on behalf of the Company during the Pre-Closing Period, do not exceed \$5,000 per month;

(h) the Company shall not enter into any Contract that requires (or a series of related Contracts that in the aggregate require) the payment by the Company of more than \$20,000;

(i) the Company shall not (i) enter into, or permit any of the assets owned or used by it to become bound by, any Material Contract, or (ii) amend or prematurely terminate, or waive any material right or remedy under, any Material Contract;

(j) the Company shall not (i) lend money or pay any bonuses to any Person (except that the Company may make routine travel advances to employees or consultants in the ordinary course of business and consistent with past practices), or (ii) incur or guarantee any indebtedness for borrowed money;

(k) the Company shall not (i) establish, adopt or amend any Company Employee Plan, (ii) pay any bonus or make any profit-sharing payment, cash incentive payment or similar payment to, or increase the amount of the wages, salary, commissions, fringe benefits or other compensation or remuneration payable to, any of its directors, officers or employees, or (iii) hire any new employees;

(l) the Company shall not change any of its methods of accounting or accounting practices in any material respect;

(m) the Company shall not make any Tax election other than Tax elections within the ordinary course of business, consistent with past practice;

(n) the Company shall not commence or settle any Legal Proceeding; and

(o) the Company shall not agree or commit to take any of the actions described in clauses “(e)” through “(n)” above.

Notwithstanding the foregoing, the Company may, during the Pre-Closing Period (1) close any account listed on Part 2.20 of the Company Disclosure Schedule and use the proceeds thereof to repay all or any portion of amounts owed by the Company to Aceras Partners, LLC pursuant to that certain Future Advance Promissory Note dated May 2, 2013, (2) pay Company Transaction Expenses, or (3) with the prior written consent of Parent, repay and extinguish any other Company Debt.

### **5.3 Notification; Updates to Company Disclosure Schedule.**

(a) During the Pre-Closing Period, the Company shall promptly notify Parent in writing of:

(i) the discovery by the Company of any event, condition, fact or circumstance that occurred or existed on or prior to the date of this Agreement and that caused or constitutes in any material respect an inaccuracy in or breach of any representation or warranty made by the Company in this Agreement (as modified by the Company Disclosure Schedule);

(ii) any event, condition, fact or circumstance that occurs, arises or exists after the date of this Agreement and that would cause or constitute in any material respect an inaccuracy in or breach of any representation or warranty made by the Company in this Agreement if (A) such representation or warranty had been made as of the time of the occurrence, existence or discovery of such event, condition, fact or circumstance, or (B) such event, condition, fact or circumstance had occurred, arisen or existed on or prior to the date of this Agreement;

(iii) any material breach of any covenant or obligation of the Company; and

(iv) any event, condition, fact or circumstance that would make the satisfaction of any of the conditions set forth in Section 7 or Section 8 impossible or unlikely.

(b) If any event, condition, fact or circumstance that is required to be disclosed pursuant to Section 5.3(a) requires any change in the Company Disclosure Schedule, or if any such event, condition, fact or circumstance would require such a change assuming the Company Disclosure Schedule were dated as of the date of the occurrence, existence or discovery of such event, condition, fact or circumstance, then the Company shall promptly deliver to Parent an update to the Company Disclosure Schedule specifying such change. No such update shall be deemed to supplement or amend the Company Disclosure Schedule for the purpose of (i) determining the accuracy of any of the representations and warranties made by the Company in this Agreement (including for purposes of indemnification pursuant to Section 10), or (ii) determining whether any of the conditions set forth in Section 7 has been satisfied.

**5.4 No Negotiation.** Prior to the earlier of the expiration of the Pre-Closing Period and October 18, 2013 (the “Exclusivity Period”), the Company shall not, directly or indirectly:

(a) solicit or encourage the initiation of any inquiry, proposal or offer from any Person (other than Parent) relating to a possible Acquisition Transaction;

(b) participate in any discussions or negotiations or enter into any agreement with, or provide any non-public information to, any Person (other than Parent) relating to or in connection with a possible Acquisition Transaction; or

(c) consider, entertain or accept any proposal or offer from any Person (other than Parent) relating to a possible Acquisition Transaction.

The Company shall promptly notify Parent in writing of any inquiry, proposal or offer relating to a possible Acquisition Transaction that is received by the Company or any of its respective affiliates during the Exclusivity Period.

## 6. ADDITIONAL COVENANTS OF THE PARTIES

**6.1 Filings and Consents.** As promptly as practicable after the execution of this Agreement, each party to this Agreement: (a) shall make all filings (if any) and give all notices (if any) required to be made and given by such party in connection with the Merger and the other transactions contemplated by this Agreement, and (b) shall use all commercially reasonable efforts to obtain Consents as set forth on Part 6.1 of the Company Disclosure Schedule. The Company shall (upon request) promptly deliver to Parent a copy of each such filing made, each such notice given and each such Consent obtained by the Company during the Pre-Closing Period.

**6.2 Public Announcements.** Neither the Company nor Parent shall issue any press release regarding this Agreement or the Merger, or regarding any of the other transactions contemplated by this Agreement, without the other party's prior written consent, except as required by any Legal Requirement (including rules of any exchange).

**6.3 Commercially Reasonable Efforts.** During the Pre-Closing Period, the Company and Parent shall use all commercially reasonable efforts to cause the conditions set forth in Sections 7 and 8, as applicable, to be satisfied on a timely basis.

**6.4 Company Debt.** Prior to Closing, the Company shall discharge all Company Debt other than the accounts payable and accrued liabilities that: (A) in the aggregate do not exceed \$60,000, including liabilities, with respect to completed work and work that, as of the Closing Date, has not been completed, in each case pursuant to then existing Company Contracts (including, without limitation, the Company Contracts set forth on Part 6.4 of the Company Disclosure Schedule), or (B) are payable under the terms of that certain Patent License Agreement dated January 6, 2011 between the Company and the National Institute of Health, as amended, and that certain Cooperative Research and Development Agreement dated May 19, 2009 between the Company and The National Institute of Neurological Disorders and Stroke, as amended (collectively, (A) and (B), the "Permitted Company Debt"). Parent or the Surviving Corporation shall pay all Permitted Company Debt that is due and payable as of Closing within five (5) days of the Closing Date.

**6.5 FIRPTA Matters.** At the Closing, the Company shall deliver Parent a statement described in Section 1.1445-2(c)(3)(i) of the Treasury Regulations certifying the interests in the Company are not U.S. real property interests.

**6.6 Consulting Agreement.** The Company shall use its best efforts to cause the Aceras Partners LLC to enter into the Consulting Agreement.

**6.7 Non-Competition and Non-Solicitation Agreement.** At the Closing, the Company shall cause those individuals identified on Schedule 6.7 to execute and deliver to Parent a non-competition and non-solicitation Agreement substantially in the form of Exhibit F (the "Non-Competition Agreement").

**6.8 Resignation of Officers and Directors.** The Company shall use commercially reasonable efforts to obtain and deliver to Parent at or prior to the Closing the resignation of each officer and director of the Company effective as of the Effective Time (it being understood that such resignation shall be from the office of officer or director of the Company).

**6.9 Registration Statement; Rule 144.**

(a) Parent shall prepare and file with the SEC at its expense as soon as practicable, but in no event later than October 31, 2013 or such other date as Parent and Key Holder may agree to in writing, a Registration Statement relating to the shares of Parent Common Stock issuable with respect to the Merger, including the Merger Consideration and all shares of Parent Common Stock issued as an exclusivity fee in connection with the signing of the Summary of Terms and Conditions dated on or about August 30, 2013 (the “Exclusivity Shares”), to the extent that the Exclusivity Shares have not been returned, and no longer are subject to return, to Parent thereunder, pursuant to the terms and conditions of this Agreement and the Registration Rights Agreement. For clarity, to the extent that timely filing pursuant to this Section 6.9(a) is as a result of a delay in the timely delivery of information required from Company, such filing date shall be automatically extended by a day for each day in which the required information is not delivered.

(b) Parent agrees to use its best efforts to cause the Registration Statement to become or be declared effective by the SEC as promptly as practicable after the filing thereof. In connection with the filing of any Registration Statement, but subject to Parent’s timely receipt of the Company’s financial statements as requested, Parent agrees to make any other filings with the SEC required to be made prior to the effectiveness of the Registration Statement, including, if required, a Current Report on Form 8-K with respect to the Closing and all financial statements required to be included therein.

(c) Parent shall use its reasonable best efforts to maintain the effectiveness of the Registration Statement for the period described in the Registration Rights Agreement, and shall otherwise comply with all of its obligations contained in the Registration Rights Agreement.

(d) Parent shall file the reports required to be filed by it under the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if Parent is not required to file such reports, will, upon the request of the Key Holder make publicly available other information) and will take such further action as the Key Holder may reasonably request, all to the extent required from time to time to enable the Company Stockholders (or their designees) to sell Parent Common Stock without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144 under the Securities Act, as such Rule may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the SEC. Without limiting the foregoing, Parent shall provide (or cause its Representatives to provide), at its expense, any opinion letter necessary to remove the restrictive legends from the Merger Consideration or Exclusivity Shares, if applicable, in connection with any such sale or transfer. In addition, Parent will take such action as the Key Holder may reasonably request in writing to the extent required for the Key Holder to transfer, for no consideration, the Exclusivity Shares to its beneficial owners or other designees.

(e) Parent shall reimburse the Key Holder for any attorneys fees it incurs in connection with any claims or Legal Proceedings by the Key Holder to enforce the Parent’s obligations set forth in this Section 6.9.

**6.10 Affiliate and Other Legends.** Parent shall be entitled to place appropriate legends with respect to restrictions on transfer imposed by the Securities Act or by applicable Contract on the certificates evidencing any Parent Common Stock to be issued in connection with the Merger, including by Rule 145 promulgated under the Securities Act on certificates received by any Person that Parent reasonably determines may be deemed an affiliate of the Company and/or Parent and to issue appropriate stop transfer instructions to the transfer agent for such Parent Common Stock.

**6.11 Tax Matters.**

(a) It is intended by the parties hereto that the Merger constitute a reorganization within the meaning of Section 368(a) of the Code. Each of the parties hereto adopts this Agreement as a “plan of reorganization” within the meaning of Sections 1.368-2(g) and 1.368-3(a) of the Treasury Regulations. Both prior to and after the Closing, each party’s books and records shall be maintained, and all federal, state and local income tax returns and schedules thereto shall be filed in a manner consistent with the Merger being qualified as a reorganization and nontaxable exchange under Section 368(a)(1)(A) of the Code (and comparable provisions of any applicable state or local laws), except to the extent the Merger is determined in a final administrative or judicial decision not to qualify as a reorganization within the meaning of Code Section 368(a).

(b) Where it is necessary for purposes of this Agreement to apportion the Taxes of the Company or with respect to the assets of the Company for a Tax period that includes but does not end on the Closing Date (a “Straddle Period”), such liability shall be apportioned between the period deemed to end at the close of the Closing Date, and the period deemed to begin at the beginning of the day following the Closing Date on the basis of an interim closing of the books, except that Taxes imposed on a periodic basis (such as real or personal property Taxes, but excluding Taxes imposed upon or incurred in connection with specific taxable events, which shall be allocated to the portion of the Straddle Period in which they were incurred) shall be allocated pro rata on a daily basis. Deductions attributable to the transactions contemplated by this Agreement, including any payment made by or on behalf of the Company in connection with Closing shall be taken into account in full, and not on a proportional basis, in determining the Tax liability (including for purposes of timely paying estimated Taxes) of the Company for any period of portion thereof ending on or prior to the Closing Date.

(c) Parent shall prepare or cause to be prepared and file or cause to be filed all Tax Returns for the Company that are required to be filed after the Closing Date, and Parent shall pay all Taxes shown as due on those Tax Returns. Parent shall provide the Key Holder with drafts of all Tax Returns prepared by it pursuant to this Section 6.11(c), but only to the extent such Tax Returns would reflect a Tax liability subject to indemnification pursuant to Section 10 of this Agreement. The Key Holder shall have the right to review such draft Tax Returns during the fifteen (15) day period following the receipt of such draft Tax Returns, and Parent agrees to consider any comments made by the Key Holder in good faith.

(d) Parent shall have the right to conduct and control in its sole and absolute discretion any audit, litigation or other Legal Proceeding with respect to Taxes (a “Tax Contest”); *provided, however*, that with respect to any Tax Contest for any Pre-Closing Tax Period that would be reasonably expected to result in an increase in Tax liability subject to indemnification pursuant to Section 10 of this Agreement, Parent shall not settle any such Tax Contest without the consent of the Key Holder, which consent shall not be unreasonably withheld, conditioned or delayed. After the Closing

Date, the Key Holder and Parent shall cooperate, and shall cause their respective affiliates to cooperate, with each other and with each others' agents, including accounting firms and legal counsel, in connection with Tax matters relating to the Company. Such cooperation shall include the retention and (upon the other party's reasonable request) the provision of records and information within its possession that are reasonably relevant to any such Tax Contest and making representatives available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The Key Holder and Parent agree to retain all books and records within their respective possession with respect to Tax matters pertinent to the Company relating to any taxable period beginning before the Closing Date until the expiration of the statute of limitations (and, to the extent notified by Parent or the Key Holder, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any taxing authority. In the event of any conflict with this Section 6.11(d) and the provisions of Section 10.6 regarding third party claims, the provisions of this Section 6.11(d) shall govern.

(e) Parent will not make or permit to be made any election under Section 338 of the Code with respect to the transactions contemplated by this Agreement. Other than as part of a matter administered pursuant to Section 6.11(d) above, Parent will not without the Key Holder's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, cause or permit any Tax Returns that were filed by the Company prior to the Closing Date or that otherwise relate (in whole or in part) to any Pre-Closing Tax Period to be amended if such amendment will cause or increase an obligation to indemnify hereunder on the part of the Key Holder.

**6.12 Reclassification of Consultants.** After the Effective Time, Parent shall use commercially reasonable efforts to avoid reclassification of any independent contractor, consultant or similar non-employee third party of the Company as an employee, whether misclassified or otherwise, for any period on or prior to the Effective Time.

## **7. CONDITIONS PRECEDENT TO OBLIGATIONS OF PARENT AND MERGER SUB**

The obligations of Parent and Merger Sub to effect the Merger and otherwise consummate the transactions contemplated by this Agreement are subject to the satisfaction (or waiver by Parent), at or prior to the Closing, of each of the following conditions:

**7.1 Accuracy of Representations.** Each of the representations and warranties made by the Company in Section 2 shall have been true and correct in all material respects as of the date of this Agreement and shall be true and correct in all respects as of the Closing Date as if made at the Closing (except to the extent such representations and warranties expressly relate to a specific date, in which case such representations and warranties shall be true and correct in all respects on and as of such date), except where the failure of such representations and warranties of the Company to be so true and correct, individually or in the aggregate, has not had and does not have a Company Material Adverse Effect; *provided, however*, that (i) all materiality qualifications limiting the scope of such representations and warranties shall be disregarded; and (ii) for purposes of determining the accuracy of such representations and warranties, any update of or modification to the Company Disclosure Schedule made or purported to have been made on or after the date of this Agreement shall be disregarded.

**7.2 Performance of Covenants.** All of the covenants and obligations that the Company is required to comply with or to perform at or prior to the Closing shall have been complied with and performed in all material respects.

**7.3 Stockholder Approval.** The adoption of this Agreement shall have been duly approved by the Required Vote.

**7.4 Governmental Consents.** All filings, other than the Registration Statement, with and other Consents of any Governmental Body required to be made or obtained in connection with the Merger and the other transactions contemplated by this Agreement shall have been made or obtained and shall be in full force and effect and any waiting period under any applicable antitrust or competition law, regulation or other Legal Requirement shall have expired or been terminated.

**7.5 Reserved.**

**7.6 Agreements and Documents.** Parent shall have received the following agreements and documents, each of which shall be in full force and effect:

(a) Aceras Partners LLC shall have entered into the Consulting Agreement and such Consulting Agreement shall be in full force and effect;

(b) a Non-Competition Agreement duly executed by those individuals listed on Schedule 6.7;

(c) the president of the Company, on behalf of the Company, shall have delivered, as of the Closing Date, to Parent a certificate to the effect that the conditions specified in Sections 7.1, 7.2, 7.4 and 7.7 have been duly satisfied (the “Company Closing Certificate”);

(d) the secretary of the Company, on behalf of the Company, shall have delivered, as of the Closing Date, to Parent a certificate certifying the Company’s (i) certificate of incorporation, (ii) bylaws, (iii) board resolutions approving the Merger and adopting this Agreement, and (iv) Written Consent approving the Merger and adopting this Agreement;

(e) a Certificate of Merger in a form reasonably satisfactory to Parent, duly executed by the Company;

(f) a certificate in substantially the form hereto as Exhibit G (the “Merger Consideration Certificate”), duly executed on behalf of the Company by the president of the Company, containing the following information and the representation and warranty of the Company that all of such information is true and accurate as of the Closing:

(i) an itemized list of the Permitted Company Debt;

(ii) the aggregate amount of Company Transaction Expenses paid or payable (including any Company Transaction Expenses that will become payable after the Effective Time with respect to services performed or actions taken prior to the Effective Time) (including an itemized list of each Company Transaction Expenses with a description of the nature of such expenses and the Person to whom such expense was or is owed) and the Deductible Transaction Expenses (including the calculation thereof);

(iii) the name and address of record of each Person who is a stockholder of the Company immediately prior to the Effective Time;



(iv) the number and class of securities held by each such individual immediately prior to the Effective Time;

(v) the number of shares of Parent Common Stock that each stockholder of the Company is entitled to receive pursuant to Section 1.5; and

(vi) the pro rata portion of Future Shares that each stockholder of the Company is entitled to receive pursuant to Section 1.9.

The Merger Consideration Certificate assumes the following: (i) there are no withholding Taxes; (ii) there are no Dissenting Shares; and (iii) there are no claims against the Holdback Shares.

(g) written acknowledgments pursuant to which the outside legal counsel and any financial advisor, accountant or other Person who performed services for or on behalf of the Company, or who is otherwise entitled to any compensation from the Company, in connection with this Agreement, any of the transactions contemplated by this Agreement or otherwise, other than to the extent such amounts are included in Permitted Company Debt, acknowledges: (A) the total amount of fees, costs and expenses of any nature that is payable or has been paid to such Person in connection with this Agreement and any of the transactions contemplated by this Agreement or otherwise; and (B) subject to Section 11.2 hereof, that it has been paid in full and is not (and will not be) owed any other amount by the Company with respect to this Agreement, the transactions contemplated by this Agreement or otherwise;

(h) written resignations of each officer and director of the Company, effective as of the Effective Time;

(i) a questionnaire filled by each holder of Shares outstanding immediately prior to the Effective Time, indicating in a manner satisfactory to Parent, that such holder is an accredited investor as defined in Rule 501 of Regulation D promulgated under the Securities Act; and

(j) Registration Rights Agreement executed by each Company Stockholder.

**7.7 Absence of Material Adverse Effect.** Since the date of this Agreement, there has not been any Company Material Adverse Effect.

**7.8 FIRPTA Compliance.** The Company shall have delivered to Parent the documents required to be filed with the Internal Revenue Service referred to in Section 6.5.

**7.9 No Restraints.** No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the Merger shall have been issued by any court of competent jurisdiction and remain in effect, and there shall not be any Legal Requirement enacted or deemed applicable to the Merger that makes consummation of the Merger illegal.

**7.10 No Legal Proceedings.** No Governmental Body shall have commenced or threatened to commence any Legal Proceeding against the Company or any Legal Proceedings: (a) challenging the Merger or any of the other transactions contemplated by this Agreement or seeking the recovery of damages in connection with the Merger or any of the other transactions contemplated by this Agreement; (b) seeking to prohibit or limit the exercise by Parent of any material right pertaining to its ownership of stock of Merger Sub or the Company; (c) that may have the effect of preventing, delaying, making illegal or otherwise interfering with the Merger or any of the other transactions contemplated by this

Agreement; or (d) seeking to compel the Company, Parent or any affiliate of Parent to dispose of or hold separate any material assets as a result of the Merger or any of the other transactions contemplated by this Agreement.

**7.11 Extinguishment of Debt.** Other than the Permitted Company Debt, all outstanding debts and obligations, whether current or long term, of the Company will be extinguished immediately prior to the Closing.

## **8. CONDITIONS PRECEDENT TO OBLIGATIONS OF THE COMPANY**

The obligations of the Company to effect the Merger and otherwise consummate the transactions contemplated by this Agreement are subject to the satisfaction (or waiver by the Company), at or prior to the Closing, of the following conditions:

**8.1 Accuracy of Representations.** The representations and warranties made by Parent and Merger Sub in Section 4 shall have been true and correct in all material respects as of the date of this Agreement and shall be true and correct in all respects as of the Closing Date as if made at the Closing (except to the extent such representations and warranties expressly relate to a specific date, in which case such representations and warranties shall be true and correct in all respects on and as of such date), except where the failure of such representations and warranties of Parent to be so true and correct, individually or in the aggregate, has not had and does not have a Parent Material Adverse Effect; *provided, however*, that all materiality qualifications limiting the scope of such representations and warranties shall be disregarded.

**8.2 Performance of Covenants.** All of the covenants and obligations that Parent and Merger Sub are required to comply with or to perform at or prior to the Closing shall have been complied with and performed in all material respects.

**8.3 Governmental Consents.** All filings with and other Consents of any Governmental Body required to be made or obtained in connection with the Merger and the other transactions contemplated by this Agreement shall have been made or obtained and shall be in full force and effect and any waiting period under any applicable antitrust or competition law, regulation or other Legal Requirement shall have expired or been terminated.

**8.4 Agreements and Documents.** The Company shall have received the following agreements and documents, each of which shall be in full force and effect:

(a) Parent shall have entered into the Consulting Agreement and such Consulting Agreement shall be in full force and effect;

(b) a Non-Competition Agreement duly executed by those individuals listed on Schedule 6.7;

(c) Parent shall have duly executed and delivered the Registration Rights Agreement; and

(d) a certificate executed on behalf of Parent by an officer of Parent containing the representation and warranty of Parent that the conditions set forth in Section 8.1, 8.2, 8.3 and 8.5 have been duly satisfied (the "Parent Closing Certificate").

**8.5 Absence of Material Adverse Effect.** Since the date of this Agreement, there has been no Parent Material Adverse Effect.

**8.6 FDA Meeting Minutes.** Parent shall have made available to the Company for its review, at least five (5) business days prior to Closing, complete and accurate copies of Parent's and its Subsidiaries' FDA meeting minutes for any meetings that have occurred within one (1) year prior to the date of this Agreement.

**8.7 No Restraints.** No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the Merger shall have been issued by any court of competent jurisdiction and remain in effect, and there shall not be any Legal Requirement enacted or deemed applicable to the Merger that makes consummation of the Merger illegal.

**8.8 No Legal Proceedings.** No Governmental Body shall have commenced or threatened to commence any Legal Proceeding: (a) challenging the Merger or any of the other transactions contemplated by this Agreement or seeking the recovery of damages in connection with the Merger or any of the other transactions contemplated by this Agreement; (b) seeking to prohibit or limit the exercise by the Company Stockholders of any material right pertaining to its ownership of Parent Common Stock; (c) that may have the effect of preventing, delaying, making illegal or otherwise interfering with the Merger or any of the other transactions contemplated by this Agreement; or (d) seeking to compel the Company, Parent or any affiliate of Parent to dispose of or hold separate any material assets as a result of the Merger or any of the other transactions contemplated by this Agreement.

