UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

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

For the quarterly period ended September 30, 2015

OR

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

For the transition period from _________ to _________

Commission file number 001-36150

SORRENTO THERAPEUTICS, INC.
(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

33-0344842
(I.R.S. Employer
Identification Number)

9380 Judicial Drive,
San Diego, California 92121
(Address of Principal Executive Offices)

(858) 210-3700
(Registrant's Telephone Number, Including Area Code)

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

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

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

Large accelerated filer ☐ Accelerated filer ☒

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

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

The number of shares of the issuer’s common stock, par value $0.0001 per share, outstanding as of November 9, 2015 was
37,767,085.
# Index to Consolidated Financial Statements

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## Part I. Financial Information

### Item 1. Consolidated Financial Statements.

**Sorrento Therapeutics, Inc.**

**Consolidated Balance Sheets**

(In thousands, except for share amounts)

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<th>September 30, 2015 (Unaudited)</th>
<th>December 31, 2014 (Audited)</th>
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</thead>
<tbody>
<tr>
<td><strong>Assets</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current assets:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$59,067</td>
<td>$71,902</td>
</tr>
<tr>
<td>Marketable securities</td>
<td>64,386</td>
<td>—</td>
</tr>
<tr>
<td>Grants and accounts receivables, net</td>
<td>622</td>
<td>732</td>
</tr>
<tr>
<td>Prepaid expenses and other, net</td>
<td>731</td>
<td>1,281</td>
</tr>
<tr>
<td>Total current assets</td>
<td>124,806</td>
<td>73,915</td>
</tr>
<tr>
<td>Property and equipment, net</td>
<td>3,813</td>
<td>2,277</td>
</tr>
<tr>
<td>Intangibles, net</td>
<td>4,023</td>
<td>4,357</td>
</tr>
<tr>
<td>Goodwill</td>
<td>20,626</td>
<td>24,041</td>
</tr>
<tr>
<td>Investments in common stock</td>
<td>111,500</td>
<td>10,000</td>
</tr>
<tr>
<td>Equity method investments</td>
<td>60,000</td>
<td>—</td>
</tr>
<tr>
<td>Long-term assets held for sale</td>
<td>—</td>
<td>26,619</td>
</tr>
<tr>
<td>Other, net</td>
<td>527</td>
<td>332</td>
</tr>
<tr>
<td>Total assets</td>
<td>$325,295</td>
<td>$141,541</td>
</tr>
</tbody>
</table>

|                |                                 |                            |
| **Liabilities and Stockholders' Equity** |            |                            |
| Current liabilities: |                                 |                            |
| Accounts payable     | $1,619                         | $1,656                     |
| Accrued payroll and related | 1,683                     | 1,825                      |
| Current portion of deferred compensation | 973                         | 1,893                      |
| Accrued expenses     | 3,215                          | 867                        |
| Acquisition consideration payable | 13,855                | —                          |
| Current portion of debt | 4,722                         | 3,316                      |
| Total current liabilities | 26,067                       | 9,557                      |
| Long-term debt       | 5,646                          | 8,830                      |
| Deferred compensation | 877                          | 796                        |
| Deferred tax liabilities | 34,507                     | 1,709                      |
| Long-term liabilities held for sale | —                          | 10,837                     |
| Deferred revenue     | 110,912                        | 1,024                      |
| Deferred rent and other | 501                           | 75                         |
| Total liabilities    | 178,510                        | 32,828                     |

|                |                                 |                            |
| Commitments and contingencies |            |                            |
| Equity: Sorrento Therapeutics, Inc. equity |            |                            |
| Preferred stock, $0.0001 par value; 100,000,000 shares authorized and no shares issued or outstanding | — | — |
| Common stock, $0.0001 par value; 750,000,000 shares authorized and 37,767,085 and 36,184,912 shares issued and outstanding at September 30, 2015 and December 31, 2014, respectively | 4 | 4 |
| Additional paid-in capital | 181,652 | 176,227 |
| Accumulated other comprehensive income | 54,386 | — |
| Accumulated deficit | (89,853) | (67,518) |
| Total Sorrento Therapeutics, Inc. stockholders' equity | 146,189 | 108,713 |

| Noncontrolling interests | 596 | — |
| Total equity | 146,785 | 108,713 |

| Total liabilities and equity | $325,295 | $141,541 |

See accompanying unaudited notes
SORRENTO THERAPEUTICS, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(In thousands, except per share amounts)

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended September 30,</th>
<th></th>
<th>Nine Months Ended September 30,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
<td>2014</td>
<td>2015</td>
</tr>
<tr>
<td>Revenues:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grant</td>
<td>$367</td>
<td>$147</td>
<td>$1,064</td>
</tr>
<tr>
<td>Sales and services</td>
<td>736</td>
<td>1,129</td>
<td>2,189</td>
</tr>
<tr>
<td>Total revenues</td>
<td>1,103</td>
<td>1,276</td>
<td>3,253</td>
</tr>
<tr>
<td>Operating costs and expenses:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Costs of revenues</td>
<td>604</td>
<td>527</td>
<td>1,427</td>
</tr>
<tr>
<td>Research and development</td>
<td>7,244</td>
<td>5,440</td>
<td>23,055</td>
</tr>
<tr>
<td>Acquired in-process research and development</td>
<td>24,068</td>
<td>—</td>
<td>24,068</td>
</tr>
<tr>
<td>General and administrative</td>
<td>4,711</td>
<td>1,854</td>
<td>10,002</td>
</tr>
<tr>
<td>Intangible amortization</td>
<td>111</td>
<td>586</td>
<td>1,046</td>
</tr>
<tr>
<td>Total costs and operating expenses</td>
<td>36,738</td>
<td>8,407</td>
<td>59,598</td>
</tr>
<tr>
<td>Loss from operations</td>
<td>(35,635)</td>
<td>(7,131)</td>
<td>(56,345)</td>
</tr>
<tr>
<td>Gain on sale of IgDraSol, net</td>
<td>69,274</td>
<td>—</td>
<td>69,274</td>
</tr>
<tr>
<td>Interest expense</td>
<td>(396)</td>
<td>(476)</td>
<td>(1,277)</td>
</tr>
<tr>
<td>Income (loss) before income tax expense</td>
<td>33,244</td>
<td>(7,605)</td>
<td>11,653</td>
</tr>
<tr>
<td>Income tax expense</td>
<td>35,323</td>
<td>—</td>
<td>35,128</td>
</tr>
<tr>
<td>Net loss</td>
<td>(2,079)</td>
<td>(7,605)</td>
<td>(23,475)</td>
</tr>
<tr>
<td>Net loss attributable to noncontrolling interests</td>
<td>(1,140)</td>
<td>—</td>
<td>(1,140)</td>
</tr>
<tr>
<td>Net loss attributable to Sorrento</td>
<td>$ (939)</td>
<td>$ (7,605)</td>
<td>$ (22,335)</td>
</tr>
<tr>
<td>Net loss per share - basic and diluted per share attributable to Sorrento</td>
<td>$(0.03)</td>
<td>$(0.27)</td>
<td>$(0.61)</td>
</tr>
<tr>
<td>Weighted-average shares used during period - basic and diluted per share attributable to Sorrento</td>
<td>37,328</td>
<td>28,533</td>
<td>36,618</td>
</tr>
</tbody>
</table>

See accompanying unaudited notes
<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended September 30,</th>
<th>Nine Months Ended September 30,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
<td>2014</td>
</tr>
<tr>
<td>Net loss attributable to Sorrento</td>
<td>$(939)</td>
<td>$(7,605)</td>
</tr>
<tr>
<td>Other comprehensive income:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unrealized gains on marketable securities</td>
<td>54,386</td>
<td>—</td>
</tr>
<tr>
<td>Total other comprehensive income</td>
<td>54,386</td>
<td>—</td>
</tr>
<tr>
<td>Comprehensive income (loss) attributable to Sorrento</td>
<td>53,447</td>
<td>$(7,605)</td>
</tr>
<tr>
<td>Comprehensive income (loss) attributable to noncontrolling interests</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Comprehensive income (loss)</td>
<td>$53,447</td>
<td>$(7,605)</td>
</tr>
</tbody>
</table>

See accompanying unaudited notes
SORRENTO THERAPEUTICS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(In thousands)

<table>
<thead>
<tr>
<th>Nine Months Ended September 30, 2015</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Operating activities</strong></td>
<td></td>
</tr>
<tr>
<td>Net loss</td>
<td>$(23,475)</td>
</tr>
<tr>
<td>Adjustments to reconcile net loss to net cash provided by and (used in) operating activities:</td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>1,837</td>
</tr>
<tr>
<td>Non-cash interest expense</td>
<td>298</td>
</tr>
<tr>
<td>Gain on sale of IgDraSol</td>
<td>(69,274)</td>
</tr>
<tr>
<td>Stock-based compensation</td>
<td>5,483</td>
</tr>
<tr>
<td>Acquired in-process research and development</td>
<td>13,855</td>
</tr>
<tr>
<td>Provision for doubtful accounts</td>
<td>4</td>
</tr>
<tr>
<td>Deferred tax provision</td>
<td>32,798</td>
</tr>
<tr>
<td>Changes in operating assets and liabilities; net of acquisitions:</td>
<td></td>
</tr>
<tr>
<td>Grants and other receivables</td>
<td>106</td>
</tr>
<tr>
<td>Prepaid expenses and other</td>
<td>293</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>(352)</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>9,888</td>
</tr>
<tr>
<td>Accrued expenses and other liabilities</td>
<td>2,632</td>
</tr>
<tr>
<td><strong>Net cash used for operating activities</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Investing activities**

| Purchases of property and equipment | (1,950) | (433) |
| Proceeds from sale of IgDraSol      | 27,759 | — |
| Investments in common stock          | (11,500) | — |
| **Net cash provided by (used in) investing activities** |       | 14,309 | (433) |

**Financing activities**

| Net borrowings under loan and security agreement | — | 7,500 |
| Proceeds from issuance of common stock, net of issuance costs and repurchases | — | 26,643 |
| Net principal payments under loan and security agreement | (1,915) | — |
| Net payments of deferred compensation | (1,000) | — |
| Proceeds from exercise of stock options | 1,678 | — |
| **Net cash (used in) provided by financing activities** |       | (1,237) | 34,143 |

| Net change in cash and cash equivalents | (12,835) | 12,602 |
| Cash and cash equivalents at beginning of period | 71,902 | 31,667 |
| **Cash and cash equivalents at end of period** | $59,067 | $44,269 |

**Supplemental disclosures:**

| Cash paid during the period for: |      |
| Income taxes                     | $3 | $6 |
| Interest paid                    | $720 | $636 |

**Supplemental disclosures of non-cash investing and financing activities:**

| Change in unrealized gains (losses) on marketable securities | $54,386 | — |
| Increase in cost method investment in deferred revenue | $(100,000) | — |
| Contributions to equity method investments made on Company's behalf | $(60,000) | — |
| Property and equipment costs incurred but not paid | $315 | — |
| Issuance of 1,306,272 shares to former stockholders of IgDraSol | — | — |

See accompanying unaudited notes
1. Nature of Operations, Summary of Significant Accounting Policies and Business Activities

Nature of Operations and Basis of Presentation

Sorrento Therapeutics, Inc. (NASDAQ: SRNE), together with its subsidiaries (collectively, the “Company”) is a biopharmaceutical company focused on the discovery, acquisition, development and commercialization of proprietary therapeutic products for addressing significant unmet medical needs worldwide. The Company’s primary therapeutic focus is oncology, including the treatment of chronic cancer pain, but is also developing therapeutic products for other indications, including immunology and infectious diseases. The Company currently has multiple clinical development programs underway: CAR-T programs for solid tumors, resiniferatoxin, or RTX, a non-opiate, ultra potent and selective agonist of the TRPV-1 receptor for intractable pain in end-stage disease and its clinical development program for its biosimilar/biobetter antibodies that the Company licensed from Mabtech Limited, a holding company for antibody development and manufacturing companies in China. On July 8, 2015, the Company consummated the previously announced sale to NantPharma, LLC, a related party, of all of the Company’s equity interests in IgDraSol, Inc., a wholly-owned subsidiary of the Company which holds all the rights to Cynviloq, a polymeric micelle based Cremophor free paclitaxel injectable finished formulation.

The Company’s pipeline also includes preclinical fully human therapeutic monoclonal antibodies (mAbs) such as its fully human anti-PD-L1 and anti-PD-1 checkpoint inhibitors derived from its proprietary G-MAB® library platform, antibody drug conjugates (ADCs), bispecific antibodies (BsAbs), as well as Chimeric Antigen Receptor-T Cell (CAR-T) and Chimeric Antigen Receptor Tumor-attacking Neukoplast® (CAR.TNK™, pronounced “CARTANK”) for adoptive cellular immunotherapies (ACI). The Company’s objective is to develop its antibody drug products and adoptive cellular immunotherapies as: (i) First in Class (FIC), and/or (ii) Best in Class (BIC), which may offer greater efficacy and/or fewer adverse events or side effects as compared to existing drugs, as well as fully human therapeutic antibodies derived from its proprietary G-MAB® library platform and antibody drug conjugates, or ADCs.

Through September 30, 2015, the Company had devoted substantially all of its efforts to research and product development, raising capital and building infrastructure, and had not realized revenues from its planned principal operations.

The accompanying interim consolidated financial statements have been prepared by the Company, without audit, in accordance with the instructions to Form 10-Q and, therefore, do not necessarily include all information and footnotes necessary for a fair statement of its financial position, results of operations and cash flows in accordance with United States generally accepted accounting principles (GAAP). The accompanying consolidated financial statements include the accounts of the Company’s wholly-owned subsidiaries and those of a variable interest entity where the Company is the primary beneficiary. For consolidated entities where the Company owns or are exposed to less than 100% of the economics, the Company records net income (loss) attributable to noncontrolling interests in its consolidated statements of operations equal to the percentage of the economic or ownership interest retained in such entities by the respective noncontrolling parties. Two subsidiaries, Sorrento Therapeutics, Inc. Hong Kong Limited and Scintilla Pharmaceuticals, Inc., had no operating activity through September 2015. All intercompany balances and transactions have been eliminated in consolidation.

In determining whether the Company is the primary beneficiary of an entity, the Company applies a qualitative approach that determines whether it has both (i) the power to direct the economically significant activities of the entity and (ii) the obligation to absorb losses of, or the right to receive benefits from, the entity that could potentially be significant to that entity. These considerations impact the way the Company accounts for its existing collaborative relationships and other arrangements. The Company continuously assesses whether it is the primary beneficiary of a variable interest entity as changes to existing relationships or future transactions may result in the Company consolidating or deconsolidating one or more of its collaborators or partners.