## 9. TERMINATION

**9.1 Termination Events.** This Agreement may be terminated prior to the Closing:

(a) by Parent if the Closing has not taken place on or before 5:00 p.m. (Pacific time) on October 18, 2013 (the "Expiration Date") (other than as a result of any failure on the part of Parent to comply with or perform any covenant or obligation of Parent or Merger Sub set forth in this Agreement or in any other agreement or instrument delivered to the Company in connection with the transactions contemplated by this Agreement);

(b) by the Company if the Closing has not taken place on or before 5:00 p.m. (Pacific time) on the Expiration Date (other than as a result of any failure on the part of the Company or any of the stockholders of the Company to comply with or perform any covenant or obligation set forth in this Agreement or in any other agreement or instrument delivered to Parent in connection with the transactions contemplated by this Agreement);

(c) by either Parent or the Company if: (i) a court of competent jurisdiction or other Governmental Body shall have issued a final and non-appealable order, decree or ruling, or shall have taken any other action, having the effect of permanently restraining, enjoining or otherwise prohibiting the Merger; or (ii) there shall be any Legal Requirement enacted, promulgated, issued or deemed applicable to the Merger by any Governmental Body that would make consummation of the Merger illegal;

(d) by Parent if: (i) any of the representations and warranties of the Company contained in this Agreement shall be inaccurate as of the date of this Agreement, or shall have become inaccurate as of a date subsequent to the date of this Agreement, such that the condition set forth in

Section 7.1 would not be satisfied; or (ii) any of the covenants of the Company contained in this Agreement shall have been breached such that the condition set forth in Section 7.2 would not be satisfied; *provided, however*, that if an inaccuracy in any of the representations and warranties of the Company as of a date subsequent to the date of this Agreement or a breach of a covenant by the Company is curable by the Company through the use of reasonable efforts within twenty (20) days following the date Parent notifies the Company in writing of the existence of such inaccuracy or breach (the “Company Cure Period”), then Parent may not terminate this Agreement under this Section 9.1(d) as a result of such inaccuracy or breach prior to the expiration of the Company Cure Period; *provided* the Company, during the Company Cure Period, continues to exercise reasonable efforts to cure such inaccuracy or breach (it being understood that Parent may not terminate this Agreement pursuant to this Section 9.1(d) with respect to such inaccuracy or breach if such inaccuracy or breach is cured prior to the expiration of the Company Cure Period);

(e) by the Company if: (i) any of Parent’s representations and warranties contained in this Agreement shall be inaccurate as of the date of this Agreement, or shall have become inaccurate as of a date subsequent to the date of this Agreement, such that the condition set forth in Section 8.1 would not be satisfied; or (ii) if any of Parent’s covenants contained in this Agreement shall have been breached such that the condition set forth in Section 8.2 would not be satisfied; *provided, however*, that if an inaccuracy in any of Parent’s representations and warranties as of a date subsequent to the date of this Agreement or a breach of a covenant by Parent is curable by Parent through the use of reasonable efforts during the period within twenty (20) days following the date the Company notifies Parent in writing of the existence of such inaccuracy or breach (the “Parent Cure Period”), then the Company may not terminate this Agreement under this Section 9.1(e) as a result of such inaccuracy or breach prior to the expiration of the Parent Cure Period; *provided* Parent, during the Parent Cure Period, continues to exercise reasonable efforts to cure such inaccuracy or breach (it being understood that the Company may not terminate this Agreement pursuant to this Section 9.1(e) with respect to such inaccuracy or breach if such inaccuracy or breach is cured prior to the expiration of the Parent Cure Period).

**9.2 Termination Procedures.** If Parent wishes to terminate this Agreement pursuant to Section 9.1(a), Section 9.1(c) or Section 9.1(d), Parent shall deliver to the Company a written notice stating that Parent is terminating this Agreement and setting forth a brief description of the basis on which Parent is terminating this Agreement. If the Company wishes to terminate this Agreement pursuant to Section 9.1(b), Section 9.1(c) or Section 9.1(e), the Company shall deliver to Parent a written notice stating that the Company is terminating this Agreement and setting forth a brief description of the basis on which the Company is terminating this Agreement.

**9.3 Effect of Termination.** If this Agreement is terminated pursuant to Section 9.1, all further obligations of the parties under this Agreement shall terminate; *provided, however*, that: (a) none of the parties shall be relieved of any obligation or liability arising from any prior breach by such party of any provision of this Agreement; and (b) the parties shall, in all events, remain bound by and continue to be subject to the provisions set forth in Section 11 and, with respect to the Exclusivity Shares only, Section 6.9 of this Agreement.

## 10. INDEMNIFICATION, ETC.

### 10.1 Survival of Representations, Etc.

(a) General Survival. Subject to Section 10.1(b), the representations and warranties made by the Company, the Company Stockholders, and Parent in this Agreement and the representations

and warranties set forth in the Company Closing Certificate and the Parent Closing Certificate, in each case other than the Specified Representations, shall survive the Effective Time and shall expire on the twelve-month anniversary of the Closing Date (“Termination Date”); *provided, however*, that if, at any time prior to the Termination Date, a written notice is delivered to the Key Holder or Parent, as applicable, alleging the existence of an inaccuracy in or a breach of any of such representations and warranties and asserting a claim in good faith and setting forth in reasonable detail the claim for recovery under Section 10.2, as applicable, based on such alleged inaccuracy or breach, then the claim asserted in such notice shall survive the Termination Date until such time as such claim is fully and finally resolved.

(b) Specified Representations. Notwithstanding anything to the contrary contained in Section 10.1(a), the Specified Representations shall survive the Effective Time indefinitely.

(c) Intentional/Willful Misrepresentation; Fraud. Notwithstanding anything to the contrary contained in Section 10.1(a), the limitations set forth in Sections 10.1(a) shall not apply in the case of claims based upon intentional or willful misrepresentation or fraud.

(d) Disclosure Schedule. For purposes of this Agreement, each statement or other item of information set forth in the Company Disclosure Schedule or in any update to the Company Disclosure Schedule shall be deemed to be a representation and warranty made by the Company in this Agreement.

## **10.2 Right to Indemnification.**

(a) Parent Right to Indemnification. From and after the Effective Time (but subject to Section 10.1), the Key Holder shall hold harmless and indemnify each of the Parent Indemnitees from and against, and shall compensate and reimburse each of the Parent Indemnitees for, any Damages which are suffered or incurred by any of the Parent Indemnitees or to which any of the Parent Indemnitees may otherwise become subject (regardless of whether or not such Damages relate to any third party claim) and which arise from or as a result of, or are connected with:

(i) any inaccuracy in or breach of any representation or warranty made by the Company in this Agreement (A) as of the date of this Agreement; (B) as if such representation or warranty was made on and as of the Closing (other than representations and warranties which by their terms are made as of a specific date); or (C) in the Company Closing Certificate (in each case of clause “A,” “B” and “C”, without giving effect to any update of or modification to the Company Disclosure Schedule made or purported to have been made on or after the date of this Agreement);

(ii) any breach of any covenant or obligation of the Company in this Agreement;

(iii) any Damages relating to any misclassification of employees, including Damages related to breaches of Sections 2.14(a) because of such misclassification (the “Indemnifiable Contractor Matters”);

(iv) any Company Debt, other than Permitted Company Debt (the “Indemnifiable Company Debt”); or

(v) the exercise by any stockholder of the Company of such stockholder's appraisal rights under the DGCL (or under any other any applicable Legal Requirement) for any amount in excess of what is payable by Parent in accordance with Section 1.5 hereof.

(b) Indemnification by Company Stockholders. From and after the Effective Time (but subject to Section 10.1), each Company Stockholder shall hold harmless and indemnify each of the Parent Indemnitees from and against, and shall compensate and reimburse each of the Parent Indemnitees for, any Damages which are suffered or incurred by any of the Parent Indemnitees or to which any of the Parent Indemnitees may otherwise become subject (regardless of whether or not such Damages relate to any third party claim) and which arise from or as a result of, or are connected with: (i) any inaccuracy in or breach of any representation or warranty made by such Company Stockholder in this Agreement as of the date of this Agreement or on and as of the Closing (other than representations and warranties which by their terms are made as of a specific date) and in each case, without giving effect to any update of or modification to the Company Disclosure Schedule made or purported to have been made on or after the date of this Agreement); or (ii) any breach of any covenant or obligation of such Company Stockholder in this Agreement.

(c) Indemnification by Parent. From and after the Effective Time (but subject to Section 10.1), Parent and the Surviving Corporation shall hold harmless and indemnify each of the Stockholder Indemnitees from and against, and shall compensate and reimburse each of the Stockholder Indemnitees for, any Damages which are suffered or incurred by any of the Stockholder Indemnitees or to which any of the Stockholder Indemnitees may otherwise become subject (regardless of whether or not such Damages relate to any third party claim) and which arise from or as a result of, or are connected with: (i) any inaccuracy in or breach of any representation or warranty made by Parent or Merger Sub in this Agreement (A) as of the date of this Agreement; (B) as if such representation or warranty was made on and as of the Closing (other than representations and warranties which by their terms are made as of a specific date); or (C) in the Parent Closing Certificate (in each case of clause "A," "B" and "C", without giving effect to any update or modification in the schedules delivered by the Parent hereunder on or after the date of this Agreement); or (ii) any breach of any covenant or obligation of Parent, Merger Sub or the Surviving Corporation in this Agreement.

### **10.3 Limitations to Parent Indemnitee's Rights.**

(a) Recourse to the Holdback Shares. Except with respect to Indemnifiable Contractor Matters, Indemnifiable Company Debt and intentional or willful misrepresentation or fraud and subject to Section 10.3(c) (and for the avoidance of doubt, subject to any injunction or other non-monetary equitable remedies that may be available to the Parent Indemnitees), the release and forfeiture of the Holdback Shares to Parent shall be the Parent Indemnitees' sole and exclusive remedy for monetary Damages arising out of, resulting from or incurred in connection with this Agreement. For purposes of determining the number of Holdback Shares required to satisfy any indemnifiable Damages of Parent Indemnitees, each Holdback Share shall be valued at the volume weighted average last sale price or closing price, as applicable, of the Parent Common Stock as quoted on the OTC Bulletin Board (or such stock exchange on which the Parent Common Stock is then traded) for the ten (10) consecutive trading days immediately preceding the date that any Holdback Shares are required to be released from escrow (the "Release Date Value") (subject to adjustment in the event of stock splits, stock dividends, stock combinations and the like).

(b) Applicability of Basket. Except in the case of Indemnifiable Contractor Matters, Indemnifiable Company Debt and intentional or willful misrepresentation or fraud, Parent Indemnitees

may not recover any Damages for indemnification pursuant to Section 10.2(a)(i) unless and until with respect to all claims brought by the Parent Indemnitees, the aggregate amount (without duplication) of such Damages exceeds Ten Thousand Dollars (\$10,000), at which point the Parent Indemnitees shall be entitled to recover all Damages.

(c) Applicability of Liability Cap.

(i) Except in the case of Indemnifiable Contractor Matters, Indemnifiable Company Debt and intentional or willful misrepresentation or fraud, the total amount of indemnification payments that the Key Holder can be required to make to the Parent Indemnitees pursuant to this Agreement hereunder shall not exceed in the aggregate the Holdback Shares Closing Value.

(ii) With respect to Indemnifiable Contractor Matters, Indemnifiable Company Debt and intentional or willful misrepresentation or fraud, the total amount of indemnification payments that the Key Holder can be required to make to the Parent Indemnitees pursuant to this Agreement shall not exceed in the aggregate the Key Holder's respective pro rata portion of the Merger Consideration Closing Value with respect to the Merger Consideration actually received by the Key Holder.

(iii) With respect to a breach of its representations in Section 3 of this Agreement or intentional or willful misrepresentation or fraud, the total amount of indemnification payments that a Company Stockholder (other than the Key Holder) can be required to make to the Parent Indemnitees pursuant to this Agreement shall not exceed in the aggregate such Company Stockholder's respective pro rata portion of the Merger Consideration Closing Value with respect to the Merger Consideration actually received by it.

(iv) The amount of any Damages for which indemnification is provided for under this Agreement shall be (i) reduced by any amounts actually received by an Indemnified Party as a result of any indemnification, contribution or other payment by any third party, and (ii) reduced by any insurance proceeds or other amounts actually recovered or received by the Indemnified Party from third parties with respect to such Damages. If an Indemnified Party recovers any amount with respect to any Damage that was previously satisfied by an Indemnifying Party such Indemnified Party shall promptly pay such amount to the Indemnifying Party.

**10.4 No Contribution.** The Key Holder and each Company Stockholder waives, and acknowledges and agrees that it shall not have, and shall not, exercise or assert (or attempt to exercise or assert), any right of contribution, right of indemnity or other right or remedy against Merger Sub or the Surviving Company in connection with any indemnification obligation or any other liability to which it may become subject under or in connection with this Agreement or any other agreement or document delivered to Parent in connection with this Agreement.

**10.5 Indemnification Procedure.**

(a) Any Indemnified Party seeking indemnification hereunder (the "Claimant") (other than for a third party claim which is governed by Section 10.6) must give the Indemnifying Party from whom indemnification is claimed prompt written notice of the claim for Damages (a "Demand") stating the aggregate amount of the Damages or a good faith estimate thereof, in each case to the extent known or determinable at such time; *provided* that the failure to provide such notice shall not relieve the

Indemnifying Party of its indemnification obligations hereunder except to the extent that the Indemnifying Party is actually prejudiced by the failure of the Claimant, to give such notice.

(b) Upon receipt of a Demand by an Indemnifying Party, such Indemnifying Party shall have thirty (30) days (the “Indemnity Notice Period”), to review and respond by written notice to such Demand (the “Return Notice”) to the Claimant. If the Return Notice does not contest the Demand, or if no Return Notice is delivered to the Claimant by the expiration of the Indemnity Notice Period, then, the Demand shall be conclusively determined in the Indemnified Party’s favor for purposes of this Section 10, and the Indemnified Party shall be indemnified by the Indemnifying Party for the amount of the Damages stated in such Demand on demand or, in the case of any notice in which the Damages (or any portion thereof) are estimated, on such later date when the amount of such Damages (or such portion thereof) becomes finally determined.

(c) If the Return Notice given by the Indemnifying Party disputes the claim or claims asserted in a Demand or the amount of Damages thereof (a “Disputed Claim”), then the Claimant and the Indemnifying Parties shall make a reasonable good faith effort to resolve their differences for a period of thirty (30) days following the receipt by the Claimant of the Return Notice asserting a Disputed Claim. If the Indemnifying Party and the Indemnified Party should so agree, a memorandum setting forth such agreement shall be prepared and signed by both such parties and, in the case of a demand for recovery from the Holdback Shares, shall be furnished to the Escrow Agent, and payment shall be made in accordance with the methodology in Section 10.5(d). If no such agreement can be reached after good faith negotiation within thirty (30) days after delivery of a Return Notice, the matter set forth in the applicable Demand will be resolved in any court having jurisdiction over the matter where venue is proper pursuant to Section 11.9 of this Agreement.

(d) With respect to a Demand made by Parent prior to the expiration of the Escrow Period, the Escrow Agent shall, upon receipt of joint written instructions or memorandum from both the Indemnifying Party and the Indemnified Party, promptly release and deliver to Parent that number of Holdback Shares (valued at the Release Date Value) representing the amount of Damages in the Demand or, with respect to a claim for Indemnifiable Contractor Matters, Indemnifiable Company Debt or intentional or willful misrepresentation or fraud and if the Holdback Shares that remain are less than the Damages in the Demand, or if the Indemnifying Party is a Company Stockholder (other than the Key Holder), subject in each case to the limitations set forth in Section 10.3, such Indemnifying Party shall deliver to Parent such Merger Consideration actually received by it (valued at the volume weighted average last sale price or closing price, as applicable, of the Parent Common Stock as quoted on the OTC Bulletin Board (or such stock exchange on which the Parent Common Stock is then traded) for the ten (10) consecutive trading days immediately preceding the date that any such Shares are required to be returned to Parent hereunder) or, if such Merger Consideration has been sold, the equivalent dollar amount, in each case in an amount necessary to satisfy its obligations in the Demand. With respect to a Demand made by a Stockholder Indemnitee, subject to this Section 10.5, Parent shall promptly pay the amount of Damages in the Demand to the Stockholder Indemnitees pursuant to their respective pro rata portions indicated on the Merger Consideration Certificate.

## **10.6 Third Party Claims.**

(a) Promptly after receipt of any assertion of Damages by any third party regarding the transactions contemplated by this Agreement (“Third Party Claims”) that might give rise to any Damages for which indemnification may be sought pursuant to this Section 10, an Indemnified Party shall give written notice to the Indemnifying Party and the Escrow Agent of such Third Party Claim (a



“Notice of Third Party Claim”), stating the nature and basis of such Third Party Claim and the amount of Damages thereof to the extent known. Such Notice of Third Party Claim shall be accompanied by copies of all relevant documentation with respect to such Third Party Claim, including any summons, complaint or other pleading that may have been served, any written demand or any other document or instrument. Notwithstanding the foregoing, the failure to provide notice as aforesaid to an Indemnifying Party will not relieve such Indemnifying Party from any obligation hereunder (*provided* that such Notice of Third Party Claim is received by the Indemnifying Party prior to the Expiration Date applicable to the underlying claims) except to the extent that such Indemnifying Party is actually prejudiced thereby.

(b) Provided that the Indemnifying Party expressly agrees in writing, that as between the Indemnifying Party and the Indemnified Party, the Indemnifying Party shall be solely obligated to satisfy and discharge the Third Party Claim in full, and so long as the Indemnifying Party is contesting such Third Party Claim in good faith, the Indemnifying Party may elect to defend any Third Party Claim with counsel of its own choosing, reasonably acceptable to the Indemnified Party, within thirty (30) days after receipt of the Notice of Claim by the Indemnifying Party (the “Election to Defend”), and shall act reasonably and in accordance with its good faith business judgment in handling such Third Party Claim. No Third Party Claim may be settled without the prior written consent of the Indemnified Party, which shall not be unreasonably conditioned, withheld or delayed, unless such settlement includes an unconditional release of the Indemnified Party from all liability in respect of such claim. Notwithstanding the foregoing, if the Third Party Claim involves amounts estimated to be in excess of the balance of the Holdback Shares, then the Indemnified Party shall have the sole right to defend such Third Party Claim. If an Indemnifying Party chooses not to defend any Third Party Claim by failure to deliver the Election to Defend or by failure to meet the conditions specified above, the Indemnified Party may defend against such Third Party Claim and consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim in any manner it may deem appropriate and seek indemnification pursuant to this Section 10 for Damages resulting from such Third Party Claim in accordance with the provisions, and subject to the limitations, of this Section 10. In addition, if an Indemnifying Party has assumed defense of the Third Party Claim and if a potential or actual conflict of interest shall exist or if different defenses shall be available as between the Indemnifying Party, on one hand, and Indemnified Party, on the other, then the Indemnified Party shall be entitled, at the expense of the Indemnifying Party, to retain separate legal counsel. Notwithstanding anything to the contrary contained herein, the Indemnified Party shall at all times have the right to fully participate in such defense at its own expense directly or through counsel. Any settlement entered into with respect to a Third Party Claim shall be treated as Damages, and if the Indemnifying Party is the Key Holder, such fees and expenses shall be paid from the Holdback Shares or otherwise as set forth in this Section 10. The parties shall, in connection with the defense of any Third Party Claim, make available to each other and their counsel and accountants all books and records and information reasonably related to such Third Party Claim, keep each other fully apprised as to the details and progress of all proceedings relating thereto and render to each other such assistance as may be reasonably required for the proper and adequate defense of any Third Party Claim; *provided*, that the covenants and agreements contained in this Section 10.6 shall in no event be, or be deemed to be, a waiver by any party of any right to assert the attorney-client or other applicable privilege.

**10.7 Sole and Exclusive Remedy.** Except with respect to claims based on fraud and the right of a party to seek specific performance for a breach or threatened breach of covenant as provided in Section 11.9, the indemnification rights of the Indemnified Parties under this Section 10 shall be the sole and exclusive remedy of the Indemnified Parties with respect to claims resulting from or relating to this Agreement.

**10.8 Release of Holdback Shares.** Within five (5) business days following the earlier of the twelve-month anniversary of the Closing or the termination of the Consulting Agreement by Parent (other than termination for "Cause" in accordance with the terms thereof) (the "Escrow Period"), Parent and Key Holder shall instruct the Escrow Agent to distribute to the Key Holder (or their respective designees, as specified in the applicable Letter of Transmittal) that amount of Holdback Shares equal to the amount (if any) by which (i) the Holdback Shares, reduced by any Holdback Shares previously permanently released to Parent or other Parent Indemnitee with respect to indemnification claims relating to this Agreement, exceeds (ii) a number of Holdback Shares (valued at the Release Date Value) equal to the aggregate amount of Damages claimed under all pending indemnification claims made by the Parent Indemnitees that remain unresolved at such time (the amount of such excess, the "Holdback Payment"). Upon final resolution of pending indemnification claims made by Parent Indemnitees that were unresolved at such time, the Escrow Agent shall distribute any Holdback Shares retained by Escrow Agent after the distribution of the Holdback Payment to which the Key Holder become entitled to receive within five (5) business days following the date of such final resolution.

## **11. MISCELLANEOUS PROVISIONS**

**11.1 Further Assurances.** Each party hereto shall execute and cause to be delivered to each other party hereto such instruments and other documents, and shall take such other actions, as such other party may reasonably request (prior to, at or after the Closing) for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.

**11.2 Fees and Expenses.** Each party to this Agreement shall bear and pay all fees, costs and expenses (including legal fees and accounting fees) that have been incurred or that are incurred by such party in connection with the transactions contemplated by this Agreement, including all fees, costs and expenses incurred by such party in connection with or by virtue of (a) the investigation and review conducted by Parent and its Representatives with respect to the Company's business (and the furnishing of information to Parent and its Representatives in connection with such investigation and review); (b) the negotiation, preparation and review of this Agreement (including the Company Disclosure Schedule) and all agreements, certificates, opinions and other instruments and documents delivered or to be delivered in connection with the transactions contemplated by this Agreement; (c) the preparation and submission of any filing or notice required to be made or given in connection with any of the transactions contemplated by this Agreement, and the obtaining of any Consent required to be obtained in connection with any of such transactions; (d) the satisfaction of any conditions to the Closing; and (e) the consummation of the Merger; *provided, however*, that the Deductible Transaction Expenses shall be deducted from the Closing Merger Consideration. Notwithstanding the foregoing, Parent shall, subject to Section 7.6(f), pay (or cause to be paid) at Closing, or promptly thereafter upon written notice from the Key Holder delivered at or prior to October 18, 2013, up to an aggregate \$25,000 of reasonable and documented legal fees that have been or that are incurred by the Company or the Key Holder in connection with the transactions contemplated by this Agreement and the documents and instruments contemplated hereby; provided, further, that for the avoidance of doubt, Parent's obligation to pay such legal fees does not limit its obligation to pay legal fees pursuant to the Registration Rights Agreement or Section 6.9 hereof.

**11.3 Attorneys' Fees.** If any action or proceeding relating to this Agreement or the enforcement of any provision of this Agreement is brought against any party hereto, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing party may be entitled).

**11.4 Notices.** Any notice or other communication required or permitted to be delivered to any party under this Agreement shall be in writing and shall be deemed properly delivered, given and received: (a) if delivered by hand, when delivered; (b) if sent via facsimile before 5:00 p.m. (Pacific time) with confirmation of receipt, when transmitted and receipt is confirmed; (c) if sent via facsimile after 5:00 p.m. (Pacific time) with confirmation of receipt, the business day after being sent; (d) if sent by registered, certified or first class mail, the third business day after being sent; and (e) if sent by overnight delivery via a national courier service, one business day after being sent, in each case to the address or facsimile telephone number set forth beneath the name of such party below (or to such other address or facsimile telephone number as such party shall have specified in a written notice given to the other parties hereto):

**if to Parent or Merger Sub:**

Sorrento Therapeutics, Inc.  
6042 Cornerstone Ct. West, Suite B  
San Diego, CA 92121  
Attention: Richard Vincent, CFO  
Facsimile: (858) 210-3759

**with a copy to:**

Cooley LLP  
3175 Hanover Street  
Palo Alto, CA 94304  
Attention: Glen Y. Sato  
Facsimile: (650) 849-7400

**if to the Company:**

Sherrington Pharmaceuticals, Inc.  
325 East 41st Street, Suite 107  
New York, New York 10017  
Attention: Matthew G. Wyckoff  
Facsimile: (818) 797-2250

**with a copy to:**

Wyrick Robbins Yates & Ponton LLP  
4101 Lake Boone Trail, Suite 300  
Raleigh, NC 27607  
Attention: Thomas A. Allen  
Facsimile: (919) 781-4865

**if to the Key Holder:**

Aceras BioMedical, LLC  
325 East 41st Street, Suite 107  
New York, New York 10017  
Attention: John D. Liatos  
Facsimile: (818) 797-2250

**11.5 Time of the Essence.** Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement.

**11.6 Headings.** The headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

**11.7 Counterparts.** This Agreement may be executed in several counterparts (including via facsimile or other electronic means), each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

**11.8 Governing Law; Dispute Resolution.**

(a) Governing Law. This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of Delaware (without giving effect to principles of conflicts of laws).

(b) Venue. Any Legal Proceeding relating to this Agreement or the enforcement of any provision of this Agreement (including a Legal Proceeding based upon intentional or willful misrepresentation or fraud) may be brought or otherwise commenced in any state or federal court located in the State of California. Each party to this Agreement: (i) expressly and irrevocably consents and submits to the jurisdiction of each state and federal court located in the State of California (and each appellate court located in the State of California) in connection with any such Legal Proceeding; (ii) agrees that each state and federal court located in the State of California shall be deemed to be a convenient forum; and (iii) agrees not to assert (by way of motion, as a defense or otherwise), in any such Legal Proceeding commenced in any state or federal court located in the State of California, any claim that such party is not subject personally to the jurisdiction of such court, that such Legal Proceeding has been brought in an inconvenient forum, that the venue of such proceeding is improper or that this Agreement or the subject matter of this Agreement may not be enforced in or by such court.

**11.9 Successors and Assigns.** This Agreement shall be binding upon each of the parties hereto and each of their respective successors and assigns, if any. This Agreement shall inure to the benefit of: the Company; Parent; Merger Sub; the Surviving Corporation; the other Parent Indemnitees; and the respective successors and assigns, if any, of the foregoing. Merger Sub may freely assign any or all of its rights under this Agreement (including its indemnification rights under Section 10), in whole or in part, to any other affiliate of Parent without obtaining the consent or approval of any other party hereto or of any other Person.

**11.10 Remedies Cumulative; Specific Performance.** The parties to this Agreement agree that, in the event of any breach or threatened breach by any party to this Agreement of any covenant, obligation or other provision set forth in this Agreement, for the benefit of any other party to this Agreement: (a) such other party shall be entitled (in addition to any other remedy that may be available to it) to: (i) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision; and (ii) an injunction restraining such breach or threatened breach; and (b) such other party shall not be required to provide any bond or other security in connection with any such decree, order or injunction or in connection with any related action or Legal Proceeding.

### **11.11 Waiver.**

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

(b) No Person shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Person; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

**11.12 Amendments.** This Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument duly executed and delivered by the Parent and the Key Holder.

**11.13 Severability.** In the event that any provision of this Agreement, or the application of any such provision to any Person or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

**11.14 Parties in Interest.** Except for the provisions of Section 10, none of the provisions of this Agreement is intended to provide any rights or remedies to any Person other than the parties hereto and their respective successors and assigns (if any).

**11.15 Waiver of Jury Trial.** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED ISSUES AND, THEREFORE, EACH SUCH PARTY, TO THE EXTENT PERMITTED BY LAW, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER AND (B) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY.

**11.16 Disclosure Schedule.** The Company Disclosure Schedule shall be arranged in separate parts corresponding to the numbered and lettered sections contained herein, and the information disclosed in any numbered or lettered part shall be deemed to relate to and to qualify only (1) the particular representation or warranty set forth in the corresponding numbered or lettered section herein and (2) any other representation or warranty if it is readily apparent from the information disclosed and the corresponding section of this Agreement (without further knowledge and notwithstanding the omission of an appropriate cross-reference to such other part) that it is relevant to such other representation or warranty.

**11.17 Entire Agreement.** This Agreement and the other agreements, documents and instruments referred to herein set forth the entire understanding of the parties hereto relating to the subject matter hereof and thereof and supersede all prior agreements and understandings among or between any of the parties relating to the subject matter hereof and thereof.

**11.18 Construction.**

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

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

(c) As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

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

The parties hereto have caused this Agreement to be executed and delivered as of the date first written above.

**SORRENTO THERAPEUTICS, INC.,**  
a Delaware corporation

/s/ Henry Ji  
Name: Henry Ji  
Title: President and Chief Executive Officer

**SP MERGER SUB, INC.,**  
a Delaware corporation

/s/ Henry Ji  
Name: Henry Ji  
Title: President and Chief Executive Officer

**SHERRINGTON PHARMACEUTICALS, INC.,**  
a Delaware corporation

/s/ Matthew Wyckoff  
Name: Matthew Wyckoff  
Title: President

**ACERAS BIOMEDICAL LLC,**  
a Delaware limited liability company

/s/ John Liaros  
Name: John Liaros  
Title: Partner

/s/ Bryan Jones  
Bryan Jones

**SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER**

The parties hereto have caused this Agreement to be executed and delivered as of the date first written above.

**COOLE LLP,**  
solely in its capacity as Escrow Agent

/s/ Glen Sato  
Glen Sato, Partner

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**SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER**



## EXHIBIT A

### CERTAIN DEFINITIONS

For purposes of the Agreement (including this Exhibit A):

**Acquisition Transaction.** “Acquisition Transaction” shall mean any transaction or series of transactions involving:

(a) the sale, license or disposition of all or a material portion of any of the Company’s business or assets;

(b) the issuance, disposition or acquisition of: (i) any capital stock or other security of the Company (other than Company Common Stock issued to employees of the Company upon exercise of Company Options); (ii) any option, call, warrant or right (whether or not immediately exercisable) to acquire any capital stock, unit or other equity security of any of the Company; or (iii) any security, instrument or obligation that is or may become convertible into or exchangeable for any capital stock, unit or other equity security of the Company; or

(c) any merger, consolidation, business combination, reorganization or similar transaction involving the Company.

**Agreement.** “Agreement” shall mean the Agreement and Plan of Merger and Reorganization to which this Exhibit A is attached (including the other schedules and exhibits thereto and the Disclosure Schedules), as it may be amended from time to time.

**Balance Sheet Date.** “Balance Sheet Date” shall have the meaning set forth in Section 2.4(a) of this Agreement.

**Certificate of Merger.** “Certificate of Merger” shall have the meaning set forth in Section 1.3 of this Agreement.

**Claimant.** “Claimant” shall have the meaning set forth in Section 10.5(a) of this Agreement.

**Closing.** “Closing” shall have the meaning set forth in Section 1.3 of this Agreement.

**Closing Date.** “Closing Date” shall have the meaning set forth in Section 1.3 of this Agreement.

**Closing Merger Consideration.** “Closing Merger Consideration” shall mean the number of shares of Parent Common Stock that equals the difference between: (a) 200,000 shares of Parent Common Stock (subject to adjustment in the event of stock splits, stock dividends, stock combinations and the like); *minus* (b) the Deductible Transaction Expenses.

**Closing Per Share Merger Consideration.** “Closing Per Share Merger Consideration” means, with respect to a Share, the amount of the (1) Closing Merger Consideration, divided by (2) the number of outstanding Shares as of Closing.

**Code.** “Code” shall mean the Internal Revenue Code of 1986, as amended.

**Common Value.** “Common Value” means the volume weighted average last sale price or closing price, as applicable, of the Parent Common Stock as quoted on the OTC Bulletin Board (or such stock exchange on which the Parent Common Stock is then traded) for the ten (10) consecutive trading days immediately preceding Closing.

**Company.** “Company” shall have the meaning set forth in the preamble.

**Company Capital Stock.** “Company Capital Stock” shall mean the Company Common Stock.

**Company Closing Certificate.** “Company Closing Certificate” shall have the meaning set forth in Section 7.6(c).

**Company Common Stock.** “Company Common Stock” shall mean the common stock, \$0.0001 par value per share, of the Company.

**Company Contract.** “Company Contract” shall mean any Contract: (a) to which the Company is a party; (b) by which the Company or any of its assets is or may become bound or under which the Company has, or may become subject to, any obligation; or (c) under which the Company has or may acquire any right or interest.

**Company Cure Period.** “Company Cure Period” shall have the meaning set forth in Section 9.1(d) of this Agreement.

**Company Debt.** “Company Debt” shall mean all indebtedness of the Company for borrowed money, whether current or funded, short- or long-term, secured or unsecured, direct or indirect, including any accrued and unpaid interest, fees, premiums and prepayment or termination penalties (including any penalties payable by the Company in connection with the termination or prepayment in full of any Company Debt at or prior to the Closing), if any, measured as of the Closing, and including (i) any indebtedness evidenced by any note, bond, debenture or other debt security, (ii) any indebtedness to any lender or creditor under credit facilities of the Company, (iii) any indebtedness for the deferred purchase price of property with respect to which the Company is liable, contingently or otherwise, as obligor or otherwise, (iv) any drawn amounts under letter of credit arrangements, (v) any cash overdrafts, (vi) any capitalized leases, (vii) any indebtedness under any financial instrument classified as debt, (viii) any notes payable to any of the stockholders of the Company or the Company’s vendors, customers or third parties; (ix) any accounts payable and Liability, and (x) any Liability of other Persons of the type described in the preceding clauses (i)-(x) that the Company has guaranteed, that is recourse to the Company or any of its assets or that is otherwise the legal Liability of the Company. For the avoidance of doubt, Company Transaction Expenses and any amounts not yet due or payable under the executory portion of any Company Contract that continues in effect after Closing shall not constitute Company Debt.

**Company Disclosure Schedule.** “Company Disclosure Schedule” shall mean the schedule (dated as of the date of the Agreement) delivered to Parent on behalf of the Company and prepared in accordance with Section 11.16 of the Agreement.

**Company Employee.** “Company Employee” shall mean any current or former employee of the Company or any affiliate of the Company.

**Company Employee Plan.** “Company Employee Plan” shall mean any plan, program, policy, practice, Contract or other arrangement providing for compensation, severance, termination pay, deferred

compensation, performance awards, stock or stock-related awards, fringe benefits or other employee benefits or remuneration of any kind, whether written, unwritten or otherwise, funded or unfunded, that is or has been maintained, contributed to, or required to be contributed to, by the Company for the benefit of any employee, former employee, independent contractor, former independent contractor, director or former director of the Company or to any beneficiary or dependent thereof or with respect to which the Company has or may have any Liability or obligation.

**Company Financial Statements.** “Company Financial Statements” shall have the meaning set forth in Section 2.4(a) of this Agreement.

**Company IP.** “Company IP” shall mean all Intellectual Property and Intellectual Property Rights in which the Company has (or purports to have) an ownership interest or an exclusive license or similar exclusive right.

**Company IP Contract.** “Company IP Contract” shall mean any Contract to which the Company is or was a party or by which the Company is or was bound, that contains any assignment or license of, or any covenant not to assert or enforce, any Intellectual Property Right or that otherwise relates to any Company IP or any Intellectual Property developed by, with or for the Company (other than “shrink wrap,” “click through” or similar license agreements accompanying widely available computer software that have not been modified or customized for Company).

**Company Material Adverse Effect.** “Company Material Adverse Effect” shall mean any change, event, effect, claim, circumstance or matter (each, an “Effect”) that (considered together with all other Effects) is, or could reasonably be expected to be or to become, materially adverse to: (a) the business, condition, assets, capitalization, Intellectual Property, Liabilities, operations, results of operations, or financial performance of the Company taken as a whole; (b) Parent’s right to own, or to receive dividends or other distributions with respect to, the stock of the Surviving Corporation; or (c) the ability of the Company to perform any of its or his material covenants or obligations under this Agreement or under any other Contract or instrument executed, delivered or entered into in connection with any of the transactions contemplated by this Agreement; *provided, however*, that none of the following shall constitute or shall be considered in determining whether a Company Material Adverse Effect has occurred or could be reasonably expected to occur: (A) changes in general economic, business, financial, technological or regulatory conditions or changes in securities or credit markets in general to the extent not having a disproportionate effect (relative to other industry participants) on the Company, (B) general changes in the industries in which the Company and its subsidiaries operate that do not disproportionately and adversely affect the Company as compared to other entities operating in such industries, (C) acts of armed hostility, sabotage, terrorism or war, including any escalation or worsening thereof, natural disasters, weather conditions, explosions or fires or other force majeure events in any country or region in the world, except to the extent disproportionately affecting the Company compared to other entities operating in such industries, (D) any adverse effect arising from or otherwise related to changes in Law or applicable accounting regulations or principles or interpretations thereof to the extent not having a disproportionate affect (relative to other industry participants) on the Company; or (E) any compliance by the affected party with any request made by the non-affected party or its affiliates, including, without limitation, performance of such party’s obligations in accordance with the terms and conditions of this Agreement.

**Company Option.** “Company Option” shall mean each Option to purchase Company Common Stock whether or not issued under the Company’s Stock Plan.

**Company Products.** “Company Products” shall mean all products under development at any time by the Company and all products produced, manufactured, marketed or distributed at any time by the Company.

**Company Related Party.** “Company Related Party” shall mean: (a) each stockholder who holds more than 1% of the Company; (b) each individual who is, or who has at any time since inception been, an officer or director of the Company; (c) each member of the immediate family of each of the individuals referred to in clauses “(a),” and “(b)” above; and (d) any trust or other Entity (other than the Company) in which any one of the Persons referred to in clauses “(a),” “(b)” and “(c)” above holds (or in which more than one of such Persons collectively hold), beneficially or otherwise, a material voting, proprietary or equity interest.

**Company Return.** “Company Return” shall have the meaning set forth in Section 2.13(a) of this Agreement.

**Company Stock Certificate.** “Company Stock Certificate” shall have the meaning set forth in Section 1.6 of this Agreement.

**Company Stock Plan.** “Company Stock Plan” shall mean the Company’s 2009 Stock Plan.

**Company Stockholders.** “Company Stockholders” shall mean the stockholders of the Company immediately prior to Closing.

**Company Transaction Expenses.** “Company Transaction Expenses” shall mean all fees, costs, expenses, payments, expenditures or Liabilities of the Company, whether incurred prior to the date of the Agreement, during the Pre-Closing Period or at the Effective Time, and whether or not invoiced prior to the Effective Time, that relate to the Agreement, any of the transactions contemplated by the Agreement, including any fees, costs or expenses payable to the Company’s outside legal counsel or to any financial advisor, accountant or other Person who performed services for or on behalf of the Company.

**Consent.** “Consent” shall mean any approval, consent, ratification, permission, waiver or authorization (including any Governmental Authorization).

**Consulting Agreement.** “Consulting Agreement” shall have the meaning set forth in the recitals.

**Contract.** “Contract” shall mean any written, oral or other agreement, contract, subcontract, lease, understanding, arrangement, instrument, note, warranty, insurance policy, benefit plan or legally binding commitment or undertaking of any nature.

**Controlled Group Liability.** “Controlled Group Liability” means any and all liabilities (a) under Title IV of ERISA, (b) under Section 302 of ERISA, (c) under Sections 412 and 4971 of the Code, (d) as a result of a failure to comply with the continuation coverage requirements of Section 601 *et seq.* of ERISA and Section 4980B of the Code and (e) under corresponding or similar provisions of foreign Legal Requirements, other than such liabilities that arise solely out of, or relate solely to, a Company Employee Plan.

**Damages.** “Damages” shall include any loss, damage, injury, Liability, claim, demand, settlement, judgment, award, fine, penalty, Tax, fee (including reasonable attorneys’ fees), charge, cost (including costs of investigation) or expense of any nature, but excluding any damages for any punitive,

special or consequential damages except to the extent such damages are recovered by a third party in any third party actions that are subject to indemnification hereunder.

**Deductible Transaction Expenses.** “Deductible Transaction Expenses” shall mean that number of shares of Parent Common Stock equal to: (a) the Company Transaction Expenses that exceed \$25,000; *divided by* (b) the Common Value.

**Demand.** “Demand” shall have the meaning set forth in Section 10.5(a) of this Agreement.

**DGCL.** “DGCL” shall have the meaning set forth in the recitals.

**Dissenting Shares.** “Dissenting Shares” shall have the meaning set forth in Section 1.10(a) of this Agreement.

**Effective Time.** “Effective Time” shall have the meaning set forth in Section 1.3 of this Agreement.

**Election to Defend.** “Election to Defend” shall have the meaning set forth in Section 10.6(b) of this Agreement.

**Encumbrance.** “Encumbrance” shall mean any lien, pledge, hypothecation, charge, mortgage, security interest, license, option, right of first refusal, encumbrance, claim, limitation or restriction of any nature.

**Entity.** “Entity” shall mean any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization or entity.

**Environmental Law.** “Environmental Law” shall mean any federal, state, local or foreign Legal Requirement relating to pollution or protection of human health or the environment (including ambient air, surface water, ground water, land surface or subsurface strata), including any law or regulation relating to emissions, discharges, releases or threatened releases of Materials of Environmental Concern, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of Environmental Concern.

**ERISA.** “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

**ERISA Affiliate.** “ERISA Affiliate” means, with respect to any entity, trade or business, any other entity, trade or business that is a member of a group described in Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes the first entity, trade or business, or that is a member of the same “controlled group” as the first entity, trade or business pursuant to Section 4001(a)(14) of ERISA.

**Escrow Agent.** “Escrow Agent” shall have the meaning set forth in Section 1.8(c) of this Agreement.

**Escrow Period.** “Escrow Period” shall have the meaning set forth in Section 10.8 of this Agreement.

**Exchange Act.** “Exchange Act” has the meaning set forth in Section 2.11(b) of this Agreement.

**Exclusivity Period.** “Exclusivity Period” shall have the meaning set forth in Section 5.4 of this Agreement.

**Exclusivity Shares.** “Exclusivity Shares” shall have the meaning set forth in Section 6.9(a) of this Agreement.

**Expiration Date.** “Expiration Date” has the meaning set forth in Section 9.1(a) of this Agreement.

**FDA.** “FDA” shall mean United States Food and Drug Administration.

**Future Per Share Consideration.** “Future Per Share Consideration” means, with respect to a Share, the amount of the (1) aggregate number of Future Shares, divided by (2) the number of outstanding Shares as of Closing.

**Future Shares.** “Future Shares” shall have the meaning set forth in Section 1.9 of this Agreement.

**GAAP.** “GAAP” shall mean generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, that are applicable to the circumstances of the date of determination, consistently applied.

**Governmental Authorization.** “Governmental Authorization” shall mean any: (a) permit, license, certificate, franchise, permission, clearance, registration, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement; or (b) right under any Contract with any Governmental Body.

**Governmental Body.** “Governmental Body” shall mean any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; or (c) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, organization, unit, body or Entity and any court or other tribunal).

**Governmental Patent Authority.** “Governmental Patent Authority” shall have the meaning set forth in Section 2.9(b) of this Agreement.

**Grant Date.** “Grant Date” shall have the meaning set forth in Section 2.3(b) of this Agreement.

**Holdback Shares.** “Holdback Shares” means 29,350 shares of Parent Common Stock otherwise payable to the Key Holder. For clarity, the Holdback Shares shall not include any Future Shares.

**Holdback Shares Closing Value.** “Holdback Shares Closing Value” means the product of the total number of Holdback Shares multiplied by the Common Value.

**Indemnifiable Company Debt.** “Indemnifiable Company Debt” shall have the meaning set forth in Section 10.2(a).

**Indemnifiable Contractor Matters.** “Indemnifiable Contractor Matters” shall have the meaning set forth in Section 10.2(a).

**Indemnified Parties.** “Indemnified Parties” means the Parent Indemnitees or the Stockholder Indemnitees, as applicable.

**Indemnifying Party.** “Indemnifying Party” means the Person from whom indemnification is claimed by an Indemnified Party.

**Indemnity Notice Period.** “Indemnity Notice Period” shall have the meaning set forth in Section 10.5(b) of this Agreement.

**Intellectual Property.** “Intellectual Property” shall mean sales methodologies and processes, training protocols and similar methods and processes, algorithms, APIs, apparatus, circuit designs and assemblies, gate arrays, net lists, test vectors, databases, data collections, diagrams, utility models, formulae, designs, inventions (whether or not patentable), know-how, logos, marks (including brand names, product names, logos, and slogans), methods, network configurations and architectures, processes, proprietary information, protocols, schematics, specifications, software, software code (in any form, including source code and executable or object code), subroutines, techniques, user interfaces, URLs, web sites, works of authorship and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing, such as instruction manuals, laboratory notebooks, prototypes, samples, studies, summaries or other documentation).

**Intellectual Property Rights.** “Intellectual Property Rights” shall mean all rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights and moral rights; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) other proprietary rights in Intellectual Property, including without limitations, design rights, semiconductor chips rights and domain name rights; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses “(a)” through “(e)” above.

**Key Holder.** “Key Holder” shall have the meaning set forth in the preamble.

**Knowledge.** An individual shall be deemed to have “Knowledge” of a particular fact or other matter if such individual is actually aware of such fact or other matter after reasonable inquiry. The Company shall be deemed to have “Knowledge” of a particular fact or other matter if any officer or director of the Company or any Key Holder has Knowledge of such fact or other matter. Parent shall be deemed to have “Knowledge” of a particular fact or other matter if any officer or director of Parent has Knowledge of such fact or other matter.

**Legal Proceeding.** “Legal Proceeding” shall mean any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any court or other Governmental Body or any arbitrator or arbitration panel.

**Leased Real Property.** “Leased Real Property” shall have the meaning set forth in Section 2.8 of this Agreement.

**Legal Requirement.** “Legal Requirement” shall mean any federal, state, local, municipal, foreign or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body.

**Liability.** “Liability” shall mean any debt, obligation, duty or liability of any nature (including any unknown, undisclosed, unmatured, unaccrued, unasserted, contingent, indirect, conditional, implied, vicarious, derivative, joint, several or secondary liability), regardless of whether such debt, obligation, duty or liability would be required to be disclosed on a balance sheet prepared in accordance with GAAP and regardless of whether such debt, obligation, duty or liability is immediately due and payable.

**Material Contracts.** “Material Contracts” shall have the meaning set forth in Section 2.10(a) of this Agreement.

**Materials of Environmental Concern.** “Materials of Environmental Concern” means chemicals, pollutants, contaminants, wastes, toxic substances, petroleum and petroleum products and any other substance that is now or hereafter regulated by any Environmental Law

**Merger.** “Merger” shall have the meaning set forth in the recitals.

**Merger Consideration.** “Merger Consideration” means the Closing Merger Consideration and the Future Shares, if any.

**Merger Consideration Certificate.** “Merger Consideration Certificate” shall have the meaning set forth in Section 7.6(e) of this Agreement.

**Merger Consideration Closing Value.** “Merger Consideration Closing Value” means the product of the total number of shares represented by the Merger Consideration multiplied by the Common Value.

**Non-Competition Agreement.** “Non-Competition Agreement” shall have the meaning set forth in Section 6.7 of this Agreement.

**Non-Dissenting Stockholder.** “Non-Dissenting Stockholder” shall have the meaning set forth in Section 1.8(b) of the Merger Agreement.

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

**Non-Dissenting Stockholder.** “Non-Dissenting Stockholder” shall mean each stockholder of the Company that does not perfect such stockholder’s appraisal rights under the DGCL and is otherwise entitled to receive the Merger Consideration pursuant to Section 1.5.

**Notice of Third Party Claim.** “Notice of Third Party Claim” shall have the meaning set forth in Section 10.6(a) of this Agreement.

**“Option”** shall mean, with respect to any Person, any security, right, subscription, warrant, option, “phantom” stock right or other Contract that gives the right to (i) purchase or otherwise receive or be issued any shares of capital stock of such Person or any security of any kind convertible into or exchangeable or exercisable for any shares of capital stock of such Person or (ii) receive or exercise any benefits or rights similar to any rights enjoyed by or accruing to the holder of shares of capital stock of



such Person, including any rights to participate in the equity or income of such Person or to participate in or direct the election of any directors or officers of such Person or the manner in which any shares of capital stock of such Person are voted.

**Order.** “Order” shall mean any order, writ, injunction, judgment, decree, ruling or award of any arbitrator or any court or other Governmental Body.

**Parent.** “Parent” shall have the meaning set forth in the preamble.

**Parent Closing Certificate.** “Parent Closing Certificate” shall have the meaning set forth in Section 8.4(c) of this Agreement.

**Parent Common Stock.** “Parent Common Stock” shall mean the common stock, par value \$0.0001 per share, of Parent.

**Parent Cure Period.** “Parent Cure Period” shall have the meaning set forth in Section 9.1(e) of this Agreement.

**Parent Financial Statements.** “Parent Financial Statements” shall have the meaning set forth in Section 4.3 of this Agreement.

**Parent Indemnitees.** “Parent Indemnitees” shall mean the following Persons: (a) Parent; (b) Parent’s current and future affiliates (including Merger Sub and, following the Merger, the Surviving Corporation); (c) the respective Representatives of the Persons referred to in clauses “(a)” and “(b)” above; and (d) the respective successors and assigns of the Persons referred to in clauses “(a)”, “(b)” and “(c)” above; *provided, however*, that the Key Holder shall not be deemed to be “Parent Indemnitees.”

**Parent Material Adverse Effect.** “Parent Material Adverse Effect” shall mean any Effect that (considered together with all other Effects) is, or could reasonably be expected to be or to become, materially adverse to: (a) the business, condition, assets, capitalization, Intellectual Property, Liabilities, operations, results of operations, or financial performance of the Parent taken as a whole; (b) Company Stockholders’ rights to own, or to receive dividends or other distributions with respect to, the Parent Common Stock; or (c) the ability of the Parent or Merger Sub to perform any of their material covenants or obligations under this Agreement or under any other Contract or instrument executed, delivered or entered into in connection with any of the transactions contemplated by this Agreement; *provided, however*, that none of the following shall constitute or shall be considered in determining whether a Parent Material Adverse Effect has occurred or could be reasonably expected to occur: (A) changes in general economic, business, financial, technological or regulatory conditions or changes in securities or credit markets in general to the extent not having a disproportionate effect (relative to other industry participants) on the Parent, (B) general changes in the industries in which the Parent and its subsidiaries operate that do not disproportionately and adversely affect the Parent or its subsidiaries as compared to other entities operating in such industries, (C) acts of armed hostility, sabotage, terrorism or war, including any escalation or worsening thereof, natural disasters, weather conditions, explosions or fires or other force majeure events in any country or region in the world, except to the extent disproportionately affecting the Parent or its subsidiaries compared to other entities operating in such industries, (D) any adverse effect arising from or otherwise related to changes in Law or applicable accounting regulations or principles or interpretations thereof to the extent not having a disproportionate affect (relative to other industry participants) on the Parent or its subsidiaries; (E) any decline in the price or trading volume of the shares of Parent Common Stock that has not otherwise resulted from a Parent Material Adverse Effect; or (F) any compliance by the affected party with any request made by the non-

affected party or its affiliates, including, without limitation, performance of such party's obligations in accordance with the terms and conditions of this Agreement.