The balance sheet at December 31, 2014 is derived from the audited consolidated financial statements at that date which are not presented herein.

In the opinion of management, the unaudited financial information for the interim periods presented reflects all adjustments, which are only normal and recurring, necessary for a fair statement of financial position, results of operations and cash flows. These consolidated financial statements should be read in conjunction with the consolidated financial statements included in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2014. Operating results for interim periods are not expected to be indicative of operating results for the Company’s 2015 fiscal year.
**Liquidity**

The Company anticipates that it will continue to incur net losses into the foreseeable future as it (i) advances clinical stage product candidates such as BioSimilar/BioBetter antibodies, CAR-T programs and RTX in the clinic and potentially pursues other development, (ii) continues to identify a number of potential mAb and ADC drug candidates and further advances various preclinical and development activities, (iii) advances its product candidates into the clinic, (iv) invests in additional joint ventures or third party collaboration or acquisition agreements, and (v) expands corporate infrastructure, including the costs associated with being a NASDAQ listed public company. Based on currently available resources, the Company believes it has the ability to meet all obligations due over the course of the next twelve months.

In June 2015, the National Institutes of Health, or NIH announced that the Clinical Center suspended operations of its Pharmaceutical Development Section after FDA inspections that occurred in May 2015. An FDA inspection report issued on May 29, 2015 noted “deficiencies in the physical facility, including flaws in the air handling system, and operational failures including inadequate quality control, insufficient employee training, and lack of compliance with standard operating procedures”. As a result, 46 clinical programs, including the resiniferatoxin (RTX) study in patients with severe pain in advanced cancer, were placed on clinical hold by the FDA. NIH has developed an interim corrective action/preventative action plan which has not yet been approved by the FDA. The Company plans to continue with its already planned corporate IND for RTX.

In August 2015, the Company and TNK Therapeutics, Inc., (“TNK”), a subsidiary of the Company, entered into a Membership Interest Purchase Agreement (the “Membership Interest Purchase Agreement”) with CARgenix Holdings LLC (“CARgenix”) and the members of CARgenix (the “Members”) pursuant to which the Members sold all of their membership interests in CARgenix to TNK for: (1) a cash payment of $100.00, and (2) $6.0 million in shares of TNK Class A common stock, subject to adjustment in certain circumstances, to be issued to the Members upon a financing resulting in gross proceeds (individually or in the aggregate) to TNK of at least $50.0 million (a “Qualified Financing”). In the event a Qualified Financing does not occur by March 15, 2016 or TNK does not complete an initial public offering of shares of its capital stock by March 31, 2016, in lieu of receiving shares of TNK pursuant to the acquisition, the Members shall receive an aggregate of 309,917 shares of common stock of the Company, subject to adjustment in certain circumstances. The Membership Interest Purchase Agreement further provides that 20% of the shares of TNK or the Company, as applicable, issuable to the Members shall be held in escrow to secure certain post-closing adjustment and indemnification rights of TNK for a period of 12 months following the closing of the transaction.

In August 2015, the Company and TNK entered into a Stock Purchase Agreement (the “Stock Purchase Agreement”) with BDL Products, Inc. (“BDL”) and the stockholders of BDL (the “Stockholders”) pursuant to which the Stockholders sold all of their shares of capital stock in BDL to TNK for: (1) a cash payment of $100.00, and (2) $6.0 million in shares of TNK Class A common stock, subject to adjustment in certain circumstances, to be issued to the Stockholders upon a Qualified Financing. In the event a Qualified Financing does not occur by March 15, 2016 or TNK does not complete an initial public offering of shares of its capital stock by March 31, 2016, in lieu of receiving shares of TNK pursuant to the acquisition, the Stockholders shall receive an aggregate of 309,917 shares of common stock of the Company, subject to adjustment in certain circumstances. The Stock Purchase Agreement further provides that 20% of the shares of TNK or the Company, as applicable, issuable to the Stockholders shall be held in escrow to secure certain post-closing adjustment and indemnification rights of TNK for a period of 12 months following the closing of the transaction.

In August 2015, the Company entered into an exclusive licensing agreement to develop and commercialize multiple prespecified biosimilar or biobetter antibodies from Mabtech Limited. Under the terms of the agreement, the Company will develop and market these four monoclonal antibodies (mAbs) for the North American, European and Japanese market. The Company made an initial license payment of $10.0 million which was recognized as acquired in-process research and development expense in the consolidated statements of operations. The agreement includes additional milestone payments totaling up to $190.0 million payable over the next five years.

In April 2015, the Company and NantCell, Inc. (“NantCell”) established a new joint venture called Immunotherapy NANTibody, LLC, or NANTibody, as a stand-alone biotechnology company with $100.0 million initial joint funding. NantCell owns 60% of the equity interest of NANTibody and agreed to contribute $60.0 million to NANTibody. The Company owns 40% of NANTibody and in July 2015 the Company had NantPharma contribute its portion of the initial joint funding of $40 million to NANTibody from the proceeds of the sale of IgDraSol. NANTibody will focus on accelerating the development of multiple immuno-oncology monoclonal antibodies (mAbs) for the treatment of cancer, including but not limited to anti-PD-1, anti-PD-L1, anti-CTLA4 mAbs, and other immune-check point antibodies as well as antibody drug conjugates (ADCs) and bispecific antibodies.

NANTibody had no significant operations and incurred minimal general and administrative expenses during the three and nine months ended September 30, 2015.

In July 2015, the Company and NantBioScience established a new joint venture called NantCancerStemCell, LLC, or NantStem, as a stand-alone biotechnology company with $100 million initial joint funding. As initially organized, NantBioScience was obligated to make a $60 million cash contribution to NantStem for a 60% equity interest in NantStem, and the Company was obligated to make
a $40 million cash contribution to NantStem for a 40% equity interest in NantStem. Fifty percent of these contributions were funded in July 2015 and the remaining amounts were to be made by no later than September 30, 2015. The Company had NantPharma contribute its portion of the initial joint funding of $20 million to NantStem from the proceeds from the sale of IgDraSol. Pursuant to a Side Letter dated October 13, 2015, the NantStem joint venture agreement was amended to relieve the Company of the obligation to contribute the second $20 million payment, and the Company’s ownership interest in NantStem was reduced to 20%. NantBioScience’s funding obligations were unchanged. The Side Letter was negotiated at the same time the Company issued a call option on shares of NantKwest that it owned to Cambridge Equities, LP, a related party to the Company and to NantBioScience. See Note 13.

The Company plans to continue to fund its operating losses and capital funding needs through public or private equity or debt financings, strategic collaborations, licensing arrangements, asset sales, government grants or other arrangements. The Company filed a universal shelf registration statement on Form S-3 with the Securities and Exchange Commission (“SEC”), which was declared effective by the SEC in July 2013. The Shelf Registration Statement provides the Company the ability to offer up to $100 million of securities, including equity and other securities as described in the registration statement. After the May 2014 underwritten offering the Company has the ability to offer up to $36.6 million of additional securities under the July 2013 registration statement. In November 2014, the Company filed a universal shelf registration statement on Form S-3 with the SEC, which was declared effective by the SEC in December 2014. This Shelf Registration Statement provides the Company with the ability to offer up to $250 million of securities, including equity and other securities as described in the registration statement. Included in the 2014, shelf registration is a sales agreement prospectus covering the offering, issuance and sale by the Company of up to a maximum aggregate offering price of $50.0 million of the Company’s common stock that may be issued and sold under a sales agreement with MLV & Co. LLC. The Company cannot be sure that such additional funds will be available on reasonable terms, or at all. If the Company is unable to secure adequate additional funding, the Company may be forced to make reductions in spending, extend payment terms with suppliers, liquidate assets where possible, and/or suspend or curtail planned programs. Any of these actions could materially harm the Company’s business, results of operations, and future prospects.