**Parent SEC Filings.** "Parent SEC Filings" shall mean all registration statements, prospectuses, reports, schedules, forms, statements and other documents (including schedules and exhibits and all other information incorporated by reference) filed by Parent with the SEC pursuant to the requirements of the Securities Act and the Securities Exchange Act of 1934, as amended, as a publicly traded company.

**Permitted Company Debt.** "Permitted Company Debt" shall have the meaning set forth in Section 6.4 of this Agreement.

**Person.** "Person" shall mean any individual, Entity or Governmental Body.

**Pre-Closing Period.** "Pre-Closing Period" shall have the meaning set forth in Section 5.1 of this Agreement.

**Pre-Closing Tax Period.** "Pre-Closing Tax Period" means any taxable period of the Company ending on or before the date of the Effective Time and the portion through the end of the date of the Effective Time for any taxable period that includes (but does not end on) the date of the Effective Time.

**Product Candidate.** "Product Candidate" shall mean all the products previously, currently or that at any time prior to the Effective Time will be under development or research by the Company, including Agonist and/or antAgonist against TRPV receptor, specifically TRPV1 receptor.

**Qualified Group.** "Qualified Group" shall have the meaning set forth in Section 6.11(a) of this Agreement.

**Registered IP.** "Registered IP" shall mean all Intellectual Property Rights that are registered, filed or issued under the authority of, with or by any Governmental Body, including all patents, registered copyrights, registered trademarks and all applications, filings and issues for any of the foregoing.

**Registration Rights Agreement.** "Registration Rights Agreement" shall have the meaning set forth in the recitals of this Agreement.

**Registrable Securities.** "Registrable Securities" shall mean the Parent Common Stock issued as Merger Consideration.

**Registration Statement.** "Registration Statement" refers to a registration statement filed with the SEC in compliance with the 1933 Act.

**Registration Statement Deadline.** "Registration Statement Deadline" shall have the meaning set forth in Section 1.8 of this Agreement.

**Release Date Value.** "Release Date Value" shall have the meaning set forth in Section 10.3(a) of this Agreement.

**Representatives.** "Representatives" shall mean officers, directors, employees, agents, attorneys, accountants, advisors and representatives.

**Required Vote.** “Required Vote” shall have the meaning set forth in Section 2.7 of this Agreement.

**Return Notice.** “Return Notice” shall have the meaning set forth in Section 10.5(b) of this Agreement.

**SEC.** “SEC” means the United States Securities and Exchange Commission.

**Securities Act.** “Securities Act” shall have the meaning set forth in Section 1.8(g) of this Agreement.

**Shares.** “Shares” shall mean collectively all shares of Company Capital Stock.

**Specified Representations.** “Specified Representations” shall mean: (a) the representations and warranties set forth in Sections 2.3, 2.21, 4.2 and 4.11 of the Agreement; and (b) the representations and warranties set forth in the Company Closing Certificate and Parent Closing Certificate, but only to the extent such representations and warranties relate to any of the matters addressed in any of the representations and warranties specified in clause “(a)” of this sentence.

**Stockholder.** “Stockholder” shall have the meaning set forth in the preamble.

**Stockholder Indemnitees.** “Stockholder Indemnitees” shall mean the following Persons: (a) the Company Stockholders; (b) the Company Stockholders’ current and future affiliates; (c) the respective Representatives of the Persons referred to in clauses “(a)” and “(b)” above; and (d) the respective successors and assigns of the Persons referred to in clauses “(a)”, “(b)” and “(c)” above; *provided, however*, that the Parent, Merger Sub and their respective affiliates shall not be deemed to be “Stockholder Indemnitees.”

**Subsidiary.** An entity shall be deemed to be a “Subsidiary” of another Person if such Person directly or indirectly owns or purports to own, beneficially or of record: (a) an amount of voting securities of or other interests in such Entity that is sufficient to enable such Person to elect at least a majority of the members of such Entity’s board of directors or other governing body; or (b) at least 50% of the outstanding equity, voting, beneficial or financial interests in such Entity.

**Surviving Corporation.** “Surviving Corporation” shall have the meaning set forth in Section 1.1 of this Agreement.

**Tax.** “Tax” includes all forms of taxation and statutory, governmental, supra-governmental, state, principal, local government or municipal impositions, duties, contributions, charges and levies in the nature of a tax imposed by a Governmental Body, whenever imposed, and all penalties, charges, surcharges, costs, expenses and interest relating thereto and without limitation all employment taxes and any deductions or withholdings of any sort regardless of whether any such taxes, impositions, duties, contributions, charges and levies are chargeable directly or primarily against or attributable directly or primarily to the Company, or any other Person and of whether any amount in respect of any of them is recoverable from any other Person.

**Tax Return.** “Tax Return” shall mean any return (including any information return), report, statement, declaration, estimate, schedule, notice, notification, form, election, certificate or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax

or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

**Third Party Claims.** “Third Party Claims” shall have the meaning set forth in Section 10.6(a) of this Agreement.

**Treasury Regulations.** “Treasury Regulations” shall mean the final or temporary regulations promulgated by the United States Department of the Treasury pursuant to and with respect to the Code.

**Unaudited Interim Balance Sheet.** “Unaudited Interim Balance Sheet” shall have the meaning set forth in Section 2.4 of this Agreement.

**Unaudited Interim Balance Sheet Date.** “Unaudited Interim Balance Sheet Date” shall have the meaning set forth in Section 2.4 of this Agreement.

**Written Consent.** “Written Consent” shall have the meaning set forth in the recitals to this Agreement.

## LOAN AND SECURITY AGREEMENT

**THIS LOAN AND SECURITY AGREEMENT** (as the same may from time to time be amended, modified, supplemented or restated, this “**Agreement**”) dated as of September 27, 2013 (the “**Effective Date**”) among OXFORD FINANCE LLC, a Delaware limited liability company with an office located at 133 North Fairfax Street, Alexandria, Virginia 22314 (“**Oxford**”), as collateral agent (in such capacity, “**Collateral Agent**”), the Lenders listed on Schedule 1.1 hereof or otherwise a party hereto from time to time including Oxford in its capacity as a Lender and SILICON VALLEY BANK, a California corporation with an office located at 3003 Tasman Drive, Santa Clara, CA 95054 (“**Bank**” or “**SVB**”) (each a “**Lender**” and collectively, the “**Lenders**”), and SORRENTO THERAPEUTICS, INC., a Delaware corporation (“**Parent**”), and IGDRA SOL, INC., a Delaware corporation, with offices located at 6042 Cornerstone Court, Suite B, San Diego, CA 92121 (individually and collectively, jointly and severally, “**Borrower**”), provides the terms on which the Lenders shall lend to Borrower and Borrower shall repay the Lenders. The parties agree as follows:

### 1. ACCOUNTING AND OTHER TERMS

**1.1** Accounting terms not defined in this Agreement shall be construed in accordance with GAAP. Calculations and determinations must be made in accordance with GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. All references to “**Dollars**” or “**\$**” are United States Dollars, unless otherwise noted.

### 2. LOANS AND TERMS OF PAYMENT

**2.1 Promise to Pay.** Borrower hereby unconditionally promises to pay each Lender, the outstanding principal amount of all Term Loans advanced to Borrower by such Lender and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

#### **2.2 Term Loans.**

(a) Availability. Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, to make term loans to Borrower on the Effective Date in an aggregate amount of Five Million Dollars (\$5,000,000.00) according to each Lender’s Term Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a “**Term Loan**”, and collectively as the “**Term Loans**”). After repayment, no Term Loan may be re-borrowed.

(b) Repayment. Borrower shall make monthly payments of interest only commencing on the first (1<sup>st</sup>) Payment Date following the Funding Date of the Term Loan, and continuing on the Payment Date of each successive month thereafter through and including the Payment Date immediately preceding the Amortization Date. Borrower agrees to pay, on the Funding Date of the Term Loan, any initial partial monthly interest payment otherwise due for the period between the Funding Date of the Term Loan and the first Payment Date thereof. Commencing on the Amortization Date, and continuing on the Payment Date of each month thereafter, Borrower shall make consecutive equal monthly payments of principal and interest, in arrears, to each Lender, as calculated by Collateral Agent (which calculations shall be deemed correct absent manifest error) based upon: (1) the amount of such Lender’s Term Loan, (2) the effective rate of interest, as determined in Section 2.3(a), and (3) a repayment schedule equal to thirty-six (36) months, if the Amortization Date is May 1, 2014, or thirty (30) months, if the Amortization Date is November 1, 2014. All unpaid principal and accrued and unpaid interest with respect to the Term Loan is due and payable in full on the Maturity Date. The Term Loan may only be prepaid in accordance with Sections 2.2(c) and 2.2(d).

(c) Mandatory Prepayments. If the Term Loans are accelerated following the occurrence of an Event of Default, Borrower shall immediately pay to Lenders, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (ii) the Final Payment, (iii) the Prepayment Fee, plus (iv) all other Obligations that are due and payable, including Lenders’ Expenses and interest at the Default Rate

with respect to any past due amounts. Notwithstanding (but without duplication with) the foregoing, on the Maturity Date, if the Final Payment had not previously been paid in full in connection with the prepayment of the Term Loans in full, Borrower shall pay to Collateral Agent, for payment to each Lender in accordance with its respective Pro Rata Share, the Final Payment in respect of the Term Loan(s).

(d) Permitted Prepayment of Term Loans. Borrower shall have the option to prepay all, but not less than all, of the Term Loans advanced by the Lenders under this Agreement, provided Borrower (i) provides written notice to Collateral Agent of its election to prepay the Term Loans at least seven (7) days prior to such prepayment, and (ii) pays to the Lenders on the date of such prepayment, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of (A) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (B) the Final Payment, (C) the Prepayment Fee, plus (D) all other Obligations that are due and payable, including Lenders' Expenses, if any, and interest at the Default Rate with respect to any past due amounts. Silicon Valley Bank hereby agrees to waive (i) the unaccrued portion of the final payment, and (ii) any prepayment fees, with respect to the Existing Indebtedness.

### **2.3 Payment of Interest on the Credit Extensions.**

(a) Interest Rate. Subject to Section 2.3(b), the principal amount outstanding under the Term Loans shall accrue interest at a fixed per annum rate (which rate shall be fixed for the duration of the applicable Term Loan) equal to the Basic Rate, determined by Collateral Agent on the Funding Date of the applicable Term Loan, which interest shall be payable monthly in arrears in accordance with Sections 2.2(b) and 2.3(e). Interest shall accrue on each Term Loan commencing on, and including, the Funding Date of such Term Loan, and shall accrue on the principal amount outstanding under such Term Loan through and including the day on which such Term Loan is paid in full.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall accrue interest at a fixed per annum rate equal to the rate that is otherwise applicable thereto plus five percentage points (5.00%) (the "**Default Rate**"). Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Collateral Agent.

(c) 360-Day Year. Interest shall be computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) months of thirty (30) days.

(d) Debit of Accounts. Collateral Agent and each Lender may debit (or ACH) any deposit accounts, maintained by Borrower or any of its Subsidiaries, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes the Lenders under the Loan Documents when due. Any such debits (or ACH activity) shall not constitute a set-off. Without limiting the foregoing, Collateral Agent and each Lender shall use commercially reasonable efforts to notify Borrower of any amounts (other than principal and interest payments) debited from Borrower's deposit accounts with respect to this Agreement.

(e) Payments. Except as otherwise expressly provided herein, all payments by Borrower under the Loan Documents shall be made to the respective Lender to which such payments are owed, at such Lender's office in immediately available funds on the date specified herein. Unless otherwise provided, interest is payable monthly on the Payment Date of each month. Payments of principal and/or interest received after 12:00 noon Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds.

**2.4 Secured Promissory Notes**. The Term Loans shall be evidenced by a Secured Promissory Note or Notes in the form attached as Exhibit D hereto (each a "**Secured Promissory Note**"), and shall be repayable as set forth in this Agreement. Borrower irrevocably authorizes each Lender to make or cause to be made, on or about the Funding Date of any Term Loan or at the time of receipt of any payment of principal on such Lender's Secured

Promissory Note, an appropriate notation on such Lender's Secured Promissory Note Record reflecting the making of such Term Loan or (as the case may be) the receipt of such payment. The outstanding amount of each Term Loan set forth on such Lender's Secured Promissory Note Record shall be prima facie evidence of the principal amount thereof owing and unpaid to such Lender, but the failure to record, or any error in so recording, any such amount on such Lender's Secured Promissory Note Record shall not limit or otherwise affect the obligations of Borrower under any Secured Promissory Note or any other Loan Document to make payments of principal or interest on any Secured Promissory Note when due. Upon receipt of an affidavit of an officer of a Lender as to the loss, theft, destruction, or mutilation of its Secured Promissory Note, Borrower shall issue, in lieu thereof, a replacement Secured Promissory Note in the same principal amount thereof and of like tenor.

**2.5 Fees.** Borrower shall pay to Collateral Agent and/or to each Lender, as applicable:

(a) Facility Fee. A fully earned, non-refundable facility fee of Fifty Thousand Dollars (\$50,000.00) to be shared between the Lenders pursuant to their respective Commitment Percentages, receipt of which hereby is acknowledged;

(b) Final Payment. The Final Payment, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares;

(c) Prepayment Fee. The Prepayment Fee, when due hereunder, if at all, to be shared between the Lenders in accordance with their respective Pro Rata Shares; and

(d) Lenders' Expenses. All Lenders' Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due.

**2.6 Withholding.** Payments received by the Lenders from Borrower hereunder will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any governmental authority (including any interest, additions to tax or penalties applicable thereto). Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to the Lenders, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, each Lender receives a net sum equal to the sum which it would have received had no withholding or deduction been required and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority. Borrower will, upon request, furnish the Lenders with proof reasonably satisfactory to the Lenders indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.6 shall survive the termination of this Agreement.

### **3. CONDITIONS OF LOANS**

**3.1 Conditions Precedent to Initial Credit Extension.** Each Lender's obligation to make a Term Loan is subject to the condition precedent that Collateral Agent and each Lender shall consent to or shall have received, in form and substance satisfactory to Collateral Agent and each Lender, such documents, and completion of such other matters, as Collateral Agent and each Lender may reasonably deem necessary or appropriate, including, without limitation:

(a) original Loan Documents, each duly executed by Borrower and each Subsidiary, as applicable;

(b) duly executed original Control Agreements with respect to any Collateral Accounts maintained by Borrower or any of its Subsidiaries;

(c) duly executed original Secured Promissory Notes in favor of each Lender according to its Term Loan Commitment Percentage;

(d) except with respect to Sorrento HK, the certificate(s) for the Shares, together with Assignment(s) Separate from Certificate, duly executed in blank;

(e) the Operating Documents and good standing certificates of Borrower and its Subsidiaries certified by the Secretary of State (or equivalent agency) of Borrower's and such Subsidiaries' jurisdiction of organization or formation and each jurisdiction in which Borrower and each Subsidiary is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date;

(f) a completed Perfection Certificate for Borrower and each of its Subsidiaries;

(g) the Annual Projections, for the current calendar year (receipt of which Collateral Agent hereby acknowledges);

(h) duly executed original officer's certificate for Borrower and each Subsidiary that is a party to the Loan Documents, in a form acceptable to Collateral Agent and the Lenders;

(i) certified copies, dated as of date no earlier than thirty (30) days prior to the Effective Date, of financing statement searches, as Collateral Agent shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

(j) a landlord's consent executed in favor of Collateral Agent in respect of all of Borrower's and each Subsidiaries' leased locations;

(k) a duly executed legal opinion of counsel to Borrower dated as of the Effective Date;

(l) evidence satisfactory to Collateral Agent and the Lenders that the insurance policies required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Collateral Agent, for the ratable benefit of the Lenders;

(m) a payoff letter from Silicon Valley Bank in respect of the Existing Indebtedness;

(n) evidence that (i) the Liens securing the Existing Indebtedness will be terminated and (ii) the documents and/or filings evidencing the perfection of such Liens, including without limitation any financing statements and/or control agreements, have or will, concurrently with the initial Credit Extension, be terminated;

(o) a subordination agreement, duly executed by each holder of Subordinated Debt; and

(p) payment of the fees and Lenders' Expenses then due as specified in Section 2.5 hereof.

**3.2 Conditions Precedent to all Credit Extensions.** The obligation of each Lender to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) receipt by (i) the Lenders of an executed Disbursement Letter in the form of Exhibit B-1 attached hereto; and (ii) SVB of an executed Loan Payment/Advance Request Form in the form of Exhibit B-2 attached hereto;

(b) the representations and warranties in Section 5 hereof shall be true, accurate and complete in all material respects on the date of the Disbursement Letter (and the Loan Payment/Advance Request Form) and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be



true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in Section 5 hereof are true, accurate and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(c) in such Lender's sole discretion, there has not been any Material Adverse Change or any material adverse deviation by Borrower from the Annual Projections of Borrower presented to and accepted by Collateral Agent and each Lender;

(d) to the extent not delivered at the Effective Date, duly executed original Secured Promissory Notes and Warrants, in number, form and content acceptable to each Lender, and in favor of each Lender according to its Commitment Percentage, with respect to each Credit Extension made by such Lender after the Effective Date; and

(e) payment of the fees and Lenders' Expenses then due as specified in Section 2.5 hereof.

**3.3 Covenant to Deliver.** Borrower agrees to deliver to Collateral Agent and the Lenders each item required to be delivered to Collateral Agent under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Collateral Agent or any Lender of any such item shall not constitute a waiver by Collateral Agent or any Lender of Borrower's obligation to deliver such item, and any such Credit Extension in the absence of a required item shall be made in each Lender's sole discretion.

**3.4 Procedures for Borrowing.** Subject to the prior satisfaction of all other applicable conditions to the making of a Term Loan set forth in this Agreement, to obtain a Term Loan, Borrower shall notify the Lenders (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 noon Eastern time three (3) Business Days prior to the date the Term Loan is to be made. Together with any such electronic, facsimile or telephonic notification, Borrower shall deliver to the Lenders by electronic mail or facsimile a completed Disbursement Letter (and the Loan Payment/Advance Request Form, with respect to SVB) executed by a Responsible Officer or his or her designee. The Lenders may rely on any telephone notice given by a person whom a Lender reasonably believes is a Responsible Officer or designee. On the Funding Date, each Lender shall credit and/or transfer (as applicable) to the Designated Deposit Account, an amount equal to its Term Loan Commitment.

#### **4. CREATION OF SECURITY INTEREST**

**4.1 Grant of Security Interest.** Borrower hereby grants Collateral Agent, for the ratable benefit of the Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Collateral Agent, for the ratable benefit of the Lenders, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to Permitted Liens that are permitted by the terms of this Agreement to have priority to Collateral Agent's Lien. If Borrower shall acquire a commercial tort claim (as defined in the Code), Borrower, shall promptly notify Collateral Agent in a writing signed by Borrower, as the case may be, of the general details thereof (and further details as may be required by Collateral Agent) and grant to Collateral Agent, for the ratable benefit of the Lenders, in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Collateral Agent.

Borrower acknowledges that it previously has entered, and/or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interest in the Collateral granted herein (subject only to Permitted Liens that may have superior priority to Bank's Lien in this Agreement).

If this Agreement is terminated, Collateral Agent's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as the Lenders' obligation to make Credit Extensions has terminated, Collateral Agent shall and each Lender, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower. In the event (x) all Obligations (other than inchoate indemnity obligations), except for Bank Services, are satisfied in full, and (y) this Agreement is terminated, Collateral Agent and each Lender shall terminate the security interest granted herein upon Borrower providing cash collateral acceptable to Bank in its good faith business judgment consistent with Bank's then current practice for Bank Services, if any. In the event such Bank Services consist of outstanding Letters of Credit, Borrower shall provide to Bank cash collateral in an amount equal to (x) if such Letters of Credit are denominated in Dollars, then one hundred five percent (105%); and (y) if such Letters of Credit are denominated in a Foreign Currency, then one hundred ten percent (110%), of the Dollar Equivalent of the face amount of all such Letters of Credit plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment), to secure all of the Obligations relating to such Letters of Credit.

**4.2 Authorization to File Financing Statements.** Borrower hereby authorizes Collateral Agent to file financing statements or take any other action required to perfect Collateral Agent's security interests in the Collateral, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Collateral Agent's interest or rights under the Loan Documents, including a notice that any disposition of the Collateral, except to the extent permitted by the terms of this Agreement, by Borrower, or any other Person, shall be deemed to violate the rights of Collateral Agent under the Code.

**4.3 Pledge of Collateral.** Borrower hereby pledges, assigns and grants to Collateral Agent, for the ratable benefit of the Lenders, a security interest in all the Shares, together with all proceeds and substitutions thereof, all cash, stock and other moneys and property paid thereon, all rights to subscribe for securities declared or granted in connection therewith, and all other cash and noncash proceeds of the foregoing, as security for the performance of the Obligations. On the Effective Date, or, to the extent not certificated as of the Effective Date, within ten (10) days of the certification of any Shares, the certificate or certificates for the Shares will be delivered to Collateral Agent, accompanied by an instrument of assignment duly executed in blank by Borrower. To the extent required by the terms and conditions governing the Shares, Borrower shall cause the books of each entity whose Shares are part of the Collateral and any transfer agent to reflect the pledge of the Shares. Upon the occurrence and during the continuance of an Event of Default hereunder, Collateral Agent may effect the transfer of any securities included in the Collateral (including but not limited to the Shares) into the name of Collateral Agent and cause new (as applicable) certificates representing such securities to be issued in the name of Collateral Agent or its transferee. Borrower will execute and deliver such documents, and take or cause to be taken such actions, as Collateral Agent may reasonably request to perfect or continue the perfection of Collateral Agent's security interest in the Shares. Unless an Event of Default shall have occurred and be continuing, Borrower shall be entitled to exercise any voting rights with respect to the Shares and to give consents, waivers and ratifications in respect thereof, provided that no vote shall be cast or consent, waiver or ratification given or action taken which would be inconsistent with any of the terms of this Agreement or which would constitute or create any violation of any of such terms. All such rights to vote and give consents, waivers and ratifications shall terminate upon the occurrence and continuance of an Event of Default.

## **5. REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants to Collateral Agent and the Lenders as follows:

**5.1 Due Organization, Authorization: Power and Authority.** Borrower and each of its Subsidiaries is duly existing and in good standing as a Registered Organization in its jurisdictions of organization or formation and Borrower and each of its Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Change. In connection with this Agreement, Borrower and each of its Subsidiaries has delivered to Collateral Agent a completed perfection certificate, dated as of the Effective Date, signed by an officer of Borrower or such Subsidiary (each as updated from time to time, as permitted hereunder, a "**Perfection Certificate**") and collectively, the "**Perfection Certificates**"). Borrower represents and warrants that (a) Borrower and each of its Subsidiaries' exact legal name is that which is

indicated on its respective Perfection Certificate and on the signature page of each Loan Document to which it is a party; (b) Borrower and each of its Subsidiaries is an organization of the type and is organized in the jurisdiction set forth on its respective Perfection Certificate; (c) each Perfection Certificate accurately sets forth each of Borrower's and its Subsidiaries' organizational identification number or accurately states that Borrower or such Subsidiary has none; (d) each Perfection Certificate accurately sets forth Borrower's and each of its Subsidiaries' place of business, or, if more than one, its chief executive office as well as Borrower's and each of its Subsidiaries' mailing address (if different than its chief executive office); (e) Borrower and each of its Subsidiaries (and each of its respective predecessors) have not, in the past five (5) years, changed its jurisdiction of organization, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificates pertaining to Borrower and each of its Subsidiaries, is accurate and complete (it being understood and agreed that Borrower and each of its Subsidiaries may from time to time update certain information in the Perfection Certificates (including the information set forth in clause (d) above) after the Effective Date to the extent permitted by one or more specific provisions in this Agreement); such updated Perfection Certificates subject to the review and approval of Collateral Agent. If Borrower or any of its Subsidiaries is not now a Registered Organization but later becomes one, Borrower shall notify Collateral Agent of such occurrence and provide Collateral Agent with such Person's organizational identification number within five (5) Business Days of receiving such organizational identification number.

The execution, delivery and performance by Borrower and each of its Subsidiaries of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's or such Subsidiaries' organizational documents, including its respective Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or such Subsidiary, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or are being obtained pursuant to Section 6.1(b), or (v) constitute an event of default under any material agreement by which Borrower or any of such Subsidiaries, or their respective properties, is bound. Neither Borrower nor any of its Subsidiaries is in default under any agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a Material Adverse Change.

## **5.2 Collateral.**

(a) Borrower and each its Subsidiaries have good title to, have rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien under the Loan Documents, free and clear of any and all Liens except Permitted Liens, and neither Borrower nor any of its Subsidiaries have any Deposit Accounts, Securities Accounts, Commodity Accounts or other investment accounts other than the Collateral Accounts or the other investment accounts, if any, described in the Perfection Certificates delivered to Collateral Agent in connection herewith with respect of which Borrower or such Subsidiary has given Collateral Agent notice and taken such actions as are necessary to give Collateral Agent a perfected security interest therein. The Accounts are bona fide, existing obligations of the Account Debtors.

(b) On the Effective Date, and except as disclosed on the Perfection Certificate (i) the Collateral is not in the possession of any third party bailee (such as a warehouse), and (ii) no such third party bailee possesses components of the Collateral in excess of One Hundred Thousand Dollars (\$100,000.00). None of the components of the Collateral shall be maintained at locations other than as disclosed in the Perfection Certificates on the Effective Date or as permitted pursuant to Section 6.11 (other than movable items of personal property including laptop computers and telephonic devices used and moved in the ordinary course of business, having an aggregate book value not exceeding One Hundred Thousand Dollars (\$100,000.00)).

(c) All Inventory is in all material respects of good and marketable quality, free from material defects.

(d) Borrower and each of its Subsidiaries is the sole owner of the Intellectual Property each respectively purports to own, free and clear of all Liens other than Permitted Liens. Except as noted on the Perfection Certificates, neither Borrower nor any of its Subsidiaries is a party to, nor is bound by, any material

license or other material agreement with respect to which Borrower or such Subsidiary is the licensee that (i) prohibits or otherwise restricts Borrower or its Subsidiaries from granting a security interest in Borrower's or such Subsidiaries' interest in such material license or material agreement or any other property, or (ii) for which a default under or termination of could interfere with Collateral Agent's or any Lender's right to sell any Collateral. Borrower shall provide written notice to Collateral Agent and each Lender within ten (10) days of Borrower or any of its Subsidiaries entering into or becoming bound by any license or agreement with respect to which Borrower or any Subsidiary is the licensee (other than over-the-counter software that is commercially available to the public).

**5.3 Litigation.** Except as disclosed (i) on the Perfection Certificates, or (ii) in accordance with Section 6.9 hereof, there are no actions, suits, investigations, or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries involving more than Two Hundred Fifty Thousand Dollars (\$250,000.00).

**5.4 No Material Deterioration in Financial Condition; Financial Statements.** All consolidated financial statements for Borrower and its Subsidiaries, delivered to Collateral Agent fairly present, in conformity with GAAP, in all material respects the consolidated financial condition of Borrower and its Subsidiaries, and the consolidated results of operations of Borrower and its Subsidiaries. There has not been any material deterioration in the consolidated financial condition of Borrower and its Subsidiaries since the date of the most recent financial statements submitted to any Lender.

**5.5 Solvency.** Borrower is Solvent, and each of its Subsidiaries, on a consolidated basis, is Solvent.

**5.6 Regulatory Compliance.** Neither Borrower nor any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Neither Borrower nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither Borrower nor any of its Subsidiaries has violated any laws, ordinances or rules, the violation of which could reasonably be expected to have a Material Adverse Change. Neither Borrower's nor any of its Subsidiaries' properties or assets has been used by Borrower or such Subsidiary or, to Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable laws. Borrower and each of its Subsidiaries has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

None of Borrower, any of its Subsidiaries, or any of Borrower's or its Subsidiaries' Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, or (iii) is a Blocked Person. None of Borrower, any of its Subsidiaries, or to the knowledge of Borrower and any of their Affiliates or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

**5.7 Investments.** Neither Borrower nor any of its Subsidiaries owns any stock, shares, partnership interests or other equity securities except for Permitted Investments.

**5.8 Tax Returns and Payments; Pension Contributions.** Borrower and each of its Subsidiaries has timely filed, or timely filed for extensions, all required tax returns and reports, and Borrower and each of its Subsidiaries, has timely paid all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower and such Subsidiaries, in all jurisdictions in which Borrower or any such Subsidiary is subject to taxes, including the United States, unless such taxes are being contested in accordance with the following sentence.

Borrower and each of its Subsidiaries, may defer payment of any contested taxes, provided that Borrower or such Subsidiary, (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Collateral Agent in writing of the commencement of, and any material development in, the proceedings, and (c) posts bonds or takes any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a “**Permitted Lien.**” Neither Borrower nor any of its Subsidiaries is aware of any claims or adjustments proposed for any of Borrower’s or such Subsidiaries’, prior tax years which could result in additional taxes becoming due and payable by Borrower or its Subsidiaries. Borrower and each of its Subsidiaries have paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither Borrower nor any of its Subsidiaries have, withdrawn from participation in, and have not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower or its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

**5.9 Use of Proceeds.** Borrower shall use the proceeds of the Credit Extensions solely as working capital and to fund its general business requirements in accordance with the provisions of this Agreement, and not for personal, family, household or agricultural purposes. A portion of the proceeds of the Term Loans shall be used by Borrower to repay the Existing Indebtedness in full on the Effective Date.

**5.10 Shares.** Borrower has full power and authority to create a first lien on the Shares and no disability or contractual obligation exists that would prohibit Borrower from pledging the Shares pursuant to this Agreement. To Borrower’s knowledge, there are no subscriptions, warrants, rights of first refusal or other restrictions on transfer relative to, or options exercisable with respect to the Shares. The Shares have been and will be duly authorized and validly issued, and are fully paid and non-assessable. To Borrower’s knowledge, the Shares are not the subject of any present or threatened suit, action, arbitration, administrative or other proceeding, and Borrower knows of no reasonable grounds for the institution of any such proceedings.

**5.11 Full Disclosure.** No written representation, warranty or other statement of Borrower or any of its Subsidiaries in any certificate or written statement given to Collateral Agent or any Lender, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Collateral Agent or any Lender, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

**5.12 Definition of “Knowledge.”** For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower’s knowledge or awareness, to the “best of” Borrower’s knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

## **6. AFFIRMATIVE COVENANTS**

Borrower shall, and shall cause each of its Subsidiaries to, do all of the following:

### **6.1 Government Compliance.**

(a) Maintain its and all its Subsidiaries’ legal existence and good standing in their respective jurisdictions of organization and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Change. Comply with all laws, ordinances and regulations to which Borrower or any of its Subsidiaries is subject, the noncompliance with which could reasonably be expected to have a Material Adverse Change.

(b) Obtain and keep in full force and effect, all of the material Governmental Approvals necessary for the performance by Borrower and its Subsidiaries of their respective businesses and obligations under

the Loan Documents and the grant of a security interest to Collateral Agent for the ratable benefit of the Lenders, in all of the Collateral. Borrower shall promptly provide copies to Collateral Agent of any material Governmental Approvals obtained by Borrower or any of its Subsidiaries.

## 6.2 Financial Statements, Reports, Certificates.

(a) Deliver to each Lender:

(i) as soon as available, but no later than thirty (30) days after the last day of each quarter, a company prepared consolidated and consolidating balance sheet, income statement and cash flow statement covering the consolidated operations of Borrower and its Subsidiaries for such month certified by a Responsible Officer and in a form reasonably acceptable to Collateral Agent;

(ii) as soon as available, but no later than one hundred eighty (180) days after the last day of Borrower's fiscal year or within five (5) days of filing with the SEC, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Collateral Agent in its reasonable discretion;

(iii) as soon as available (but in no event more than seven (7) days) after approval thereof by Borrower's Board of Directors, but no later than sixty (60) days after the last day of each of Borrower's fiscal years, Borrower's annual financial projections for the entire current fiscal year as approved by Borrower's Board of Directors, which such annual financial projections shall be set forth in a month-by-month format (such annual financial projections as originally delivered to Collateral Agent and the Lenders on or prior to the Effective Date are referred to herein as the "**Annual Projections**"; provided that, any revisions of the Annual Projections approved by Borrower's Board of Directors shall be delivered to Collateral Agent and the Lenders no later than seven (7) days after such approval);

(iv) within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower's security holders or holders of Subordinated Debt;

(v) within five (5) days of filing, all reports on Form 10-K, 10-Q and 8-K filed with the Securities and Exchange Commission,

(vi) prompt notice of any amendments of or other changes to the Operating Documents of Borrower or any of its Subsidiaries, together with any copies reflecting such amendments or changes with respect thereto;

(vii) prompt notice of any event that could reasonably be expected to materially and adversely affect the value of the Intellectual Property;

(viii) as soon as available, but no later than thirty (30) days after the last day of each month, copies of the month-end account statements for each Collateral Account maintained by Borrower or its Subsidiaries (other than Sorrento HK), which statements may be provided to Collateral Agent and each Lender by Borrower or directly from the applicable institution(s); and

(ix) other information as reasonably requested by Collateral Agent or any Lender.

Notwithstanding the foregoing, documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the internet at Borrower's website address.

(b) Concurrently with the delivery of the financial statements specified in Section 6.2(a)(i) above but no later than thirty (30) days after the last day of each quarter, deliver to each Lender, a duly completed Compliance Certificate signed by a Responsible Officer.

(c) Keep proper books of record and account in accordance with GAAP in all material respects, in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities. Borrower shall, and shall cause each of its Subsidiaries to, allow, at the sole reasonable cost of Borrower, Collateral Agent or any Lender, during regular business hours upon reasonable prior notice (provided that no notice shall be required when an Event of Default has occurred and is continuing), to visit and inspect any of its properties, to examine and make abstracts or copies from any of its books and records, and to conduct a collateral audit and analysis of its operations and the Collateral. Such audits shall be conducted no more often than once every year unless (and more frequently if) an Event of Default has occurred and is continuing.

**6.3 Inventory; Returns.** Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower, or any of its Subsidiaries, and their respective Account Debtors shall follow Borrower's, or such Subsidiary's, customary practices as they exist at the Effective Date. Borrower must promptly notify Collateral Agent and the Lenders of all returns, recoveries, disputes and claims that involve more than One Hundred Thousand Dollars (\$100,000.00) individually or in the aggregate in any calendar year.

**6.4 Taxes; Pensions.** Timely file and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely file, all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower or its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.8 hereof, and shall deliver to Lenders, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with the terms of such plans.

**6.5 Insurance.** Keep Borrower's and its Subsidiaries' business and the Collateral insured for risks and in amounts standard for companies in Borrower's and its Subsidiaries' industry and location and as Collateral Agent may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Collateral Agent and Lenders. All property policies shall have a lender's loss payable endorsement showing Collateral Agent as lender loss payee and waive subrogation against Collateral Agent, and all liability policies shall show, or have endorsements showing, Collateral Agent, as additional insured. The Collateral Agent shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent, that it will give the Collateral Agent twenty (20) days prior written notice before any such policy or policies shall be materially altered or canceled, and ten (10) days prior written notice for non-payment of premium. At Collateral Agent's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Collateral Agent's option, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to Two Hundred Fifty Thousand Dollars (\$250,000.00) with respect to any loss, but not exceeding Five Hundred Thousand Dollars (\$500,000.00), in the aggregate for all losses under all casualty policies in any one year, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Collateral Agent has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Collateral Agent, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. If Borrower or any of its Subsidiaries fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons, Collateral Agent and/or any Lender may make, at Borrower's expense, all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Collateral Agent or such Lender deems prudent.

## **6.6 Operating Accounts.**

(a) Maintain all of Borrower's and its domestic Subsidiaries' primary Collateral Accounts with Bank or its Affiliates in accounts which are subject to a Control Agreement in favor of Collateral Agent, which accounts shall represent at least fifty-one percent (51.00%) of the dollar value of Borrower's and such Subsidiaries' accounts at all financial institutions.

(b) Borrower shall provide Collateral Agent five (5) days' prior written notice before Borrower or any of its Subsidiaries establishes any Collateral Account at or with any Person other than Bank or its Affiliates. In addition, for each Collateral Account that Borrower or any of its Subsidiaries, at any time maintains, Borrower or such Subsidiary shall cause the applicable bank or financial institution at or with which such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Collateral Agent's Lien in such Collateral Account in accordance with the terms hereunder prior to the establishment of such Collateral Account, which Control Agreement may not be terminated without prior written consent of Collateral Agent. The provisions of the previous sentence shall not apply to (i) deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's, or any of its Subsidiaries', employees and identified to Collateral Agent by Borrower as such in the Perfection Certificates; and (ii) foreign account maintained by Borrower and its Subsidiaries (which accounts shall not, in the aggregate, exceed One Hundred Thousand Dollars (\$100,000.00) at any time).

(c) Neither Borrower nor any of its Subsidiaries shall maintain any Collateral Accounts except Collateral Accounts maintained in accordance with Sections 6.6(a) and (b).

**6.7 Protection of Intellectual Property Rights.** Borrower and each of its Subsidiaries shall: (a) use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of its Intellectual Property that is material to Borrower's business; (b) promptly advise Collateral Agent in writing of material infringement by a third party of its Intellectual Property; and (c) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Collateral Agent's prior written consent.

**6.8 Litigation Cooperation.** Commencing on the Effective Date and continuing through the termination of this Agreement, make available to Collateral Agent and the Lenders, without expense to Collateral Agent or the Lenders, Borrower and each of Borrower's officers, employees and agents and Borrower's Books, to the extent that Collateral Agent or any Lender may reasonably deem them necessary to prosecute or defend any third-party suit or proceeding instituted by or against Collateral Agent or any Lender with respect to any Collateral or relating to Borrower.

**6.9 Notices of Litigation and Default.** Borrower will give prompt written notice to Collateral Agent and the Lenders of any litigation or governmental proceedings pending or threatened (in writing) against Borrower or any of its Subsidiaries, which could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries of Two Hundred Fifty Thousand Dollars (\$250,000.00) or more or which could reasonably be expected to have a Material Adverse Change. Without limiting or contradicting any other more specific provision of this Agreement, promptly (and in any event within three (3) Business Days) upon Borrower becoming aware of the existence of any Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, Borrower shall give written notice to Collateral Agent and the Lenders of such occurrence, which such notice shall include a reasonably detailed description of such Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default.

## **6.10 Intentionally Omitted.**

**6.11 Landlord Waivers; Bailee Waivers.** In the event that Borrower or any of its Subsidiaries, after the Effective Date, intends to add any new offices or business locations, including warehouses, or otherwise store any portion of the Collateral with, or deliver any portion of the Collateral to, a bailee, in each case pursuant to Section 7.2, then Borrower or such Subsidiary will provide written notice thereof to Collateral Agent and, in the event that the Collateral at any new location is valued in excess of Two Hundred Thousand (\$200,000.00) in the aggregate, such bailee or landlord, as applicable, must execute and deliver a bailee waiver or landlord waiver, as



applicable, in form and substance reasonably satisfactory to Collateral Agent prior to the addition of any new offices or business locations, or any such storage with or delivery to any such bailee, as the case may be.

**6.12 Creation/Acquisition of Subsidiaries.** In the event Borrower, or any of its Subsidiaries creates or acquires any Subsidiary, Borrower shall provide prior written notice to Collateral Agent and each Lender of the creation or acquisition of such new Subsidiary and take all such action as may be reasonably required by Collateral Agent or any Lender to cause each such Subsidiary to become a co-Borrower hereunder or to guarantee the Obligations of Borrower under the Loan Documents and, in each case, grant a continuing pledge and security interest in and to the assets of such Subsidiary (substantially as described on Exhibit A hereto); and Borrower (or its Subsidiary, as applicable) shall grant and pledge to Collateral Agent, for the ratable benefit of the Lenders, a perfected security interest in the Shares. The parties acknowledge and agree that, as of the Effective Date, Sorrento HK is neither a co-Borrower nor a Guarantor under this Agreement.

### **6.13 Further Assurances.**

(a) Execute any further instruments and take further action as Collateral Agent or any Lender reasonably requests to perfect or continue Collateral Agent's Lien in the Collateral or to effect the purposes of this Agreement.

(b) Deliver to Collateral Agent and Lenders, within five (5) days after the same are sent or received, copies of all material correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to have a material adverse effect on any of the Governmental Approvals material to Borrower's business or otherwise could reasonably be expected to have a Material Adverse Change.

## **7. NEGATIVE COVENANTS**

Borrower shall not, and shall not permit any of its Subsidiaries to, do any of the following without the prior written consent of the Required Lenders:

**7.1 Dispositions.** Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn out or obsolete Equipment; (c) in connection with Permitted Liens, Permitted Investments and Permitted Licenses; and (d) in addition to those specifically enumerated above, expenditures reflected in the Annual Projections, as such Annual Projections may be amended from time to time pursuant to the terms of Section 6.2 hereof.

**7.2 Changes in Business, Management, Ownership, or Business Locations.** (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses engaged in by Borrower as of the Effective Date or reasonably related thereto; (b) liquidate or dissolve; or (c) (i) any Key Person shall cease to be actively engaged in the management of Borrower unless written notice thereof is provided to Collateral Agent within seven (7) Business Days of such change, or (ii) enter into any transaction or series of related transactions in which the stockholders of Borrower who were not stockholders immediately prior to the first such transaction own more than forty nine percent (49%) of the voting stock of Borrower immediately after giving effect to such transaction or related series of such transactions (other than by the sale of Borrower's equity securities in a public offering, a private placement of public equity or to venture capital investors so long as Borrower identifies to Collateral Agent the venture capital investors prior to the closing of the transaction). Borrower shall not, without at least fifteen (15) days' prior written notice to Collateral Agent: (A) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than One Hundred Thousand Dollars (\$100,000.00) in assets or property of Borrower or any of its Subsidiaries); (B) change its jurisdiction of organization, (C) change its organizational structure or type, (D) change its legal name, or (E) change any organizational number (if any) assigned by its jurisdiction of organization.

**7.3 Mergers or Acquisitions.** Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock, shares or property of another Person. A Subsidiary may merge or consolidate into another

Subsidiary (provided such surviving Subsidiary is a “co-Borrower” hereunder or has provided a secured Guaranty of Borrower’s Obligations hereunder) or with (or into) Borrower provided Borrower is the surviving legal entity, and as long as no Event of Default is occurring prior thereto or arises as a result therefrom. Without limiting the foregoing, Borrower shall not, without Collateral Agent’s prior written consent, enter into any binding contractual arrangement with any Person to attempt to facilitate a merger or acquisition of Borrower, unless (i) no Event of Default exists when such agreement is entered into by Borrower, (ii) such agreement does not give such Person the right to claim any fees, payments or damages from Borrower in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00), and (iii) Borrower notifies Collateral Agent in advance of entering into such an agreement.

**7.4 Indebtedness.** Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

**7.5 Encumbrance.** Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein (except for Permitted Liens that are permitted by the terms of this Agreement to have priority over Collateral Agent’s Lien), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Collateral Agent, for the ratable benefit of the Lenders) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower, or any of its Subsidiaries, from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower’s or such Subsidiary’s Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of “**Permitted Liens**” herein.

**7.6 Maintenance of Collateral Accounts.** Maintain any Collateral Account except pursuant to the terms of Section 6.6 hereof.

**7.7 Distributions; Investments.** (a) Pay any dividends (other than dividends payable solely in capital stock) or make any distribution or payment in respect of or redeem, retire or purchase any capital stock (other than (i) repurchases pursuant to the terms of employee stock purchase plans, employee restricted stock agreements, stockholder rights plans, director or consultant stock option plans, or similar plans, provided such repurchases do not exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate per fiscal year); and (ii) cash payments for repurchases of common stock of Parent for cash in lieu of shares for certain sellers of IGDRASOL, Inc. with respect to post-closing milestones relating to the acquisition of IGDRASOL, Inc., not to exceed 20,000 common stock shares of Parent; or (b) directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so.

**7.8 Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower or any of its Subsidiaries, except for (a) transactions that are in the ordinary course of Borrower’s or such Subsidiary’s business, upon fair and reasonable terms that are no less favorable to Borrower or such Subsidiary than would be obtained in an arm’s length transaction with a non-affiliated Person, and (b) Subordinated Debt or equity investments by Borrower’s investors in Borrower or its Subsidiaries.

**7.9 Subordinated Debt.** (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to Obligations owed to the Lenders.

**7.10 Compliance.** Become an “investment company” or a company controlled by an “investment company”, under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a Material Adverse Change, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower or any of its

Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

**7.11 Compliance with Anti-Terrorism Laws.** Collateral Agent hereby notifies Borrower and each of its Subsidiaries that pursuant to the requirements of Anti-Terrorism Laws, and Collateral Agent's policies and practices, Collateral Agent is required to obtain, verify and record certain information and documentation that identifies Borrower and each of its Subsidiaries and their principals, which information includes the name and address of Borrower and each of its Subsidiaries and their principals and such other information that will allow Collateral Agent to identify such party in accordance with Anti-Terrorism Laws. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries permit any Affiliate to, directly or indirectly, knowingly enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Borrower and each of its Subsidiaries shall immediately notify Collateral Agent if Borrower or such Subsidiary has knowledge that Borrower, or any Subsidiary or Affiliate of Borrower, is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries, permit any Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 or any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

**7.12 Sorrento HK Assets.** Permit the aggregate value of assets held by Sorrento HK to exceed One Hundred Thousand Dollars (\$100,000.00) at any time.

## **8. EVENTS OF DEFAULT**

Any one of the following shall constitute an event of default (an "**Event of Default**") under this Agreement:

**8.1 Payment Default.** Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 9.1 (a) hereof). During the cure period, the failure to cure the payment default is not an Event of Default (but no Credit Extension will be made during the cure period);

### **8.2 Covenant Default.**

(a) Borrower or any of its Subsidiaries fails or neglects to perform any obligation in Sections 6.2 (Financial Statements, Reports, Certificates), 6.4 (Taxes), 6.5 (Insurance), 6.6 (Operating Accounts), 6.7 (Protection of Intellectual Property Rights), 6.9 (Notice of Litigation and Default), 6.12 (Creation/Acquisition of Subsidiaries) or 6.13 (Further Assurances) or Borrower violates any covenant in Section 7; or

(b) Borrower, or any of its Subsidiaries, fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Grace periods provided under this Section shall not apply, among other things, to financial covenants, if any, or any other covenants set forth in subsection (a) above;

**8.3 Material Adverse Change.** A Material Adverse Change occurs;

**8.4 Attachment; Levy; Restraint on Business.**

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or any of its Subsidiaries or of any entity under control of Borrower or its Subsidiaries on deposit with any Lender or any Lender's Affiliate or any bank or other institution at which Borrower or any of its Subsidiaries maintains a Collateral Account, or (ii) a notice of lien, levy, or assessment is filed against Borrower or any of its Subsidiaries or their respective assets by any government agency, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; and

(b) (i) any material portion of Borrower's or any of its Subsidiaries' assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower or any of its Subsidiaries from conducting any part of its business;

**8.5 Insolvency.** (a) Borrower or any of its Subsidiaries is or becomes Insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while Borrower or any Subsidiary is Insolvent and/or until any Insolvency Proceeding is dismissed);

**8.6 Other Agreements.** There is a default in any agreement to which Borrower or any of its Subsidiaries is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) or that could reasonably be expected to have a Material Adverse Change;

**8.7 Judgments.** One or more judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower or any of its Subsidiaries and shall remain unsatisfied, unvacated, or unstayed for a period of ten (10) days after the entry thereof (provided that no Credit Extensions will be made prior to the satisfaction, vacation, or stay of such judgment, order or decree);

**8.8 Misrepresentations.** Borrower or any of its Subsidiaries or any Person acting for Borrower or any of its Subsidiaries makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Collateral Agent and/or Lenders or to induce Collateral Agent and/or the Lenders to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made;

**8.9 Subordinated Debt.** A default or breach occurs under any agreement between Borrower or any of its Subsidiaries and any creditor of Borrower or any of its Subsidiaries that signed a subordination, intercreditor, or other similar agreement with Collateral Agent or the Lenders, or any creditor that has signed such an agreement with Collateral Agent or the Lenders breaches any terms of such agreement;

**8.10 Guaranty.** (a) Any Guaranty terminates or ceases for any reason to be in full force and effect; (b) any Guarantor does not perform any obligation or covenant under any Guaranty; (c) any circumstance described in Sections 8.3, 8.4, 8.5, 8.7, or 8.8 occurs with respect to any Guarantor, or (d) the death, liquidation, winding up, or termination of existence of any Guarantor; or (e) a Material Adverse Change with respect to any Guarantor;

**8.11 Governmental Approvals.** Any Governmental Approval shall have been revoked, rescinded, suspended, modified in an adverse manner, or not renewed in the ordinary course for a full term *and* such revocation, rescission, suspension, modification or non-renewal has resulted in or could reasonably be expected to result in a Material Adverse Change; or

**8.12 Lien Priority.** Any Lien created hereunder or by any other Loan Document shall at any time fail to constitute a valid and perfected Lien on any of the Collateral purported to be secured thereby, subject to no prior or equal Lien, other than Permitted Liens which are permitted to have priority in accordance with the terms of this Agreement.