If the Company raises additional funds by issuing equity securities, substantial dilution to existing stockholders would result. If the Company raises additional funds by incurring debt financing, the terms of the debt may involve significant cash payment obligations as well as covenants and specific financial covenants that may restrict the Company’s ability to operate its business.

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Management believes that these estimates are reasonable; however, actual results may differ from these estimates.

Cash and Cash Equivalents

The Company considers all highly liquid investments purchased with original maturities of three months or less to be cash equivalents. The Company minimizes its credit risk associated with cash and cash equivalents by periodically evaluating the credit quality of its primary financial institution. The balance at times may exceed federally insured limits. The Company has not experienced any losses on such accounts.

Fair Value of Financial Instruments

The Company follows accounting guidance on fair value measurements for financial instruments measured on a recurring basis, as well as for certain assets and liabilities that are initially recorded at their estimated fair values. Fair value is defined as the exit price, or the amount that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The Company uses the following three-level hierarchy that maximizes the use of observable inputs and minimizes the use of unobservable inputs to value its financial instruments:

- Level 1: Observable inputs such as unadjusted quoted prices in active markets for identical instruments.
- Level 2: Quoted prices for similar instruments that are directly or indirectly observable in the marketplace.
- Level 3: Significant unobservable inputs which are supported by little or no market activity and that are financial instruments whose values are determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair value requires significant judgment or estimation.

Financial instruments measured at fair value are classified in their entirety based on the lowest level of input that is significant to the fair value measurement. The Company’s assessment of the significance of a particular input to the fair value measurement in its...
entirety requires it to make judgments and consider factors specific to the asset or liability. The use of different assumptions and/or estimation methodologies may have a material effect on estimated fair values. Accordingly, the fair value estimates disclosed or initial amounts recorded may not be indicative of the amount that the Company or holders of the instruments could realize in a current market exchange.

The carrying amounts of cash equivalents and marketable securities approximate their fair value based upon quoted market prices. Certain of our financial instruments are not measured at fair value on a recurring basis, but are recorded at amounts that approximate their fair value due to their liquid or short-term nature, such as cash, accounts receivable and payable, and other financial instruments in current assets or current liabilities.

** Marketable Securities**

Marketable securities are designated as available-for-sale securities and are accounted for at fair value. Marketable securities are classified as short-term or long-term based on the nature of the securities and their availability to meet current operating requirements. Marketable securities that are readily available for use in current operations are classified as short-term available-for-sale securities and are reported as a component of current assets in the accompanying consolidated balance sheets. Marketable securities that are not considered available for use in current operations are classified as long-term available-for-sale securities and are reported as a component of long-term assets in the accompanying consolidated balance sheets.

Securities that are classified as available-for-sale are carried at fair value, with temporary unrealized gains and losses reported as a component of stockholders' equity until their disposition. The Company reviews all available-for-sale securities at each period end to determine if they remain available-for-sale based on its then current intent and ability to sell the security if it is required to do so. The cost of securities sold is based on the specific identification method.

All of the Company’s marketable securities are subject to a periodic impairment review. The Company recognizes an impairment charge when a decline in the fair value of its investments below the cost basis is judged to be other-than-temporary. For the three and nine months ended September 30, 2015, no other-than-temporary impairment charges were recorded.

** Grants and Accounts Receivable**

Grants receivable at September 30, 2015 and December 31, 2014 represent amounts due under several federal contracts with the National Institute of Allergy and Infectious Diseases, or NIAID, a division of the National Institutes of Health, or NIH, collectively, the NIH Grants. The Company considers the grants receivable to be fully collectible; accordingly, no allowance for doubtful amounts has been established. If amounts become uncollectible, they are charged to operations.

Accounts receivable at September 30, 2015 and December 31, 2014 consists of trade receivables from sales and services provided to certain customers, which are generally unsecured and due within 30 days. Estimated credit losses related to trade accounts receivable are recorded as general and administrative expenses and as an allowance for doubtful accounts within grants and accounts receivable, net. The Company reviews reserves and makes adjustments based on historical experience and known collectability issues and disputes. When internal collection efforts on accounts have been exhausted, the accounts are written off by reducing the allowance for doubtful accounts. As of September 30, 2015 and December 31, 2014, the allowance for doubtful accounts was $4 and $33, respectively.

**Property and Equipment**

Property and equipment are carried at cost less accumulated depreciation. Depreciation of property and equipment is computed using the straight-line method over the estimated useful lives of the assets, which are generally three to five years. Leasehold improvements are amortized over the lesser of the life of the lease or the life of the asset. Repairs and maintenance are charged to expense as incurred.

** Acquisitions and Intangibles**

The Company has engaged in business combination activity. The accounting for business combinations requires management to make judgments and estimates of the fair value of assets acquired, including the identification and valuation of intangible assets, as well as liabilities assumed. Such judgments and estimates directly impact the amount of goodwill recognized in connection with each acquisition, as goodwill presents the excess of the purchase price of an acquired business over the fair value of its net tangible and identifiable intangible assets.
**Revenue Recognition**

The Company's revenues are generated primarily from various NIH grant awards, and from the sale of customized reagents and the provision of contract development services. The revenue from the NIH grant awards is based upon subcontractor and internal costs incurred that are specifically covered by the grant, and where applicable, a facilities and administrative rate that provides funding for overhead expenses. These revenues are recognized when expenses have been incurred by subcontractors or when the Company incurs internal expenses that are related to the grant.

Revenues from sales are generated from the sale of customized reagents which include industrial standard cytotoxins, linkers, and linker-toxins used for preparing ADCs. Contract development services include providing synthetic expertise to customer’s synthesis by delivering proprietary cytotoxins, linkers and linker-toxins and ADC service using industry standard toxin and antibodies provided by customers. Revenue is recognized when, (i) persuasive evidence of an arrangement exists, (ii) the product has been shipped or the services have been rendered, (iii) the price is fixed or determinable, and (iv) collectability is reasonably assured.

License fees for the licensing of product rights are recorded as deferred revenue upon receipt of cash and recognized as revenue on a straight-line basis over the license period.

**Investments in Entities**

The Company holds a portfolio of investments in equity securities that are accounted for under either the equity method or cost method. Investments in entities over which the Company has significant influence but not a controlling interest are accounted for using the equity method, with the Company's share of earnings or losses reported in other income (expense), net.

The Company’s cost method investments are included in investments in common stock on the consolidated balance sheets. The Company’s equity method investments are included in equity method investments on the consolidated balance sheets.