## **9. RIGHTS AND REMEDIES**

### **9.1 Rights and Remedies.**

(a) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent may, and at the written direction of Required Lenders shall, without notice or demand, do any or all of the following: (i) deliver notice of the Event of Default to Borrower, (ii) by notice to Borrower declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations shall be immediately due and payable without any action by Collateral Agent or the Lenders) or (iii) by notice to Borrower suspend or terminate the obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders (but if an Event of Default described in Section 8.5 occurs all obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders shall be immediately terminated without any action by Collateral Agent or the Lenders).

(b) Without limiting the rights of Collateral Agent and the Lenders set forth in Section 9.1(a) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right, without notice or demand, to do any or all of the following:

(i) foreclose upon and/or sell or otherwise liquidate, the Collateral;

(ii) apply to the Obligations any (a) balances and deposits of Borrower that Collateral Agent or any Lender holds or controls, or (b) any amount held or controlled by Collateral Agent or any Lender owing to or for the credit or the account of Borrower; and/or

(iii) commence and prosecute an Insolvency Proceeding or consent to Borrower commencing any Insolvency Proceeding.

(c) Without limiting the rights of Collateral Agent and the Lenders set forth in Sections 9.1(a) and (b) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right, without notice or demand, to do any or all of the following:

(i) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent considers advisable, notify any Person owing Borrower money of Collateral Agent's security interest in such funds, and verify the amount of such account;

(ii) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Collateral Agent requests and make it available in a location as Collateral Agent reasonably designates. Collateral Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Collateral Agent a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's rights or remedies;

(iii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, the Collateral. Collateral Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's and each of its Subsidiaries' labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral

and, in connection with Collateral Agent's exercise of its rights under this Section 9.1, Borrower's and each of its Subsidiaries' rights under all licenses and all franchise agreements inure to Collateral Agent, for the benefit of the Lenders;

(iv) place a "hold" on any account maintained with Collateral Agent or the Lenders and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(v) demand and receive possession of Borrower's Books;

(vi) appoint a receiver to seize, manage and realize any of the Collateral, and such receiver shall have any right and authority as any competent court will grant or authorize in accordance with any applicable law, including any power or authority to manage the business of Borrower or any of its Subsidiaries; and

(vii) subject to clauses 9.1(a) and (b), exercise all rights and remedies available to Collateral Agent and each Lender under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof);

(viii) for any Letters of Credit, demand that Borrower (i) deposit cash with Bank in an amount equal to (x) if such Letters of Credit are denominated in Dollars, then one hundred five percent (105%); and (y) if such Letters of Credit are denominated in a Foreign Currency, then one hundred ten percent (110%), of the Dollar Equivalent of the aggregate face amount of all Letters of Credit remaining undrawn (plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment)), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit; and

(ix) terminate any FX Contracts.

Notwithstanding any provision of this Section 9.1 to the contrary, upon the occurrence of any Event of Default, Collateral Agent shall have the right to exercise any and all remedies referenced in this Section 9.1 without the written consent of Required Lenders following the occurrence of an Exigent Circumstance. As used in the immediately preceding sentence, "**Exigent Circumstance**" means any event or circumstance that, in the reasonable judgment of Collateral Agent, imminently threatens the ability of Collateral Agent to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Borrower or any of its Subsidiaries after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Collateral Agent, could reasonably be expected to result in a material diminution in value of the Collateral.

**9.2 Power of Attorney.** Borrower hereby irrevocably appoints Collateral Agent as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's or any of its Subsidiaries' name on any checks or other forms of payment or security; (b) sign Borrower's or any of its Subsidiaries' name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Collateral Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Collateral Agent or a third party as the Code or any applicable law permits. Borrower hereby appoints Collateral Agent as its lawful attorney-in-fact to sign Borrower's or any of its Subsidiaries' name on any documents necessary to perfect or continue the perfection of Collateral Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Collateral Agent and the Lenders are under no further obligation to make Credit Extensions hereunder. Collateral Agent's foregoing appointment as Borrower's or any of its Subsidiaries' attorney in fact, and all of Collateral Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations)

have been fully repaid and performed and Collateral Agent's and the Lenders' obligation to provide Credit Extensions terminates.

**9.3 Protective Payments.** If Borrower or any of its Subsidiaries fail to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower or any of its Subsidiaries is obligated to pay under this Agreement or any other Loan Document, Collateral Agent may obtain such insurance or make such payment, and all amounts so paid by Collateral Agent are Lenders' Expenses and immediately due and payable, bearing interest at the Default Rate, and secured by the Collateral. Collateral Agent will make reasonable efforts to provide Borrower with notice of Collateral Agent obtaining such insurance or making such payment at the time it is obtained or paid or within a reasonable time thereafter. No such payments by Collateral Agent are deemed an agreement to make similar payments in the future or Collateral Agent's waiver of any Event of Default.

**9.4 Application of Payments and Proceeds.** Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Collateral Agent from or on behalf of Borrower or any of its Subsidiaries of all or any part of the Obligations, and, as between Borrower on the one hand and Collateral Agent and Lenders on the other, Collateral Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Collateral Agent may deem advisable notwithstanding any previous application by Collateral Agent, and (b) the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: first, to the Lenders' Expenses; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); third, to the principal amount of the Obligations outstanding; and fourth, to any other indebtedness or obligations of Borrower owing to Collateral Agent or any Lender under the Loan Documents. Any balance remaining shall be delivered to Borrower or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category. Any reference in this Agreement to an allocation between or sharing by the Lenders of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to Pro Rata Share unless expressly provided otherwise. Collateral Agent, or if applicable, each Lender, shall promptly remit to the other Lenders such sums as may be necessary to ensure the ratable repayment of each Lender's portion of any Term Loan and the ratable distribution of interest, fees and reimbursements paid or made by Borrower. Notwithstanding the foregoing, a Lender receiving a scheduled payment shall not be responsible for determining whether the other Lenders also received their scheduled payment on such date; provided, however, if it is later determined that a Lender received more than its ratable share of scheduled payments made on any date or dates, then such Lender shall remit to Collateral Agent or other Lenders such sums as may be necessary to ensure the ratable payment of such scheduled payments, as instructed by Collateral Agent. If any payment or distribution of any kind or character, whether in cash, properties or securities, shall be received by a Lender in excess of its ratable share, then the portion of such payment or distribution in excess of such Lender's ratable share shall be received by such Lender in trust for and shall be promptly paid over to the other Lender for application to the payments of amounts due on the other Lenders' claims. To the extent any payment for the account of Borrower is required to be returned as a voidable transfer or otherwise, the Lenders shall contribute to one another as is necessary to ensure that such return of payment is on a pro rata basis. If any Lender shall obtain possession of any Collateral, it shall hold such Collateral for itself and as agent and bailee for Collateral Agent and other Lenders for purposes of perfecting Collateral Agent's security interest therein.

**9.5 Liability for Collateral.** So long as Collateral Agent and the Lenders comply with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Collateral Agent and the Lenders, Collateral Agent and the Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

**9.6 No Waiver; Remedies Cumulative.** Failure by Collateral Agent or any Lender, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Collateral Agent or any Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Collateral Agent and the Required Lenders and then is only effective for the specific instance and purpose for which it is given. The rights and remedies of Collateral Agent and the Lenders under this Agreement and the other Loan Documents are cumulative. Collateral Agent and the Lenders have all rights and remedies provided under the Code, any applicable law, by law, or in equity. The exercise by Collateral Agent or any Lender of one right or remedy is not an election, and Collateral Agent's or any Lender's waiver of any Event of Default is not a continuing waiver. Collateral Agent's or any Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

**9.7 Demand Waiver.** Borrower waives, to the fullest extent permitted by law, demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Collateral Agent or any Lender on which Borrower or any Subsidiary is liable.

## 10. NOTICES

All notices, consents, requests, approvals, demands, or other communication (collectively, "**Communication**") by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail (if an email address is specified herein) or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Any of Collateral Agent, Lender or Borrower may change its mailing address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower:	SORRENTO THERAPEUTICS, INC. 6042 Cornerstone Court, Suite B San Diego, CA 92121 Attn: Chief Financial Officer Fax: (858) 210-3759 Email: rvincent@sorrentotherapeutics.com
with a copy (which shall not constitute notice) to:	Cooley LLP 3175 Hanover Street Palo Alto, CA 94304-1130 Attn: Glen Sato Fax: (650) 849-7400 Email: gsato@cooley.com
If to Collateral Agent:	OXFORD FINANCE LLC 133 North Fairfax Street Alexandria, Virginia 22314 Attention: Legal Department Fax: (703) 519-5225 Email: LegalDepartment@oxfordfinance.com
with a copy to	SILICON VALLEY BANK 4370 La Jolla Village Drive, Suite 1050 San Diego CA 92122 Attn: Mike White Fax: (858) 622-1424 Email: mwhite@svb.com



with a copy (which shall not constitute notice) to: DLA Piper LLP (US)  
4365 Executive Drive, Suite 1100  
San Diego, California 92121-2133  
Attn: Troy Zander  
Fax: (858) 638-5086  
Email: troy.zander@dlapiper.com

#### **11. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER, AND JUDICIAL REFERENCE**

California law governs the Loan Documents without regard to principles of conflicts of law. Borrower, Collateral Agent and each Lender each submit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Collateral Agent or any Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Collateral Agent or any Lender. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER, COLLATERAL AGENT AND EACH LENDER EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.**

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise

self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

## **11. GENERAL PROVISIONS**

**11.1 Successors and Assigns.** This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not transfer, pledge or assign this Agreement or any rights or obligations under it without Collateral Agent's and each Lender's prior written consent (which may be granted or withheld in Collateral Agent's and each Lender's discretion, subject to Section 11.6). The Lenders have the right, without the consent of or notice to Borrower, to sell, transfer, assign, pledge, negotiate, or grant participation in (**any** such sale, transfer, assignment, negotiation, or grant of a participation, a "**Lender Transfer**") all or any part of, or any interest in, the Lenders' obligations, rights, and benefits under this Agreement and the other Loan Documents; *provided, however*, that any such Lender Transfer (other than a transfer, pledge, sale or assignment to an Eligible Assignee) of its obligations, rights, and benefits under this Agreement and the other Loan Documents shall require the prior written consent of the Required Lenders (such approved assignee, an "**Approved Lender**"). Borrower and Collateral Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned until Collateral Agent shall have received and accepted an effective assignment agreement in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee or Approved Lender as Collateral Agent reasonably shall require. Notwithstanding anything to the contrary contained herein, so long as no Event of Default has occurred and is continuing, no Lender Transfer (other than a Lender Transfer (i) in respect of the Warrants or (ii) in connection with (x) assignments by a Lender due to a forced divestiture at the request of any regulatory agency; or (y) upon the occurrence of a default, event of default or similar occurrence with respect to a Lender's own financing or securitization transactions) shall be permitted, without Borrower's consent, to any Person which is an Affiliate or Subsidiary of Borrower, a direct competitor of Borrower or a vulture hedge fund, each as determined by Collateral Agent.

**11.2 Indemnification.** Borrower agrees to indemnify, defend and hold Collateral Agent and the Lenders and their respective directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Collateral Agent or the Lenders (each, an "**Indemnified Person**") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "**Claims**") asserted by any other party in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents; and (b) all losses or Lenders' Expenses incurred, or paid by Indemnified Person in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents between Collateral Agent, and/or the Lenders and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct. Borrower hereby further indemnifies, defends and holds each Indemnified Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnified Person) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnified Person shall be designated a party thereto and including any such proceeding initiated by or on behalf of Borrower, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Collateral Agent or Lenders) asserting any right to payment for the transactions contemplated hereby which may be imposed on, incurred by or asserted against such Indemnified Person as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the loan proceeds except for liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements directly caused by such Indemnified Person's gross negligence or willful misconduct.

**11.3 Time of Essence.** Time is of the essence for the performance of all Obligations in this Agreement.

**11.4 Severability of Provisions.** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

**11.5 Correction of Loan Documents.** Collateral Agent and the Lenders may correct patent errors and fill in any blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties, so long as Collateral Agent provides Borrower with written notice of such correction and allows Borrower at least ten (10) days to object to such correction. In the event of such objection, such correction shall not be made except by an amendment signed by both Collateral Agent and Borrower.

**11.6 Amendments in Writing; Integration.** (a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, or any consent to any departure by Borrower or any of its Subsidiaries therefrom, shall in any event be effective unless the same shall be in writing and signed by Borrower, Collateral Agent and the Required Lenders provided that:

(i) no such amendment, waiver or other modification that would have the effect of increasing or reducing a Lender's Term Loan Commitment or Commitment Percentage shall be effective as to such Lender without such Lender's written consent;

(ii) no such amendment, waiver or modification that would affect the rights and duties of Collateral Agent shall be effective without Collateral Agent's written consent or signature;

(iii) no such amendment, waiver or other modification shall, unless signed by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Term Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Term Loan (B) postpone the date fixed for, or waive, any payment of principal of any Term Loan or of interest on any Term Loan (other than default interest) or any fees provided for hereunder (other than late charges or for any termination of any commitment); (C) change the definition of the term "**Required Lenders**" or the percentage of Lenders which shall be required for the Lenders to take any action hereunder; (D) release all or substantially all of any material portion of the Collateral, authorize Borrower to sell or otherwise dispose of all or substantially all or any material portion of the Collateral or release any Guarantor of all or any portion of the Obligations or its guaranty obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be expressly permitted under this Agreement or the other Loan Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 11.6 or the definitions of the terms used in this Section 11.6 insofar as the definitions affect the substance of this Section 11.6; (F) consent to the assignment, delegation or other transfer by Borrower of any of its rights and obligations under any Loan Document or release Borrower of its payment obligations under any Loan Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; (G) amend any of the provisions of Section 9.4 or amend any of the definitions of Pro Rata Share, Term Loan Commitment, Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder; (H) subordinate the Liens granted in favor of Collateral Agent securing the Obligations; or (I) amend any of the provisions of Section 11.10. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F), (G) and (H) of the preceding sentence;

(iv) the provisions of the foregoing clauses (i), (ii) and (iii) are subject to the provisions of any interlender or agency agreement among the Lenders and Collateral Agent pursuant to which any Lender may agree to give its consent in connection with any amendment, waiver or modification of the Loan Documents only in the event of the unanimous agreement of all Lenders.

(b) Other than as expressly provided for in Section 11.6(a)(i)-(iii), Collateral Agent may, if requested by the Required Lenders, from time to time designate covenants in this Agreement less restrictive by notification to a representative of Borrower.

(c) This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

**11.7 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

**11.8 Survival.** All covenants, representations and warranties made in this Agreement continue in full force and effect until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. Without limiting the foregoing, except as otherwise provided in Section 4.1, the grant of security interest by Borrower in Section 4.1 shall survive until the termination of all Bank Services Agreements. The obligation of Borrower in Section 11.2 to indemnify each Lender and Collateral Agent, as well as the confidentiality provisions in Section 11.9 below, shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

**11.9 Confidentiality.** In handling any confidential information of Borrower, the Lenders and Collateral Agent shall exercise the same degree of care that it exercises for their own proprietary information, but disclosure of information may be made: (a) subject to the terms and conditions of this Agreement, to the Lenders' and Collateral Agent's Subsidiaries or Affiliates, or in connection with a Lender's own financing or securitization transactions and upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; (b) to prospective transferees (other than those identified in (a) above) or purchasers of any interest in the Credit Extensions (provided, however, the Lenders and Collateral Agent shall, except upon the occurrence and during the continuance of an Event of Default, obtain such prospective transferee's or purchaser's agreement to the terms of this provision or to similar confidentiality terms); (c) as required by law, regulation, subpoena, or other order; (d) to Lenders' or Collateral Agent's regulators or as otherwise required in connection with an examination or audit; (e) as Collateral Agent reasonably considers appropriate in exercising remedies under the Loan Documents; and (f) to third party service providers of the Lenders and/or Collateral Agent so long as such service providers have executed a confidentiality agreement with the Lenders and Collateral Agent with terms no less restrictive than those contained herein. Confidential information does not include information that either: (i) is in the public domain or in the Lenders' and/or Collateral Agent's possession when disclosed to the Lenders and/or Collateral Agent, or becomes part of the public domain after disclosure to the Lenders and/or Collateral Agent; or (ii) is disclosed to the Lenders and/or Collateral Agent by a third party, if the Lenders and/or Collateral Agent does not know that the third party is prohibited from disclosing the information. Collateral Agent and the Lenders may use confidential information for any purpose, including, without limitation, for the development of client databases, reporting purposes, and market analysis, in each case so long as Collateral Agent does not disclose Borrower's identity or the identity of any person associated with Borrower unless otherwise expressly permitted by this Agreement. The provisions of the immediately preceding sentence shall survive the termination of this Agreement. The agreements provided under this Section 11.9 supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section 11.9.

**11.10 Right of Set Off.** Borrower hereby grants to Collateral Agent and to each Lender, a lien, security interest and right of set off as security for all Obligations to Collateral Agent and each Lender hereunder, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Collateral Agent or the Lenders or any entity under the control of Collateral Agent or the Lenders (including a Collateral Agent affiliate) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Collateral Agent or the Lenders may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmaturing and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE COLLATERAL AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

**11.11 Silicon Valley Bank as Agent.** Collateral Agent hereby appoints Silicon Valley Bank ("SVB") as its agent (and SVB hereby accepts such appointment) for the purpose of perfecting Collateral Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected by possession or control, including without limitation, all deposit accounts maintained at SVB.

**11.12 Cooperation of Borrower.** If necessary, Borrower agrees to (i) execute any documents (including new Secured Promissory Notes) reasonably required to effectuate and acknowledge each assignment of a Term Loan Commitment or Loan to an assignee in accordance with Section 11.1, (provided such assignment is in accordance with section 11.1), (ii) make Borrower's management available to meet with Collateral Agent and prospective participants and assignees of Term Loan Commitments or Credit Extensions (which meetings shall be conducted no more often than twice every twelve months unless an Event of Default has occurred and is continuing), and (iii) assist Collateral Agent or the Lenders in the preparation of information relating to the financial affairs of Borrower as any prospective participant or assignee of a Term Loan Commitment or Term Loan reasonably may request in accordance with section 11.1 and subject to Section 11.9. Subject to the provisions of Sections 11.1 and 11.9, Borrower authorizes each Lender to disclose to any prospective participant or assignee of a Term Loan Commitment, any and all information in such Lender's possession concerning Borrower and its financial affairs which has been delivered to such Lender by or on behalf of Borrower pursuant to this Agreement, or which has been delivered to such Lender by or on behalf of Borrower in connection with such Lender's credit evaluation of Borrower prior to entering into this Agreement.

**11.13 Borrower Liability.** Either Borrower may, acting singly, request Credit Extensions hereunder. Each Borrower hereby appoints the other as agent for the other for all purposes hereunder, including with respect to requesting Credit Extensions hereunder. Each Borrower hereunder shall be jointly and severally obligated to repay all Credit Extensions made hereunder, regardless of which Borrower actually receives said Credit Extension, as if each Borrower hereunder directly received all Credit Extensions. Each Borrower waives (a) any suretyship defenses available to it under the Code or any other applicable law, including, without limitation, the benefit of California Civil Code Section 2815 permitting revocation as to future transactions and the benefit of California Civil Code Sections 1432, 2809, 2810, 2819, 2839, 2845, 2847, 2848, 2849, 2850, and 2899 and 3433, and (b) any right to require Collateral Agent or any Lender to: (i) proceed against any Borrower or any other person; (ii) proceed against or exhaust any security; or (iii) pursue any other remedy. Collateral Agent and or any Lender may exercise or not exercise any right or remedy it has against any Borrower or any security it holds (including the right to foreclose by judicial or non-judicial sale) without affecting any Borrower's liability. Notwithstanding any other provision of this Agreement or other related document, each Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrower to the rights of Collateral Agent and the Lenders under this Agreement) to seek contribution, indemnification or any other form of reimbursement from any other Borrower, or any other Person now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by Borrower with respect to the Obligations in connection with this Agreement or otherwise and all rights that it might have to benefit from, or to participate in, any security for the Obligations as a result of any payment made by Borrower with respect to the Obligations in connection with this Agreement or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section shall be null and void. If any payment is made to a Borrower in contravention of this Section, such Borrower shall hold such payment in trust for Collateral Agent and the Lenders and such payment shall be promptly delivered to Collateral Agent for application to the Obligations, whether matured or unmatured.

## **12. DEFINITIONS**

**12.1 Definitions.** As used in this Agreement, the following terms have the following meanings:

**"Account"** is any "account" as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

**"Account Debtor"** is any "account debtor" as defined in the Code with such additions to such term as may hereafter be made.

**"Affiliate"** of any Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

**"Agreement"** is defined in the preamble hereof.

“**Amortization Date**” is, May 1, 2014; provided that, if Borrower achieves the Equity Event prior to December 31, 2013, the Amortization Date shall be November 1, 2014.

“**Annual Projections**” is defined in Section 6.2(a).

“**Anti-Terrorism Laws**” are any laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

“**Approved Fund**” is any (i) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business or (ii) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (i) and that, with respect to each of the preceding clauses (i) and (ii), is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

“**Approved Lender**” is defined in Section 11.1.

“**Bank Services**” are any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank’s various agreements related thereto (each, a “**Bank Services Agreement**”).

“**Bank**” is defined in the preamble hereof.

“**Basic Rate**” is, with respect to a Term Loan, the per annum rate of interest (based on a year of three hundred sixty (360) days) equal to the greater of (i) seven and ninety-five hundredths percent (7.95%) and (ii) the sum of (a) the three (3) months U.S. LIBOR rate reported in the Wall Street Journal three (3) Business Days prior to the Funding Date of such Term Loan, plus (b) seven and sixty-eight hundredths percent (7.68%).

“**Blocked Person**” is any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224, or (e) a Person that is named a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list.

“**Borrower**” is defined in the preamble hereof.

“**Borrower’s Books**” are Borrower’s or any of its Subsidiaries’ books and records including ledgers, federal, and state tax returns, records regarding Borrower’s or its Subsidiaries’ assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“**Business Day**” is any day that is not a Saturday, Sunday or a day on which Collateral Agent is closed.

“**Cash Equivalents**” are (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc., and (c) certificates of deposit maturing no more than one (1) year after issue provided that the account in which any such certificate of deposit is

maintained is subject to a Control Agreement in favor of Collateral Agent. For the avoidance of doubt, the direct purchase by Borrower or any of its Subsidiaries of any Auction Rate Securities, or purchasing participations in, or entering into any type of swap or other derivative transaction, or otherwise holding or engaging in any ownership interest in any type of Auction Rate Security by Borrower or any of its Subsidiaries shall be conclusively determined by the Lenders as an ineligible Cash Equivalent, and any such transaction shall expressly violate each other provision of this Agreement governing Permitted Investments. Notwithstanding the foregoing, Cash Equivalents does not include and Borrower, and each of its Subsidiaries, are prohibited from purchasing, purchasing participations in, entering into any type of swap or other equivalent derivative transaction, or otherwise holding or engaging in any ownership interest in any type of debt instrument, including, without limitation, any corporate or municipal bonds with a long-term nominal maturity for which the interest rate is reset through a dutch auction and more commonly referred to as an auction rate security (each, an “**Auction Rate Security**”).

“**Claims**” are defined in Section 11.2.

“**Code**” is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Collateral Agent’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of California, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“**Collateral**” is any and all properties, rights and assets of Borrower described on Exhibit A.

“**Collateral Account**” is any Deposit Account, Securities Account, or Commodity Account, or any other bank account maintained by Borrower or any Subsidiary at any time.

“**Collateral Agent**” is, Oxford, not in its individual capacity, but solely in its capacity as agent on behalf of and for the benefit of the Lenders.

“**Commitment Percentage**” is set forth in Schedule 1.1, as amended from time to time.

“**Commodity Account**” is any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.

“**Communication**” is defined in Section 10.

“**Compliance Certificate**” is that certain certificate in the form attached hereto as Exhibit C.

“**Contingent Obligation**” is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“**Control Agreement**” is any control agreement entered into among the depository institution at which Borrower or any of its Subsidiaries maintains a Deposit Account or the securities intermediary or commodity

intermediary at which Borrower or any of its Subsidiaries maintains a Securities Account or a Commodity Account, Borrower and such Subsidiary, and Collateral Agent pursuant to which Collateral Agent obtains control (within the meaning of the Code) for the benefit of the Lenders over such Deposit Account, Securities Account, or Commodity Account.

“**Copyrights**” are any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

“**Credit Extension**” is any Term Loan or any other extension of credit by Collateral Agent or Lenders for Borrower’s benefit.

“**Default Rate**” is defined in Section 2.3(b).

“**Deposit Account**” is any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

“**Designated Deposit Account**” is Borrower’s deposit account, account number xxxxxxx599, maintained with Bank.

“**Disbursement Letter**” is that certain form attached hereto as Exhibit B-1.

“**Dollar Equivalent**” is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

“**Dollars**,” “**dollars**” and “**\$**” each mean lawful money of the United States.

“**Effective Date**” is defined in the preamble of this Agreement.

“**Eligible Assignee**” is (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund and (iv) any commercial bank, savings and loan association or savings bank or any other entity which is an “accredited investor” (as defined in Regulation D under the Securities Act of 1933, as amended) and which extends credit or buys loans as one of its businesses, including insurance companies, mutual funds, lease financing companies and commercial finance companies, in each case, which either (A) has a rating of BBB or higher from Standard & Poor’s Rating Group and a rating of Baa2 or higher from Moody’s Investors Service, Inc. at the date that it becomes a Lender or (B) has total assets in excess of Five Billion Dollars (\$5,000,000,000.00), and in each case of clauses (i) through (iv), which, through its applicable lending office, is capable of lending to Borrower without the imposition of any withholding or similar taxes; provided that notwithstanding the foregoing, “Eligible Assignee” shall not include, unless an Event of Default has occurred and is continuing, (i) Borrower or any of Borrower’s Affiliates or Subsidiaries or (ii) a direct competitor of Borrower or a vulture hedge fund, each as determined by Collateral Agent. Notwithstanding the foregoing, (x) in connection with assignments by a Lender due to a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party and (y) in connection with a Lender’s own financing or securitization transactions, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party providing such financing or formed to undertake such securitization transaction and any transferee of such Person or party upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; provided that no such sale, transfer, pledge or assignment under this clause (y) shall release such Lender from any of its obligations hereunder or substitute any such Person or party for such Lender as a party hereto until Collateral Agent shall have received and accepted an effective assignment agreement from such Person or party in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee as Collateral Agent reasonably shall require.



**“Equipment”** is all “equipment” as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

**“Equity Event”** is the receipt by Borrower on or after the Effective Date of unrestricted net cash proceeds of not less than Twenty Million Dollars (\$20,000,000.00) from (i) the issuance and sale by Borrower of its equity securities (or the issuance of convertible promissory notes provided the same are not repayable in cash, but may only be converted into equity securities, provided that notwithstanding the foregoing, in the event any convertible notes issued after the Effective Date convert prior to the December 31, 2013 Equity Event due date, the proceeds from such convertible notes shall count as cash proceeds in measuring the foregoing \$20,000,000 minimum cash proceeds towards the Equity Event) and/or (ii) a one-time, non-refundable “up front” payment in connection with a joint venture, collaboration or other partnering transaction.

**“ERISA”** is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

**“Existing Indebtedness”** is the indebtedness of Borrower to Silicon Valley Bank in the aggregate principal outstanding amount as of the Effective Date of approximately Seven Hundred Sixty Two Thousand Dollars (\$762,000.00) pursuant to that certain Loan and Security Agreement, dated February 22, 2013, entered into by and between Silicon Valley Bank and Borrower.

**“Event of Default”** is defined in Section 8.

**“Final Payment”** is a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest) due on the earliest to occur of (a) the Maturity Date, or (b) the acceleration of any Term Loan, or (c) the prepayment of a Term Loan pursuant to Section 2.2(c) or (d), equal to the original principal amount of such Term Loan multiplied by the Final Payment Percentage, payable to Lenders in accordance with their respective Pro Rata Shares.

**“Final Payment Percentage”** is four percent (4.00%).

**“Foreign Currency”** means lawful money of a country other than the United States.

**“Foreign Subsidiary”** is a Subsidiary that is not an entity organized under the laws of the United States or any territory thereof.

**“Funding Date”** is any date on which a Credit Extension is made to or on account of Borrower which shall be a Business Day.

**“FX Contract”** is any foreign exchange contract by and between Borrower and Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency on a specified date.

**“GAAP”** is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination.

**“General Intangibles”** are all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter

pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

**“Governmental Approval”** is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

**“Governmental Authority”** is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

**“Guarantor”** is any Person providing a Guaranty in favor of Collateral Agent.

**“Guaranty”** is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

**“Indebtedness”** is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

**“Indemnified Person”** is defined in Section 11.2.

**“Insolvency Proceeding”** is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

**“Insolvent”** means not Solvent.

**“Intellectual Property”** means all of Borrower’s or any Subsidiary’s right, title and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;
- (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;
- (c) any and all source code;
- (d) any and all design rights which may be available to Borrower;
- (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
- (f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

**“Inventory”** is all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

**“Investment”** is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance, payment or capital contribution to any Person.

**“Key Person”** is (A) each of Parent’s (i) President and Chief Executive Officer, who is Henry Ji as of the Effective Date and (ii) Chief Financial Officer, who is Richard Vincent as of the Effective Date and (B) IgDraSol’s (i) Chief Science Officer, who is Vuong Trieu as of the Effective Date and (ii) Chief Commercial Officer, who is George Uy as of the Effective Date.

**“Lender”** is any one of the Lenders.

**“Lenders”** are the Persons identified on Schedule 1.1 hereto and each assignee that becomes a party to this Agreement pursuant to Section 11.1.

**“Lenders’ Expenses”** are all audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Collateral Agent and/or the Lenders in connection with the Loan Documents.

**“Letter of Credit”** is a standby or commercial letter of credit issued by Bank upon request of Borrower based upon an application, guarantee, indemnity, or similar agreement.

**“Lien”** is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

**“Loan Documents”** are, collectively, this Agreement, the Warrants, the Perfection Certificates, each Compliance Certificate, each Disbursement Letter, each Loan Payment/Advance Request Form and any Bank Services Agreement, the Post Closing Letter, any subordination agreements, any note, or notes or guaranties executed by Borrower or any other Person, and any other present or future agreement entered into by Borrower, any Guarantor or any other Person for the benefit of the Lenders and Collateral Agent in connection with this Agreement; all as amended, restated, or otherwise modified.

**“Loan Payment/Advance Request Form”** is that certain form attached hereto as Exhibit B-2.

**“Material Adverse Change”** is (a) a material impairment in the perfection or priority of Collateral Agent’s Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations or condition (financial or otherwise) of Borrower or any Subsidiary; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

**“Maturity Date”** is, for each Term Loan, the date which is (x) thirty-five (35) months after the Amortization Date, if the Amortization Date is May 1, 2014; or (y) twenty-nine (29) months after the Amortization Date, if the Amortization Date is November 1, 2014.

**“Obligations”** are all of Borrower’s obligations to pay when due any debts, principal, interest, Lenders’ Expenses, the Prepayment Fee, the Final Payment, and other amounts Borrower owes the Lenders now or later, in connection with, related to, following, or arising from, out of or under, this Agreement or, the other Loan Documents (other than the Warrants), or otherwise, including, without limitation, all obligations relating to letters of credit (including reimbursement obligations for drawn and undrawn letters of credit), cash management services, and foreign exchange contracts, if any, and including interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Collateral Agent, and the performance of Borrower’s duties under the Loan Documents (other than the Warrants).

**“OFAC”** is the U.S. Department of Treasury Office of Foreign Assets Control.

**“OFAC Lists”** are, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

**“Operating Documents”** are, for any Person, such Person’s formation documents, as certified by the Secretary of State (or equivalent agency) of such Person’s jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

**“Patents”** means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

**“Payment Date”** is the first (1<sup>st</sup>) calendar day of each calendar month, commencing on November 1, 2013.

**“Perfection Certificate”** and **“Perfection Certificates”** is defined in Section 5.1.

**“Permitted Indebtedness”** is:

- (a) Borrower’s Indebtedness to the Lenders and Collateral Agent under this Agreement and the other Loan Documents;
- (b) Indebtedness existing on the Effective Date and disclosed on the Perfection Certificate(s);
- (c) Subordinated Debt;
- (d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

(e) Indebtedness consisting of capitalized lease obligations and purchase money Indebtedness, in each case incurred by Borrower or any of its Subsidiaries to finance the acquisition, repair, improvement or construction of fixed or capital assets of such person, provided that (i) the aggregate outstanding principal amount of all such Indebtedness does not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) at any time and (ii) the principal amount of such Indebtedness does not exceed the lower of the cost or fair market value of the property so acquired or built or of such repairs or improvements financed with such Indebtedness (each measured at the time of such acquisition, repair, improvement or construction is made);

(f) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of Borrower’s business;

(g) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (e) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose materially more burdensome terms upon Borrower, or its Subsidiary, as the case may be;

(h) Indebtedness for any Bank Services, and

(i) other Indebtedness not enumerated above not to exceed Ten Thousand Dollars (\$10,000.00) at any time.

**“Permitted Investments”** are:

- (a) Investments disclosed on the Perfection Certificate(s) and existing on the Effective Date;

(b) (i) Investments consisting of cash and Cash Equivalents, and (ii) any other Investments permitted by Borrower's investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Collateral Agent (and Collateral Agent acknowledges the investment policy delivered on or prior to the Effective Date is hereby approved);

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

(d) Investments consisting of deposit accounts in which Collateral Agent has a perfected security interest;

(e) Investments in connection with Transfers permitted by Section 7.1;

(f) Investments (i) by Borrower in Sorrento HK not to exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate in any fiscal year; (ii) by Borrower or any secured Guarantor in any other Borrower or secured Guarantor; (iii) by any Subsidiary in Borrower or secured Guarantor; and (iv) by Borrower in any new Subsidiaries created after the Effective Date not to exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate in any fiscal year;

(g) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors; not to exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate for (i) and (ii) in any fiscal year;

(h) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(i) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (i) shall not apply to Investments of Borrower in any Subsidiary;

(j) non-cash Investments in joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support; and

(k) other Investments not enumerated above not to exceed Ten Thousand Dollars (\$10,000.00) at any time.

**"Permitted Licenses"** are (A) licenses of over-the-counter software that is commercially available to the public, and (B) non-exclusive and exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, provided, that, with respect to each such license described in clause (B), (i) no Event of Default has occurred or is continuing at the time of such license; (ii) the license constitutes an arms-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Intellectual Property and do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise Transfer any Intellectual Property; (iii) in the case of any exclusive license, (x) Borrower delivers ten (10) days' prior written notice and a brief summary of the terms of the proposed license to Collateral Agent and the Lenders and delivers to Collateral Agent and the Lenders copies of the final executed licensing documents in connection with the exclusive license promptly upon consummation thereof, and (y) any such license could not result in a legal transfer of title of the licensed property but may be exclusive in respects other than territory and may be exclusive as to territory only as to discrete geographical areas outside of the United States; and (iv) all upfront payments, royalties, milestone payments or other proceeds arising from the licensing agreement that are payable to Borrower or any of its Subsidiaries are paid to a Deposit Account that is governed by a Control Agreement.

**“Permitted Liens”** are:

(a) Liens existing on the Effective Date and disclosed on the Perfection Certificates or arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) liens securing Indebtedness permitted under clause (e) of the definition of **“Permitted Indebtedness,”** provided that (i) such liens exist prior to the acquisition of, or attach substantially simultaneous with, or within twenty (20) days after the, acquisition, lease, repair, improvement or construction of, such property financed or leased by such Indebtedness and (ii) such liens do not extend to any property of Borrower other than the property (and proceeds thereof) acquired, leased or built, or the improvements or repairs, financed by such Indebtedness;

(d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed Twenty Five Thousand Dollars (\$25,000.00), and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) Liens to secure payment of workers’ compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) leases or subleases of real property granted in the ordinary course of Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), if the leases, subleases, licenses and sublicenses do not prohibit granting Collateral Agent or any Lender a security interest therein;

(h) banker’s liens, rights of setoff and Liens in favor of financial institutions incurred in the ordinary course of business arising in connection with Borrower’s deposit accounts or securities accounts held at such institutions solely to secure payment of fees and similar costs and expenses and provided such accounts are maintained in compliance with Section 6.6(b) hereof;

(i) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.4 or 8.7; and

(j) Liens consisting of Permitted Licenses.

**“Person”** is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

**“Post Closing Letter”** is that certain Post Closing Letter dated as of the Effective Date by and between Collateral Agent and Borrower.

**“Prepayment Fee”** is, with respect to any Term Loan subject to prepayment prior to the Maturity Date, whether by mandatory or voluntary prepayment, acceleration or otherwise, an additional fee payable to the Lenders in amount equal to:

(i) for a prepayment made on or after the Funding Date of such Term Loan through and including the first anniversary of the Funding Date of such Term Loan, three percent (3.00%) of the principal amount of such Term Loan prepaid;

(ii) for a prepayment made after the date which is after the first anniversary of the Funding Date of such Term Loan through and including the second anniversary of the Funding Date of such Term Loan, two percent (2.00%) of the principal amount of the Term Loans prepaid; and

(iii) for a prepayment made after the date which is after the second anniversary of the Funding Date of such Term Loan and prior to the Maturity Date, one percent (1.00%) of the principal amount of the Term Loans prepaid.

**“Pro Rata Share”** is, as of any date of determination, with respect to each Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by dividing the outstanding principal amount of Term Loans held by such Lender by the aggregate outstanding principal amount of all Term Loans.

**“Registered Organization”** is any “registered organization” as defined in the Code with such additions to such term as may hereafter be made.

**“Required Lenders”** means (i) for so long as all of the Persons that are Lenders on the Effective Date (each an **“Original Lender”**) have not assigned or transferred any of their interests in their Term Loan, Lenders holding one hundred percent (100%) of the aggregate outstanding principal balance of the Term Loan, or (ii) at any time from and after any Original Lender has assigned or transferred any interest in its Term Loan, Lenders holding at least sixty six percent (66%) of the aggregate outstanding principal balance of the Term Loan and, in respect of this clause (ii), (A) each Original Lender that has not assigned or transferred any portion of its Term Loan, (B) each assignee or transferee of an Original Lender’s interest in the Term Loan, but only to the extent that such assignee or transferee is an Affiliate or Approved Fund of such Original Lender, and (C) any Person providing financing to any Person described in clauses (A) and (B) above; provided, however, that this clause (C) shall only apply upon the occurrence of a default, event of default or similar occurrence with respect to such financing.

**“Requirement of Law”** is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

**“Responsible Officer”** is any of the President, Chief Executive Officer, or Chief Financial Officer of Borrower acting alone.

**“Secured Promissory Note”** is defined in Section 2.4.

**“Secured Promissory Note Record”** is a record maintained by each Lender with respect to the outstanding Obligations owed by Borrower to Lender and credits made thereto.

**“Securities Account”** is any “securities account” as defined in the Code with such additions to such term as may hereafter be made.

**“Shares”** is one hundred percent (100%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower or Borrower’s Subsidiary, in any Subsidiary; provided that, (x) in the event Borrower demonstrates to Collateral Agent’s reasonable satisfaction that a pledge of more than sixty five percent (65%) of the Shares of such Subsidiary which is a Foreign Subsidiary, creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code, and (y) in any case, with respect to

Sorrento HK, “Shares” shall mean sixty-five percent (65%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower or its Subsidiary in such Foreign Subsidiary.

“**Solvent**” is, with respect to any Person: the fair salable value of such Person’s consolidated assets (including goodwill minus disposition costs) exceeds the fair value of such Person’s liabilities; such Person is not left with unreasonably small capital after the transactions in this Agreement; and such Person is able to pay its debts (including trade debts) as they mature.

“**Sorrento HK**” is Sorrento Therapeutics, Inc. Hong Kong Limited, an entity organized under the laws of Hong Kong and a wholly-owned Subsidiary of Parent.

“**Subordinated Debt**” is indebtedness incurred by Borrower or any of its Subsidiaries from time to time subordinated to all Indebtedness of Borrower and/or its Subsidiaries to the Lenders (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Collateral Agent and the Lenders entered into between Collateral Agent, Borrower, and/or any of its Subsidiaries, and the other creditor), on terms acceptable to Collateral Agent and the Lenders.

“**Subsidiary**” is, with respect to any Person, any Person of which more than fifty percent (50%) of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or through one or more intermediaries.

“**Term Loan**” is defined in Section 2.2(a) hereof.

“**Term Loan Commitment**” is, for any Lender, the obligation of such Lender to make a Term Loan, up to the principal amount shown on Schedule 1.1. “**Term Loan Commitments**” means the aggregate amount of such commitments of all Lenders.

“**Trademarks**” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

“**Transfer**” is defined in Section 7.1.

“**Warrants**” are those certain Warrants to Purchase Stock dated as of the Effective Date, or any date thereafter, issued by Borrower in favor of each Lender or such Lender’s Affiliates.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**BORROWER:**

SORRENTO THERAPEUTICS, INC.

By /s/ Richard Vincent  
Name: Richard Vincent  
Title: CFO

IGDRASOL, INC.

By /s/ Henry Ji  
Name: Henry Ji  
Title: President and CEO

**COLLATERAL AGENT AND LENDER:**

OXFORD FINANCE LLC

By /s/ Mark Davis  
Name: Mark Davis  
Title: Vice President – Finance, Secretary & Treasurer

**LENDER:**

SILICON VALLEY BANK

By /s/ Anthony Flores  
Name: Anthony Flores  
Title: Vice President

Execution Version

REGISTRATION RIGHTS AGREEMENT

BY AND AMONG  
SORRENTO THERAPEUTICS, INC.  
AND  
THE  
STOCKHOLDERS  
OF  
SHERRINGTON PHARMACEUTICALS, INC.

Dated as of October 9, 2013

## REGISTRATION RIGHTS AGREEMENT

This **REGISTRATION RIGHTS AGREEMENT** (this “Agreement”) is made as of October 9, 2013, by and among Sorrento Therapeutics, Inc., a Delaware corporation (“the “Company”) and the undersigned stockholders of Sherrington Pharmaceuticals, Inc., a Delaware corporation (“Sherrington”) who will receive shares of common stock (“Common Stock”) of the Company pursuant to the Merger Agreement, as defined below (each a “Stockholder” and collectively the “Stockholders”).

### RECITALS

**A.** The Company and Sherrington have entered into that certain Agreement and Plan of Merger and Reorganization dated as of October 9, 2013 by and among the Company, Sherrington, SP Merger Sub, Inc., Aceras BioMedical LLC, the Company Stockholders and Cooley LLP, solely in its capacity as escrow agent (as the same may be amended, modified, restated or supplemented from time to time, the “Merger Agreement”), pursuant to which, upon the terms and subject to the conditions set forth therein, the Company has agreed to merge a subsidiary with and into Sherrington such that all outstanding shares of capital stock of Sherrington will be converted into Shares.

**B.** Pursuant to the Merger Agreement, each Stockholder or its designee shall, upon the Effective Time (as defined below), receive that number of shares of common stock of the Company as set forth opposite such Stockholder’s or its designee’s name on **Schedule A** hereto, which shall be updated as of the Closing (as defined in the Merger Agreement) and from time to time thereafter to reflect the issuance or return of any Shares pursuant to the Merger Agreement or in connection with the Merger (as defined in the Merger Agreement).

**C.** Pursuant to the Merger Agreement, the Company has agreed to enter into this Agreement as a condition to Sherrington’s obligation to consummate the transactions contemplated by the Merger Agreement.

### AGREEMENT

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

**1. DEFINITIONS.** As used in this Agreement, the following terms shall have the meanings set forth below:

**1.1 “Additional Shares”** means any additional shares of Common Stock of the Company issued to the Stockholders pursuant to a stock split, stock dividend or other distribution with respect to, or in exchange or in replacement of, the Shares.

**1.2 “Adverse Disclosure”** means public disclosure of material non-public information which, in the Company’s board of director’s good faith judgment (i) would be required to be made in any report or a Registration Statement filed with the SEC by the Company so that such report or Registration Statement would not be materially misleading; (ii) would not be required to be made at such time but for the filing, effectiveness or continued use of such report or Registration Statement; and (iii) the Company has a bona fide business purpose for not disclosing publicly (other than avoidance of its obligations hereunder), such as a potential material acquisition, divestiture of assets or other material corporate

transaction and the disclosure of such information would reasonably be expected to have a materially adverse effect on the Company.

**1.3** “Affiliate” means, with respect to any Person, any other Person that controls, is controlled by, or is under common control with such Person. The term “control”, as used with respect to any Person, means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

**1.4** “Business Day” means any day, other than a Saturday, Sunday or one on which banks are authorized by law to be closed in San Diego, California.

**1.5** “Effective Date” means the date that the Registration Statement has been declared effective by the SEC.

**1.6** “Effective Time” has the meaning set forth in the Merger Agreement.

**1.7** “Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, as the same may be amended from time to time.

**1.8** “Filing Deadline” means the date no later than October 31, 2013 or such other date as the Company and Stockholders may agree to in writing. For clarity, to the extent that timely filing pursuant to Section 3.1 is a result of a delay in the timely delivery of information required from Sherrington, such filing date shall be automatically extended by a day for each day in which the required information is not delivered.

**1.9** “Form S-1” means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC.

**1.10** “Form S-3” means such form under the Securities Act as in effect on the date hereof or any registration form under the Securities Act subsequently adopted by the SEC that permits incorporation of substantial information by reference to other documents filed by the Company with the SEC.

**1.11** “Governmental Body” shall mean any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; or (c) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, organization, unit, body or Entity and any court or other tribunal).

**1.12** “Holder” (collectively, “Holders”) means any Stockholder and any transferee permitted under Section 2.1 of Registrable Securities, in each case, to the extent holding Registrable Securities.

**1.13** “Legal Proceeding” means any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any court or other Governmental Body or any arbitrator or arbitration panel.

**1.14** “Person” means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, limited liability company or any other entity of whatever nature, and shall include any successor (by merger or otherwise) of such entity.

**1.15** “Prospectus” means the prospectus included in any Registration Statement, all amendments and supplements to such prospectus, including post-effective amendments, and all other material incorporated by reference in such prospectus.

**1.16** “register,” “registered” and “registration” refer to a registration effected by filing with the SEC a Registration Statement in compliance with the Securities Act, and the declaration or ordering by the SEC of the effectiveness of such Registration Statement.

**1.17** “Registrable Securities” means (i) the Shares and (ii) any Additional Shares; provided, however, that Shares or Additional Shares shall cease to be treated as Registrable Securities if (a) a registration statement covering such securities has been declared effective by the SEC and such security has been disposed of pursuant to such effective registration statement, (b) the date on which such security is sold pursuant to Rule 144, (c) the date on which such security ceases to be outstanding or (d) the date on which the Holder thereof, together with its Affiliates, is able to dispose of all of its Registrable Securities without restriction or limitation pursuant to Rule 144 and without the requirement to be in compliance with Rule 144 (or any successor rule).

**1.18** “Registration Statement” means a registration statement or registration statements of the Company filed under the 1933 Act covering the Registrable Securities. References to the Registration Statement shall include any Prospectus.

**1.19** “Rule 144” means Rule 144 under the Securities Act.

**1.20** “Rule 144A” means Rule 144A under the Securities At.

**1.21** “Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, as the same may be amended from time to time.

**1.22** “SEC” means the Securities and Exchange Commission.

**1.23** “Shares” means any and all shares of Common Stock of the Company issuable pursuant to the Merger Agreement (which includes the Merger Consideration, any Future Shares, and any Exclusivity Shares, to the extent that the Exclusivity Shares have not been returned, and no longer are subject to return, to the Company, as each capitalized term is defined in the Merger Agreement).

**1.24** “Transfer” means, directly or indirectly, to sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of (by merger, testamentary disposition, operation of law or otherwise), either voluntarily or involuntarily, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of (by merger, testamentary disposition, operation of law or otherwise), any Shares.

## **2. TRANSFER RESTRICTIONS**

**2.1 General Transfer Restrictions.** The right of the Stockholders to Transfer any Shares held by them is subject to the restrictions set forth in this Section 2.

(a) Each Stockholder acknowledges that the Shares have not been registered under the Securities Act and may not be Transferred except pursuant to an effective registration statement under the Securities Act or pursuant to an exemption from registration under the Securities Act. Each Stockholder covenants that the Shares will only be disposed of pursuant to an effective registration statement under, and in compliance with the requirements of, the Securities Act or pursuant to an available exemption from the registration requirements of the Securities Act, and in compliance with any applicable state and foreign securities laws. In connection with any Transfer of the Shares other than pursuant to an effective registration statement, to the Company or pursuant to Rule 144 or 144A (or any similar provision then in force), the Company may require the Stockholder to provide to the Company an opinion of counsel selected by the Stockholder 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 under the Securities Act. Notwithstanding the foregoing, the Company hereby consents to and agrees to register on the books of the Company and with its transfer agent, without any legal opinion, except to the extent that the transfer agent requests such legal opinion, any Transfer of Shares by a Stockholder to an Affiliate of such Stockholder or by any Holder to any current or former general or limited partner or member of such Holder (including any distribution of the Shares to any beneficial owner of a Holder), in each case dependent upon the receipt of an executed accredited investor questionnaire from such transferees.