All investments are reviewed on a regular basis for possible impairment. If an investment's fair value is determined to be less than its net carrying value and the decline is determined to be other-than-temporary, the investment is written down to its fair value. Such an evaluation is judgmental and dependent on specific facts and circumstances. Factors considered in determining whether an other-than-temporary decline in value has occurred include: market value or exit price of the investment based on either market-quoted prices or future rounds of financing by the investee; length of time that the market value was below its cost basis; financial condition and business prospects of the investee; the Company's intent and ability to retain the investment for a sufficient period of time to allow for recovery in market value of the investment; issues that raise concerns about the investee's ability to continue as a going concern; any other information that we may be aware of related to the investment. The Company performs its annual assessment for goodwill impairment in the fourth quarter of 2014, noting no impairment. There have not been any triggering events through September 30, 2015.

**Goodwill and Other Long-Lived Assets**

Goodwill, which has an indefinite useful life, represents the excess of cost over fair value of net assets acquired. Goodwill is reviewed for impairment at least annually during the fourth quarter, or more frequently if events occur indicating the potential for impairment. During its goodwill impairment review, the Company may assess qualitative factors to determine whether it is more likely than not that the fair value of its reporting unit is less than its carrying amount, including goodwill. The qualitative factors include, but are not limited to, macroeconomic conditions, industry and market considerations, and the overall financial performance of the Company. If, after assessing the totality of these qualitative factors, the Company determines that it is not more likely than not that the fair value of its reporting unit is less than its carrying amount, then no additional assessment is deemed necessary. Otherwise, the Company proceeds to perform the two-step test for goodwill impairment. The first step involves comparing the estimated fair value of the reporting unit with its carrying value, including goodwill. If the carrying amount of the reporting unit exceeds its fair value, the Company performs the second step of the goodwill impairment test to determine the amount of loss, which involves comparing the implied fair value of the goodwill to the carrying value of the goodwill. The Company may also elect to bypass the qualitative assessment in a period and elect to proceed to perform the first step of the goodwill impairment test. The Company performed its annual assessment for goodwill impairment in the fourth quarter of 2014, noting no impairment. There have not been any triggering events through September 30, 2015.

The Company evaluates its long-lived assets with definite lives, such as property and equipment, acquired technology, customer relationships, patent and license rights, for impairment by considering competition by products prescribed for the same indication, the likelihood and estimated future entry of non-generic and generic competition with the same or similar indication and other related factors. The factors that drive the estimate of the life are often uncertain and are reviewed on a periodic basis or when events occur that warrant review. Recoverability is measured by comparison of the assets’ book value to future net undiscounted cash flows that the assets are expected to generate. There have not been any impairment losses of long-lived assets through September 30, 2015.
The Company is obligated to accept from customers the return of products sold that are damaged or do not meet certain specifications. The Company may authorize the return of products sold in accordance with the terms of its sales contracts, and estimates allowances for such amounts at the time of sale. The Company has not experienced any sales returns.

**Acquired In-Process Research and Development Expense**

The Company has acquired and may continue to acquire the rights to develop and commercialize new drug candidates. The up-front and milestone payments to acquire research and development assets that have not reached technological feasibility are immediately expensed as acquired in-process research and development provided that the drugs have not achieved regulatory approval for marketing or have no alternative future use.

**Research and Development Costs and Collaborations**

All research and development costs are charged to expense as incurred. Such costs primarily consist of lab supplies, contract services, stock-based compensation expense, salaries and related benefits.

**Income Taxes**

The provisions of the Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) 740-10, Uncertainty in Income Taxes, address the determination of whether tax benefits claimed or expected to be claimed on a tax return should be recorded in the financial statements. Under ASC 740-10, the Company may recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. The Company has determined that it has uncertain tax positions. (See Note 11).

The Company accounts for income taxes using the asset and liability method to compute the differences between the tax basis of assets and liabilities and the related financial amounts, using currently enacted tax rates.

The Company has deferred tax assets, which are subject to periodic recoverability assessments. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount that more likely than not will be realized. As of September 30, 2015, the Company maintained a full valuation allowance against its deferred tax assets, with the exception of an amount equal to its deferred tax liabilities, which can be expected to reverse over a definite life.

**Stock-based Compensation**

The Company accounts for stock-based compensation in accordance with FASB ASC Topic 718, which establishes accounting for equity instruments exchanged for employee services. Under such provisions, stock-based compensation cost is generally measured at the grant date, based on the calculated fair value of the award and an estimate of forfeitures, and is recognized as an expense, under the straight-line method, over the employee’s requisite service period (generally the vesting period of the equity grant).

The Company accounts for equity instruments, including restricted stock or stock options, issued to non-employees in accordance with authoritative guidance for equity based payments to non-employees. Stock options issued to non-employees are accounted for at their estimated fair value determined using the Black-Scholes option-pricing model. The fair value of options and restricted stock granted to non-employees is re-measured over the vesting period, and the resulting changes in fair value are recognized as expense in the period of the change in proportion to the services rendered to date.

**Net Earnings (Loss) per Share**

Basic net earnings (loss) per share is computed by dividing net income (loss) for the period by the weighted average number of common shares outstanding during the period. Diluted net earnings (loss) per share reflects the additional dilution from potential issuances of common stock, such as stock issuable pursuant to the exercise of stock options or the exercise of outstanding warrants. The treasury stock method and if-converted method are used to calculate the potential dilutive effect of these common stock equivalents. Potentially dilutive shares are excluded from the computation of diluted net earnings (loss) per share when their effect is anti-dilutive. In periods where a net loss is presented, all potentially dilutive securities are anti-dilutive and are excluded from the computation of diluted net loss per share.

**Comprehensive Income (Loss)**

Comprehensive income (loss) is comprised of net income (loss) and adjustments for the change in unrealized gains and losses on our investments in available-for-sale marketable securities, net of taxes. The Company displays comprehensive income (loss) and its components in its consolidated statements of comprehensive income (loss).
Segment Information

The Company is engaged primarily in the discovery and development of innovative therapies focused on oncology and the treatment of chronic cancer pain as well as immunology and infectious diseases based on its platform technologies. Accordingly, the Company has determined that it operates in one operating segment.

New Accounting Standards

The Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2014-08, Reporting Discontinued Operations and Disclosures of Disposals of Components of an Entity, which amends ASC 205, Presentation of Financial Statements, and ASC 360, Property, Plant and Equipment. This ASU changes the criteria for determining which disposals should be presented as discontinued operation and modifies existing disclosure requirements. The provisions of this update were effective as of January 1, 2015; adoption of the standard had no effect on the Company’s financial position, results of operations, or cash flows.

The FASB issued ASU 2014-15, Presentation of Financial Statements — Going Concern, which requires management to assess an entity’s ability to continue as a going concern by incorporating and expanding upon certain principles that are currently in U.S. auditing standards. The provisions of this update are effective as of December 31, 2016, and because the ASU addresses disclosures only, it will not affect the Company’s financial position, results of operations, or cash flows.

In June 2014, the FASB issued ASU 2014-12, Compensation-Stock Compensation (Topic 718): Accounting for Share-Based Payments when the Terms of an Award Provide that a Performance Target Could Be Achieved After the Requisite Service Period, or ASU 2014-12. The ASU requires that a performance target that affects vesting and that could be achieved after the requisite service period be treated as a performance condition. ASU 2014-12 is effective for annual periods and interim periods within those annual periods beginning after December 15, 2015. Earlier adoption is permitted. The Company does not expect this standard to have an impact its financial position, results of operations, or cash flows.

In January 2015, the FASB issued ASU No. 2015-01, Income Statement—Extraordinary and Unusual Items (Subtopic 225-20); Simplifying Income Statement Presentation by Eliminating the Concept of Extraordinary Items, which eliminates from GAAP the concept of extraordinary items, stating that the concept causes uncertainty because (1) it is unclear when an item should be considered both unusual and infrequent and (2) users do not find the classification and presentation necessary to identify those events and transactions. This standard is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2015, with early adoption permitted provided the guidance is applied from the beginning of the fiscal year of adoption. The Company does not expect this standard to have an impact on its financial position, results of operations or cash flows upon adoption.

In February 2015, the FASB issued ASU 2015-02, Consolidation (Topic 810)—Amendments to the Consolidation Analysis, or ASU 2015-02. ASU 2015-02 affects reporting entities that are required to evaluate whether they should consolidate certain legal entities. Specifically, the amendments (1) modify the evaluation of whether limited partnerships and similar legal entities are variable interest entities (VIEs) or voting interest entities, (2) eliminate the presumption that a general partner should consolidate a limited partnership, (3) affect the consolidated analysis of reporting entities that are involved with VIEs, and (4) provide a scope exception for certain entities. ASU 2015-02 is effective for interim and annual reporting periods beginning after December 15, 2015. The Company does not expect this standard to have an impact on its financial position, results of operations or cash flows upon adoption.

In April 2015, the FASB issued ASU 2015-03, Interest—Imputation of Interest (Subtopic 835-30), which supersedes all other existing standards related to the imputation of interest. The guidance is effective for financial statements issued for fiscal years beginning after December 15, 2015, and interim periods within those fiscal years. The Company does not expect this standard to have an impact on its financial condition, results of operations, or cash flows upon adoption.

In April 2015, the FASB issued ASU No. 2014-09, Revenue from Contracts with Customers (Topic 606), which supersedes all existing revenue recognition requirements, including most industry-specific guidance. The new standard requires a company to recognize revenue when it transfers goods or services to customers in an amount that reflects the consideration that the company expects to receive for those goods or services. In August 2015, the FASB issued ASU No. 2015-14, Revenue from Contracts with Customers (Topic 606): Deferral of the Effective Date, which delayed the effective date of the new standard from January 1, 2017 to January 1, 2018. The FASB also agreed to allow entities to choose to adopt the standard as of the original effective date. The Company is currently evaluating the method of adoption and the potential impact that Topic 606 may have on its financial position and results of operations.

In April 2015, the FASB issued ASU No. 2015-05, Intangibles - Goodwill and Other - Internal-Use Software (Subtopic 350-40): Customer's Accounting for Fees Paid in a Cloud Computing Arrangement. Under this standard, if a cloud computing arrangement includes a software license, the software license element of the arrangement should be accounted for consistent with the acquisition of
other software licenses. If a cloud computing arrangement does not include a software license, the arrangement should be accounted for as a service contract. The new standard will be effective for the Company on January 1, 2016. The adoption of this standard is not expected to have an impact on the Company’s financial position or results of operations.

2. Investments

CARgenix

As described more fully in Note 1, the Company and TNK acquired the membership interests in CARgenix. The aggregate purchase price of $6.0 million was recognized as acquired in-process research and development expense in the consolidated statement of operations.

BDL

As described more fully in Note 1, the Company and TNK acquired the membership interests in BDL. The aggregate purchase price of $6.0 million was recognized as acquired in-process research and development expense in the consolidated statement of operations.

As of September 30, 2015 and December 31, 2014, the aggregate carrying amount of the Company’s cost-method investments in non-publicly traded companies was $111.5 million and $10.0 million, respectively and as of September 30, 2015 also included an ownership interest in NantCell, Inc., NantBioScience, Inc and Globavir Biosciences, Inc. The Company’s cost-method investments are assessed for impairment quarterly. The Company has determined that it is not practicable to estimate the fair value of its cost-method investments on a regular basis and does not reassess the fair value of cost-method investments if there are no identified events or changes in circumstances that may have a significant adverse effect on the fair value of the investments. No impairment losses were recorded during the three and nine months ended September 30, 2015 and 2014.

3. Equity Method Investments

NANTibody

As described in Note 1, the Company and NantCell established a new joint venture called NANTibody, as a stand-alone biotechnology company. NANTibody will focus on accelerating the development of multiple immuno-oncology monoclonal antibodies (mAbs) for the treatment of cancer, including but not limited to anti-PD-1, anti-PD-L1, anti-CTLA4 mAbs, and other immune-check point antibodies as well as antibody drug conjugates (ADCs) and bispecific antibodies.

NANTibody had no significant operations and incurred minimal general and administrative expenses during the three and nine months ended September 30, 2015.

NantStem

As described in Note 1, the Company and NantBioScience established a new joint venture called NantStem, as a stand-alone biotechnology company. NantStem will focus on the development of small molecule compounds against targets which may address important drivers of cancer growth including cancer stem cells. The Company agreed to contribute specified small molecule programs (lead inhibitors of the proto-oncogenes c-Myc, and the master metabolism regulator HIF-1 alpha, and an inducer of the tumor suppressor cytokine TRAIL) to NantStem. The value of the items contributed by the Company were insignificant.

NantStem had no significant operations and incurred minimal general and administrative expenses during the three and nine months ended September 30, 2015.

4. Marketable Securities

Marketable securities consisted of the following as of September 30, 2015 (in thousands):

<table>
<thead>
<tr>
<th>Short-term available-for-sale securities:</th>
<th>Amortized Cost</th>
<th>Gross Unrealized Gains</th>
<th>Gross Unrealized Losses</th>
<th>Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>NantKwest common shares</td>
<td>$ 10,000</td>
<td>$ 54,386</td>
<td>—</td>
<td>$ 64,386</td>
</tr>
</tbody>
</table>

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On July 27, 2015, NantKwest, Inc. completed its initial public offering (“IPO”). Prior to the IPO the Company’s investment in NantKwest was accounted for using the cost method and the total investment of $10.0 million was classified as part of investments in common stock on the Company’s consolidated balance sheets. The common shares are subject to restrictions in a lock-up agreement through December 27, 2015 as well as limitations under Rule 144 of the Securities Act of 1933. As these are short term restrictions, the Company did not apply a marketability discount. The Company recorded an unrealized gain of $54.4 million, representing the difference between the $10.0 million cost basis and the estimated fair value net of tax as of September 30, 2015, as accumulated other comprehensive income in the stockholder's equity section of the Company’s consolidated balance sheet and as a change in unrealized gains and losses on marketable securities in the Company’s consolidated statements of comprehensive income (loss). The Company’s investment in NantKwest, Inc. will be revalued on each balance sheet date. The fair value of the Company’s holdings in NantKwest at September 30, 2015 is a Level 1 measurement.

5. Sale of IgDraSol

On July 8, 2015, the Company consummated the previously announced sale to NantPharma of its equity interests in IgDraSol, Inc., its wholly-owned subsidiary and the holder of the rights to Cynviloq, a polymeric micelle based Cremophor free paclitaxel injectable finished formulation. Pursuant to the Agreement, NantPharma paid the Company an upfront payment of $90.05 million, of which $60 million was paid to NANTibody and NantStem by NantPharma on the Company’s behalf to fund the Company’s joint ventures. In addition, the Company will be entitled to receive up to $620 million in regulatory milestone payments and up to $600 million in sales milestone payments should certain events occur. The Company will also receive specified additional per unit payments in excess of cost of supply from total unit sales. In addition, during the first three years after closing, the Company has the option to co-develop and/or co-market Cynviloq on terms to be negotiated.