(b) Each Stockholder agrees to the imprinting, so long as is required by this Section 2.1, of the following legend on any certificate evidencing any of the Shares:

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAWS AND MAY NOT BE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER THE ACT AND THE RULES AND REGULATIONS THEREUNDER AND APPLICABLE STATE SECURITIES LAWS.

Certificates evidencing the Shares shall not be required to contain such legend or any other legend (i) following any sale of such Shares pursuant to an effective registration statement (including the Resale Registration Statement described in Section 3.1) covering the resale of the Shares, (ii) following any sale of such Shares pursuant to Rule 144 or Rule 144A (or any similar provision then in force) or if the Shares are transferrable by a Person who is not an Affiliate of the applicable Stockholder pursuant to Rule 144 or Rule 144A (or any similar provision then in force) without any volume or manner of sale restrictions thereunder, in each case if the holder provides the Company with a legal opinion reasonably acceptable to the Company to the effect that the Shares were or may be sold under Rule 144 or Rule 144A as indicated or (iii) if the holder provides the Company with a legal opinion reasonably acceptable to the Company to the effect that the legend is not required under applicable requirements of the Securities Act (including controlling judicial interpretations and pronouncements issued by the staff of the SEC). Whenever any of the conditions in the preceding sentence are satisfied with respect to any Shares, the holder of such securities shall be entitled to receive from the Company upon a written request, without expense, new securities of like tenor, including certificates or book entry positions representing such securities, not bearing any restrictive legends.

**3. REGISTRATION RIGHTS.** The Company hereby grants to each of the Holders the registration rights set forth in this Section 3, with respect to the Registrable Securities owned by such Holders:

### **3.1 Shelf Registration.**

(a) The Company shall file under the Securities Act as soon as practicable, but in no event later than the Filing Deadline, a Registration Statement providing for the registration of, and the sale on a continuous or delayed basis by the holders of, all, but not less than all, of the Registrable Securities, pursuant to Rule 415 or any similar rule that may be adopted by the SEC (such filing, the “Resale Registration Statement”). The Company agrees to use its best efforts to cause the Resale Registration Statement to become or be declared effective by the SEC as promptly as practicable after the filing thereof. The Company agrees to use reasonable best efforts to keep such Resale Registration Statement effective until the earlier of (i) the date on which each Holder is able to dispose of all of its Registrable Securities without restriction or limitation pursuant to Rule 144 and without the requirement to be in compliance with Rule 144 (or any successor rule) and (ii) the date on which there are no Registrable Securities held by any of the Holders. In no event shall the Company be required to file, and maintain effectiveness of more than one Registration Statement at any one time.

(b) If the Company furnishes to the Holders a certificate signed by the Chief Executive Officer or equivalent senior executive of the Company, stating that the filing, effectiveness or continued use of the Resale Registration Statement would require the Company to make an Adverse Disclosure, then the Company shall have a period of not more than 15 Business Days (or such longer period as the Holders holding a majority of the Registrable Securities shall consent to in writing) within which to delay the filing or effectiveness of such Resale Registration Statement or, in the case of a Resale Registration Statement that has been declared effective, to suspend the use by Holders of such Resale Registration Statement (in each case, a “Shelf Suspension”); *provided, however*, that, unless consented to in writing by Holders holding a majority of the Registrable Securities, the Company shall not be permitted to exercise a Shelf Suspension more than twice during any 12-month period and there must be at least 60 days between each permitted Shelf Suspension. In the case of a Shelf Suspension that occurs after the effectiveness of the Resale Registration Statement, the Holders agree to suspend use of the applicable Prospectus in connection with any sale or purchase of, or offer to sell or purchase, Registrable Securities, upon receipt of the notice referred to above. The Company shall immediately notify the Holders upon the termination of any Shelf Suspension, and (i) in the case the Resale Registration Statement has not been declared effective, shall promptly thereafter file the Resale Registration Statement, as the case may be, and use its best efforts to have such Resale Registration Statement declared effective under the Securities Act and (ii) in the case the Resale Registration Statement has become effective, shall amend or supplement the applicable Prospectus, if necessary, so it does not contain any untrue statement or omission prior to the expiration of the Shelf Suspension and furnish to the Holders such numbers of copies of any Prospectus as so amended or supplemented as the Holders may reasonably request. The Company agrees, if necessary, to supplement or make amendments to the Resale Registration Statement, if required by the registration form used by the Company for the Resale Registration or by the instructions applicable to such registration form or by the Securities Act or the rules or regulations promulgated thereunder or as may reasonably be requested by the Holders of a majority of the Registrable Securities then outstanding.

(c) The Company shall use commercially reasonable efforts to take all actions reasonably necessary to ensure that the transactions contemplated herein are effected as so contemplated

in Section 3.1 hereof, and to submit to the SEC, within two Business Days after the Company learns that no review of the Resale Registration Statement will be made by the staff of the SEC or that the staff has no further comments on such Resale Registration Statement, as the case may be, a request for acceleration of effectiveness (or post effective amendment, if applicable) of such Resale Registration Statement to a time and date not later than two Business Days after the submission of such request.

(d) Any reference herein to a registration statement or prospectus as of any time shall be deemed to include any document incorporated, or deemed to be incorporated, therein by reference as of such time and any reference herein to any post-effective amendment to a registration statement as of any time shall be deemed to include any document incorporated, or deemed to be incorporated, therein by reference as of such time. Any reference to a prospectus as of any time shall include any supplement thereto, preliminary prospectus, or any free writing prospectus in respect thereof.

(e) In connection with the filing of the Resale Registration Statement, the Company shall:

(i) prepare and file with the SEC within the time periods specified in Section 3.1, a Registration Statement on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form for such purpose ) which shall register all of the Registrable Securities for resale by the Holders thereof in accordance with (except if otherwise required pursuant to written comments received from the SEC upon a review of such Resale Registration Statement) the “Plan of Distribution” section attached hereto as **Exhibit A** and use its best efforts to cause such Resale Registration Statement to become effective within 90 days of the filing thereof;

(ii) as soon as reasonably practicable prepare and file with the SEC such amendments and supplements to such Resale Registration Statement (including without limitation, any required post effective amendments) and the prospectus included therein as may be necessary to effect and maintain the effectiveness of such Resale Registration Statement for the period specified in Section 3.1 hereof and as may be required by the applicable rules and regulations of the SEC and the instructions applicable to the form of such Resale Registration Statement;

(iii) include in the Resale Registration Statement the “Plan of Distribution” sections in substantially the form attached hereto as **Exhibit A**;

(iv) comply with the provisions of the Securities Act with respect to the disposition of all of the Registrable Securities covered by such Resale Registration Statement in accordance with the methods of disposition as described in **Exhibit A** by the Holders provided for in such Resale Registration Statement;

(v) provide the Holders and, if any, single legal counsel designated by the Holders of a majority of the Registrable Securities then outstanding (“Holder Counsel”) a reasonable opportunity to participate in the preparation of such Resale Registration Statement, each prospectus included therein or filed with the SEC and each amendment or supplement thereto (but not including any documents incorporated by reference), in each case subject to customary confidentiality restrictions, and give reasonable consideration to any comments Holder Counsel provides with respect to any Resale Registration Statement or amendment or supplement thereto. The Company shall furnish to Holder



Counsel copies of any correspondence from the SEC or the staff of the SEC to the Company or its representatives relating to any Resale Registration Statement;

(vi) keep the Resale Registration Statement current and continuously effective pursuant to Rule 415 at all times until the date set forth in Section 3.1. The Resale Registration Statement shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein not misleading;

(vii) notify the Holders (A) when the Resale Registration Statement or any Prospectus included therein or any prospectus amendment or supplement or post-effective amendment has been filed, and, with respect to such Resale Registration Statement or any post-effective amendment, when the same has become effective, (B) of any comments by the SEC with respect thereto or any request by the SEC for amendments or supplements to such Resale Registration Statement or prospectus or for additional information, (C) of the issuance by the SEC of any stop order suspending the effectiveness of such Resale Registration Statement or the initiation or threatening of any proceedings for that purpose, (D) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose (in the cases of (C) and (D), the Company shall obtain the withdrawal of such stop order or suspension at the earliest practicable time) or (E) if at any time when a prospectus is required to be delivered under the Securities Act, that such Resale Registration Statement, prospectus, prospectus amendment or supplement or post-effective amendment does not conform in all material respects to the applicable requirements of the Securities Act and the rules and regulations of the SEC thereunder or contains an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing (the Company shall use its commercially reasonable efforts to promptly prepare a supplement or amendment to the Resale Registration Statement to conform to such requirements or to correct such untrue statement or omission, and deliver such number of copies of such supplement or amendment to the selling Holders as the selling Holders may reasonably request); and

(viii) in the event that Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (A) register the resale of the Registrable Securities on another appropriate form, including a Form S-1 and (B) undertake to register the Registrable Securities on Form S-3 as soon as such form is available.

(f) In connection with the Resale Registration Statement, each Holder agrees to furnish to the Company a duly completed Selling Securityholder Questionnaire substantially in the form of **Exhibit B** hereto no later than October 9, 2013. Each Holder further agrees that it shall not be entitled to be named as a selling securityholder in the Resale Registration Statement or use the prospectus for offers and resales of Registrable Securities at any time, unless such Holder has returned to the Company a completed and signed Selling Securityholder Questionnaire. Each Holder acknowledges and agrees that the information in the Selling Securityholder Questionnaire will be used by the Company in the preparation of the Resale Registration Statement and hereby consents to the inclusion of such information in the Resale Registration Statement. Each Holder agrees to notify the Company as promptly as practicable of any inaccuracy or change in information previously furnished by such Holder to the Company contained in a Selling Securityholder Questionnaire or of the occurrence of any event in either case that could cause the prospectus to contain an untrue statement of a material fact regarding such Holder or its intended method of disposition of such Registrable Securities or omits to state any material

fact regarding such Holder or its intended method of disposition of such Registrable Securities required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, and promptly to furnish to the Company any additional information required to correct and update any previously furnished information or required so that such prospectus shall not contain, with respect to each Holder or the disposition of such Registrable Securities, an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing. If any Holder fails to provide to the Company any information required to be provided pursuant to this Section 3.1 after such Holder became aware of the inaccuracy, omission or required change, the Company may suspend the use of the Resale Registration Statement and the prospectus contained therein until such time as such Holder provides the required information to the Company.

### **3.2 Piggyback Registrations.**

(a) In addition to the Company's obligations with respect to the Resale Registration Statement set forth in Section 3.1, from and after November 1, 2013, the Company shall also notify all Holders of Registrable Securities in writing at least 15 days prior to the filing of any other Registration Statement under the Securities Act for purposes of a public offering of securities of the Company (including, but not limited to, registration statements relating to secondary offerings of securities of the Company) and will afford each such Holder an opportunity to include in such Registration Statement all or part of such Registrable Securities held by such Holder. Each Holder desiring to include in any such Registration Statement all or any part of the Registrable Securities held by it shall, within 15 days after the above-described notice from the Company, so notify the Company in writing. In such event, the right of any such Holder to include Registrable Securities in any Registration Statement for the underwritten public offering of securities of the Company pursuant to this Section 3.2 shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their Registrable Securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company. If a Holder decides not to include all of his, her or its Registrable Securities in any registration statement thereafter filed by the Company, such Holder shall nevertheless continue to have the right to include any Registrable Securities in any subsequent Registration Statement as may be filed by the Company with respect to offerings of its securities, all upon the terms and conditions set forth herein.

(b) Notwithstanding any other provision of this Agreement, if the underwriter determines in good faith that marketing factors require a limitation of the number of shares to be underwritten in any underwritten offering covered by this Section 3.2, the number of shares that may be included in the underwriting shall be allocated, first, to the Company, and second, to the Holders on a pro rata basis based on the total number of Registrable Securities held by the Holders taken together with any other stockholders of the Company with piggyback registration rights based on the total number of registrable securities held by the stockholders and the Holders. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the underwriter, delivered at least ten (10) Business Days prior to the effective date of the registration statement. Any Registrable Securities excluded or withdrawn from such underwriting shall be excluded and withdrawn from the registration. For any Holder which is a partnership, limited liability company or corporation, the partners, retired partners, members, retired members and stockholders of such Holder, or the estates and family members of any such partners, retired partners, members and retired members and

any trusts for the benefit of any of the foregoing Person shall be deemed to be a single "Holder," and any pro rata reduction with respect to such "Holder" shall be based upon the aggregate amount of shares carrying registration rights owned by all entities and individuals included in such "Holder," as defined in this sentence.

(c) The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 3.2 whether or not any Holder has elected to include securities in such registration, and shall promptly notify any Holder that has elected to include shares in such registration of such termination or withdrawal. The Registration Expenses of such withdrawn registration shall be borne by the Company in accordance with Section 3.3 hereof.

**3.3 Expenses of Registration.** All expenses incurred in connection with all registrations effected pursuant to Sections 3.1 and 3.2, including all registration, SEC, stock exchange and FINRA filing and qualification fees (including state securities law fees and expenses), printing expenses, accounting fees, fees and disbursements of counsel for, and independent public accountants of, the Company, fees and disbursements of counsel designated by the Holders of a majority of the Registrable Securities not to exceed \$15,000, and fees and expenses of all Persons retained by the Company shall be paid by the Company; provided, however, that the Company shall not be required to pay stock transfer taxes or underwriters' discounts or selling commissions relating to sales of Registrable Securities.

**3.4 Obligations of the Company.** Whenever required under this Section 3 to effect the registration of any Registrable Securities, the Company shall (in addition to the requirements set forth in Section 3.1 with respect to the Resale Registration Statement), as expeditiously as reasonably possible:

(a) use its reasonable efforts to prevent the issuance of any stop order suspending the effectiveness of the Registration Statement or of any order preventing or suspending the use of any preliminary or final prospectus and, if any such order is issued, to obtain the withdrawal of any such order as soon as practicable;

(b) use its reasonable efforts to register or qualify, and cooperate with the Holders of Registrable Securities covered by the Registration Statement and their respective counsel, in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or "blue sky" laws of each state and other jurisdiction of the United States as any such Holder or their respective counsel reasonably request in writing, and do any and all other things reasonably necessary or advisable to keep such registration or qualification in effect; provided that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or take any action which would subject it to taxation or general service of process in any such jurisdiction where it is not then so subject;

(c) notify the Holders of any pending proceeding against the Company under Section 8A of the Securities Act in connection with the offering of the Registrable Securities;

(d) comply with all requirements of the NASDAQ Stock Market or any securities exchange on which the Common Stock is then listed with regard to the issuance of the Shares and use commercially reasonable efforts to list the Registrable Securities covered by the Registration Statement on the NASDAQ Stock Market or any securities exchange on which the Common Stock is then listed;

(e) provide and cause to be maintained a transfer agent and registrar for all Registrable Securities covered by the Registration Statement from and after a date not later than the effective date of the Registration Statement; and

(f) cooperate with the Holders to facilitate the timely preparation and delivery of general statements of book entry position on the records of the Company's transfer agent through the DTC's DWAC system representing Registrable Securities to be delivered to a transferee pursuant to any Registration Statement, which certificates shall be free of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holders may reasonably request.

### **3.5 Indemnification.**

(a) The Company will, and does hereby undertake to, indemnify and hold harmless each Holder of Registrable Securities, each of such Holder's officers, directors, employees, partners and agents, and each Person controlling such Holder, the officers, directors, employees, partners and agents of each Person controlling such Holder, against all claims, losses, damages and liabilities (or actions in respect thereto) to which they may become subject under the Securities Act, the Exchange Act, or other federal or state law arising out of or based on (A) any untrue statement (or alleged untrue statement) of a material fact contained in any prospectus, offering circular or other similar document (including any related Registration Statement, notification, or the like) incident to any such registration, qualification or compliance, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances in which they were made, (B) any violation or alleged violation by the Company of any federal, state or common law rule or regulation applicable to the Company in connection with any such registration, qualification or compliance, or (C) any failure to register or qualify Registrable Securities in any state where the Company or its agents have affirmatively undertaken or agreed that the Company will undertake such registration or qualification on behalf of the Holders of such Registrable Securities (provided that in such instance the Company shall not be so liable if it has undertaken its reasonable efforts to so register or qualify such Registrable Securities) and will reimburse, as incurred, each such Holder and each such director, officer, partner, agent and controlling Person, for any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action; provided that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based on any untrue statement or omission made in reliance and in conformity with written information furnished to the Company by such Holder expressly for use therein (including, without limitation, information included on such Holder's Selling Securityholder Questionnaire).

(b) Each Holder will, and if Registrable Securities held by or issuable to such Holder are included in such registration, qualification or compliance pursuant to this Section 3, does hereby undertake to, indemnify and hold harmless the Company, each of its directors, employees, agents and officers, and each Person controlling the Company and its directors, employees, agents and officers, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any such Registration Statement, prospectus, offering circular or other document, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances in which they were made, and will reimburse, as incurred, the

Company, each such other Holder, and each such director, officer, employee, agent, partner and controlling Person of the foregoing, for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) was made in such Registration Statement, prospectus, offering circular or other document, in reliance upon and in conformity with written information furnished to the Company by such Holder expressly for use therein (including, without limitation, information included on such Holder's Selling Securityholder Questionnaire); provided, however, that the liability of each Holder hereunder shall be limited to the net proceeds received by such Holder from the sale of securities under such Registration Statement.

(c) Each party entitled to indemnification under this Section 3.5 (the "Indemnified Party") shall give notice to the party required to provide such indemnification (the "Indemnifying Party") of any claim as to which indemnification may be sought promptly after such Indemnified Party has actual knowledge thereof, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom; provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be subject to approval by the Indemnified Party (whose approval shall not be unreasonably withheld) and the Indemnified Party may participate in such defense at the Indemnifying Party's expense if (i) representation of such Indemnified Party would be inappropriate due to actual or potential differing interests between such Indemnified Party and any other party represented by such counsel in such proceeding or (ii) the Indemnifying Party shall have failed to promptly assume the defense of such proceeding; and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Section 3, except to the extent that such failure to give notice shall materially adversely affect the Indemnifying Party in the defense of any such claim or any such litigation. No Indemnifying Party, in the defense of any such claim or litigation, may, without the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement unless such settlement includes an unconditional release of such Indemnified Party from all liabilities on claims that are the subject matter of such claim or litigation.

(d) In order to provide for just and equitable contribution in case indemnification is unavailable to an Indemnified Party (by reason of legal prohibition or otherwise), the Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages or liabilities in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions which resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of material fact or omission or alleged omission to state a material fact, has been made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and such party's relative intent, knowledge, access to information and opportunity to correct or prevent such actions; provided, however, that, in any case, (i) no Holder will be required to contribute any amount in excess of the public offering price of all such Registrable Securities offered and sold by such Holder pursuant to such Registration Statement, and (ii) no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

(e) The indemnity and contribution agreements contained herein are in addition to any liability that the Indemnifying Party may have to the Indemnified Parties and shall survive the Transfer of the Registrable Securities.

**3.6 Information by Holder.** The Holder or Holders of Registrable Securities included in any registration shall furnish to the Company such information regarding such Holder or Holders and the distribution proposed by such Holder or Holders as the Company may reasonably request in writing and as shall be required in connection with any registration, qualification or compliance referred to in this Section 3.

**3.7 Transfer of Registration Rights.** The rights contained in Sections 3.1 and 3.2 hereof to cause the Company to register the Registrable Securities, and the other rights set forth in this Section 3, may be assigned or otherwise conveyed by any Stockholder to any transferee of the Registrable Securities if the Transfer was permitted under Section 2.

**3.8 Rule 144 Reporting.** With a view to making available to the Holders the benefits of certain rules and regulations of the SEC that may permit the sale of the Registrable Securities to the public without registration, the Company agrees to use its best efforts to:

(a) make and keep current public information available, within the meaning of Rule 144 or any similar or analogous rule promulgated under the Securities Act;

(b) file with the SEC, in a timely manner, all reports and other documents required of the Company under the Securities Act and Exchange Act; and

(c) as long as any Holder owns any Registrable Securities, furnish in writing upon such Holder's written request a written statement by the Company that it has timely filed all reports as contemplated by the reporting requirements of Rule 144 and of the Securities Act and Exchange Act.

#### 4. MISCELLANEOUS

**4.1 Further Assurances.** Each party hereto shall execute and cause to be delivered to each other party hereto such instruments and other documents, and shall take such other actions, as such other party may reasonably request for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.

**4.2 Notices.** Any notice or other communication required or permitted to be delivered to any party under this Agreement shall be in writing and shall be deemed properly delivered, given and received: (a) if delivered by hand, when delivered; (b) if sent via facsimile before 5:00 p.m. (Pacific time) with confirmation of receipt, when transmitted and receipt is confirmed; (c) if sent via facsimile after 5:00 p.m. (Pacific time) with confirmation of receipt, the Business Day after being sent; (d) if sent by registered, certified or first class mail, the third Business Day after being sent; and (e) if sent by overnight delivery via a national courier service, one Business Day after being sent. The addresses and facsimile numbers for such notices and communications are those set forth on the signature pages hereof, or such other address or facsimile number as may be designated in writing hereafter, in the same manner, by any such Person.

**4.3 Headings.** The headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

**4.4 Counterparts.** This Agreement may be executed in several counterparts (including via facsimile or other electronic means), each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

**4.5 Governing Law; Dispute Resolution.**

(a) This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of Delaware (without giving effect to principles of conflicts of laws).

(b) Any Legal Proceeding relating to this Agreement or the enforcement of any provision of this Agreement (including a Legal Proceeding based upon intentional or willful misrepresentation or fraud) may be brought or otherwise commenced in any state or federal court located in the State of California. Each party to this Agreement: (i) expressly and irrevocably consents and submits to the jurisdiction of each state and federal court located in the State of California (and each appellate court located in the State of California) in connection with any such Legal Proceeding; (ii) agrees that each state and federal court located in the State of California shall be deemed to be a convenient forum; and (iii) agrees not to assert (by way of motion, as a defense or otherwise), in any such Legal Proceeding commenced in any state or federal court located in the State of California, any claim that such party is not subject personally to the jurisdiction of such court, that such Legal Proceeding has been brought in an inconvenient forum, that the venue of such proceeding is improper or that this Agreement or the subject matter of this Agreement may not be enforced in or by such court.

**4.6 Successors and Assigns.** Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the parties' successors and permitted assigns.

**4.7 Waiver.**

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

(b) No Person shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Person; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

**4.8 Amendment.** This Agreement may be amended or modified, and any provision hereof may be waived, in whole or in part, at any time pursuant to an agreement in writing executed by the Company and Holders holding a majority of the Registrable Securities.

**4.9 Severability.** In the event that any provision of this Agreement, or the application of any such provision to any Person or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

**4.10 Termination.** This Agreement shall terminate on the date when there no longer remaining any Registrable Securities or upon the dissolution of liquidation of the Company.

**4.11 Waiver of Jury Trial.** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED ISSUES AND, THEREFORE, EACH SUCH PARTY, TO THE EXTENT PERMITTED BY LAW, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER AND (B) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY.

**4.12 Entire Agreement.** This Agreement and the Merger Agreement set forth the entire understanding of the parties hereto relating to the subject matter hereof and thereof and supersede all prior agreements and understandings among or between any of the parties relating to the subject matter hereof and thereof.

**4.13 Construction.**

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

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

(c) As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

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

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**IN WITNESS WHEREOF**, each of the undersigned has executed this Agreement or caused this Agreement to be executed on its behalf as of the date first written above.

**COMPANY:**

**SORRENTO THERAPEUTICS, INC.**

By: /s/ Henry Ji

Name: Henry Ji

Title: President & CEO

Address for Notice: 6042 Cornerstone Ct. West,  
Suite B  
San Diego, CA 92121

Attn: Chief Financial Officer

Facsimile No.: (858) 210-3759

**IN WITNESS WHEREOF**, each of the undersigned has executed this Agreement or caused this Agreement to be executed on its behalf as of the date first written above.

**STOCKHOLDER:**

Name: Bryan Jones

By: /s/ Bryan Jones

Name:

Title:

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Facsimile No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

**IN WITNESS WHEREOF**, each of the undersigned has executed this Agreement or caused this Agreement to be executed on its behalf as of the date first written above.

**STOCKHOLDER:**

Name: Aceras BioMedical LLC

By: /s/ John Liatos  
Name: John Liatos  
Title: Managing Member

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Facsimile No.: \_\_\_\_\_

Email Address: \_\_\_\_\_