Upon the closing of the sale agreement in July 2015, a specified development milestone in the Agreement and Plan of Merger between the Company and IgDraSol, Inc. dated September 9, 2013, was satisfied and the Company issued 1,306,272 million shares to former IgDraSol stockholders. At the time of the IgDraSol acquisition, the Company estimated that the probability of achieving these development milestones was remote and therefore the Company did not assign any value to these milestones.

The Company recorded the following amounts in the third quarter of 2015, resulting in a net gain of $69.3 million on the sale of the IgDraSol assets calculated as the difference between the non-contingent consideration and the net carrying amount of the assets and liabilities assumed or extinguished. The following sets forth the calculation of the gain on sale as of the closing (in thousands):

<table>
<thead>
<tr>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-contingent cash consideration received</td>
</tr>
<tr>
<td>Net intangible assets sold</td>
</tr>
<tr>
<td>Allocated goodwill</td>
</tr>
<tr>
<td>Extinguished employee liabilities and estimated transaction costs</td>
</tr>
<tr>
<td><strong>Gain on sale of IgDraSol, net</strong></td>
</tr>
</tbody>
</table>

The net gain on the sale of the IgDraSol assets may be adjusted in future periods by contingent consideration based upon the achievement of pre-determined regulatory and revenue milestones.

In determining the gain on sale, $3.4 million of goodwill was allocated on a relative fair value basis comparing the fair value of the IgDraSol business to the fair value of the Company.

6. Goodwill and Intangible Assets

As of September 30, 2015 and December 31, 2014, the Company had goodwill of $20,626 and $24,041, respectively. The Company performed a qualitative test for goodwill impairment as of December 31, 2014. Based upon the results of the qualitative testing the Company concluded that it is more-likely-than-not that the fair values of the Company’s goodwill was in excess of its carrying value and therefore performing the first step of the two-step impairment test was unnecessary. No goodwill impairment was recognized for the three and nine months ended September 30, 2015 and 2014.

The following is a summary of changes in the Company’s recorded goodwill during the nine months ended September 30, 2015 (in thousands):

<table>
<thead>
<tr>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Balance at December 31, 2014</strong></td>
</tr>
<tr>
<td>Relative fair value allocation of goodwill attributable to IgDraSol upon sale to NantPharma (see Note 5)</td>
</tr>
<tr>
<td><strong>Balance as September 30, 2015</strong></td>
</tr>
</tbody>
</table>
The Company’s intangible assets, excluding goodwill, include patent rights, core technologies and customer relationships. Amortization for the intangible assets that have finite useful lives is generally recorded on a straight-line basis over their useful lives. A summary of the Company’s identifiable intangible assets is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Gross Carrying Amount</th>
<th>September 30, 2015</th>
<th>Intangibles, net</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer relationships</td>
<td>$1,320</td>
<td>$472</td>
<td>$848</td>
</tr>
<tr>
<td>Acquired technology</td>
<td>3,410</td>
<td>313</td>
<td>3,097</td>
</tr>
<tr>
<td>Patent rights</td>
<td>90</td>
<td>12</td>
<td>78</td>
</tr>
<tr>
<td><strong>Total intangible assets</strong></td>
<td><strong>$4,820</strong></td>
<td><strong>$797</strong></td>
<td><strong>$4,023</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Gross Carrying Amount</th>
<th>December 31, 2014</th>
<th>Intangibles, net</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer relationships</td>
<td>$1,320</td>
<td>$272</td>
<td>$1,048</td>
</tr>
<tr>
<td>Acquired technology</td>
<td>3,410</td>
<td>182</td>
<td>3,228</td>
</tr>
<tr>
<td>Patent rights</td>
<td>90</td>
<td>9</td>
<td>81</td>
</tr>
<tr>
<td><strong>Total intangible assets</strong></td>
<td><strong>$4,820</strong></td>
<td><strong>$463</strong></td>
<td><strong>$4,357</strong></td>
</tr>
</tbody>
</table>

As of September 30, 2015, the remaining amortization period for identifiable intangible assets is 5 to 19 years.

Patent rights are stated at cost and depreciated on a straight-line basis over the estimated useful lives of the assets, determined to be approximately nineteen years from the date of transfer of the rights to the Company in April 2013. Amortization expense for both the three and nine months ended September 30, 2015 and 2014 was $1 and $4, respectively, which has been included in intangibles amortization.

Acquired technology is stated at cost and depreciated on a straight-line basis over the estimated useful lives of the assets, determined to be approximately nineteen years from the date of acquisition of the technology in December 2013. Amortization expense for both the three and nine months ended September 30, 2015 and 2014 was $50 and $150, respectively, which has been included in intangibles amortization.

Customer relationships are stated at cost and depreciated on a straight-line basis over the estimated useful lives of the assets, determined to be approximately five years from the date of acquisition in December 2013. Amortization expense for both the three and nine months ended September 30, 2015 and 2014 was $66 and $198, respectively, which has been included in intangibles amortization.

Estimated future amortization expense related to intangible assets at September 30, 2015 is as follows:

<table>
<thead>
<tr>
<th>Years Ending December 31,</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015 (remaining three months)</td>
<td>$110</td>
</tr>
<tr>
<td>2016</td>
<td>445</td>
</tr>
<tr>
<td>2017</td>
<td>445</td>
</tr>
<tr>
<td>2018</td>
<td>436</td>
</tr>
<tr>
<td>2019</td>
<td>181</td>
</tr>
<tr>
<td>Thereafter</td>
<td>2,406</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>4,023</strong></td>
</tr>
</tbody>
</table>

7. Significant Agreements and Contracts

*License Agreement with The Scripps Research Institute*

In January 2010, the Company entered into a license agreement, or the TSRI License, with The Scripps Research Institute, or TSRI. Under the TSRI License, TSRI granted the Company an exclusive, worldwide license to certain TSRI patent rights and materials based on quorum sensing for the prevention and treatment of Staphylococcus aureus (“Staph”) infections, including Methicillin-resistant Staph. In consideration for the license, the Company: (i) issued TSRI a warrant for the purchase of common stock, (ii) agreed to pay TSRI a certain annual royalty commencing in the first year after certain patent filing milestones are achieved, (iii) agreed to pay a royalty on any sales of licensed products by the Company or its affiliates and a royalty for any revenues generated
by the Company through its sublicense of patent rights and materials licensed from TSRI under the TSRI License. The TSRI License requires the Company to indemnify TSRI for certain breaches of the agreement and other matters customary for license agreements. The parties may terminate the TSRI License at any time by mutual agreement. In addition, the Company may terminate the TSRI License by giving 60 days’ notice to TSRI and TSRI may terminate the TSRI License immediately in the event of certain breaches of the agreement by the Company or upon the Company’s failure to undertake certain activities in furtherance of commercial development goals. Unless terminated earlier by either or both parties, the term of the TSRI License will continue until the final expiration of all claims covered by the patent rights licensed under the agreement. The warrant was exercised in February 2015. For the three months ended September 30, 2015 and 2014, the Company recorded $48 and $41 in patent prosecution and maintenance costs associated with the TSRI License, respectively. For the nine months ended September 30, 2015 and 2014, the Company recorded $94 and $97 in patent prosecution and maintenance costs associated with the TSRI License, respectively. All such costs have been included in general and administrative expenses.

License Agreement with Mabtech Limited

In August 2015, the Company entered into an exclusive licensing agreement to develop and commercialize multiple prespecified biosimilar and biobetter antibodies from Mabtech Limited. Under the terms of the agreement, the Company will develop and market these four monoclonal antibodies (mAbs) for the North American, European and Japanese market. The Company made an initial license payment of $10.0 million which was recognized as acquired in-process research and development expense in the consolidated statements of operations. The agreement includes additional milestone payments totaling up to $190.0 million payable over the next five years.

License Agreement with NantCell

In April 2015, the Company and NantCell entered into a license agreement. Under the terms of the agreement the Company granted an exclusive license to NantCell covering patent rights, know-how, and materials related to certain antibodies, anti-body drug conjugates (ADC) and two CAR-TNK products. NantCell agreed to pay a royalty not to exceed five percent (5%) to the Company on any net sales of products (as defined) from the assets licensed by the Company to NantCell. In addition to the future royalties payable under this agreement, NantCell paid an upfront payment of $10 million to the Company and issued 10 million shares of NantCell common stock to the Company valued at $100 million based on a recent equity sale of NantCell common stock to a third party. The Company will recognize the upfront payment and the value of the equity interest received over the expected license period of approximately ten years on a straight line basis. The Company’s ownership interest in NantCell does not provide the Company with control or the ability to exercise significant influence, therefore the $100 million investment will be carried at cost in the consolidated balance sheets and evaluated for other-than-temporary impairment on a quarterly basis.

NIH Grants

In June 2012, the NIAID awarded the Company a third Advanced Technology STTR grant to support the Company’s program to generate and develop novel human antibody therapeutics to combat Staph infections, including Methicillin-resistant Staph, or the Staph Grant II award. The project period for the Phase I grant covers a two-year period which commenced in June 2012, with a total grant award of $600. During the three months ended September 30, 2015 and 2014, the Company recorded no revenue, respectively, associated with the Staph Grant II award. During the nine months ended September 30, 2015 and 2014, the Company recorded $0 and $150 of revenue, respectively, associated with the Staph Grant II award.

In June 2014, the NIAID awarded the Company a Phase II STTR grant to support the advanced preclinical development of human bispecific antibody therapeutics to prevent and treat *Staphylococcus aureus* (*S. aureus* or Staph) infections, including methicillin-resistant *S. aureus* (MRSA), or the Staph Grant III award. The project period for this Phase II grant covers a two-year period which commenced in June 2014, with total funds available of approximately $1 million per year for up to 2 years. During the three months ended September 30, 2015 and 2014, the Company recorded $243 and $115 of revenue, respectively, associated with the Staph Grant III award. During the nine months ended September 30, 2015 and 2014, the Company recorded $660 and $147 of revenue, respectively, associated with the Staph Grant III award.

In June 2014, the NIAID awarded the Company a Phase I STTR grant entitled “Anti-Pseudomonas Immunotherapy and Targeted Drug Delivery”. This grant will support the preclinical development of novel anti-*Pseudomonas aeruginosa* mAb immunotherapy or an antibody-mediated targeted antibiotic delivery vehicle. Each modality may be an effective and safe stand-alone therapy and/or a component of a “cocktail” therapeutic option for prevention and treatment of *P. aeruginosa* infections. The project period for this Phase I grant covers a two-year period which commenced in July 2014, with total funds available of approximately $300 per year for up to 2 years. During the three months ended September 30, 2015 and 2014, the Company recorded $73 and $11 of revenue, respectively, associated with the Phase I STTR grant award. During the nine months ended September 30, 2015 and 2014, the Company recorded $167 and $11 of revenue, respectively, associated with the Phase I STTR grant award.
In July 2014, the National Cancer Institute (NCI), a division of the NIH, awarded the Company a Phase I STTR grant, entitled “Targeting of Myc-Max Dimerization for the Treatment of Cancer”. This grant will support the preclinical development of the Myc inhibitor, which interferes with the protein-protein interaction (PPI) between Myc and its obligatory dimerization partner, Max, preventing sequence-specific binding to DNA and subsequent initiation of oncogenic transformation. The project period for this Phase I grant covers a one-year period which commenced in August 2014, with total funds available of approximately $225. During the three months ended September 30, 2015 and 2014, the Company recorded $9 and $19 of revenue, respectively, associated with the Phase I Myc grant award. During the nine months ended September 30, 2015 and 2014, the Company recorded $139 and $19 of revenue, respectively, associated with the Phase I Myc grant award.

In August 2014, the National Heart, Lung, and Blood Institute (NHBLI), a division of the NIH awarded the Company a Phase I Small Business Technology Transfer (SBIR) grant entitled “Human Anti-WISP-1 Antibodies for Treatment of Idiopathic Pulmonary Fibrosis”. This grant will advance the Company’s immunotherapy targeting WNT-1 Inducible Signaling Protein-1(WISP1) for the treatment of Idiopathic Pulmonary Fibrosis (IPF). WISP1 is a protein that has been shown to be upregulated in IPF, linked to key growth factors, cellular proliferation, hyperplasia and is correlated with late stage cancers. IPF is a fatal disease, which results in progressive loss of lung function due to fibrosis of the lungs. The project period for this Phase I grant covers a one-year period which commenced in August 2014, with total funds available of approximately $225. During the three months ended September 30, 2015 and 2014, the Company recorded $31 and $2 of revenue, respectively, associated with the Phase I WISP1 grant award. During the nine months ended September 30, 2015 and 2014, the Company recorded $61 and $2 of revenue, respectively, associated with the Phase I WISP1 grant award.

8. Loan and Security Agreement

In September 2013, the Company entered into a $5.0 million loan and security agreement with two banks pursuant to which: (i) the lenders provided the Company a term loan which was funded at closing, (ii) the Company repaid its then outstanding equipment loan balance of $762, and (iii) the lenders received a warrant to purchase an aggregate 31,250 shares of the Company’s common stock at an exercise price of $8.00 per share exercisable for seven years from the date of issuance. The value of the warrants, totaling $215, was recorded as debt discount and additional paid-in capital.

In March 2014, the Company entered into an amended and restated loan and security agreement, increasing the September 2013 facility to $12.5 million from $5.0 million, with the same two banks. Such loan was funded at closing and is secured by a lien covering substantially all of the Company’s assets, excluding intellectual property, which is subject to a negative pledge. In October 2014, the Company entered into a second amendment to its amended and restated loan and security agreement to extend the interest only payments on the outstanding amount of the loan from October 1, 2014 to May 1, 2015, after which equal monthly payments of principal and interest are due until the loan maturity date of September 30, 2017. The amended and restated loan: (i) interest rate is 7.95% per annum, and (ii) provided the Lenders additional warrants to purchase an aggregate of 34,642 shares of the Company’s common stock at an exercise price of $12.99 per share, exercisable for seven years from the date of issuance. The value of the warrants, totaling $321, was recorded as debt discount and additional paid-in capital.

At the Company’s option, it may prepay all of the outstanding principal balance, subject to certain pre-payment fees ranging from 1% to 3% of the prepayment amount. In the event of a final payment of the loans under the loan agreement, either in the event of repayment of the loan at maturity or upon any prepayment, the Company is obligated to pay the amortized portion of the final fee of $781.

The Company is also subject to certain affirmative and negative covenants under the loan agreement, including limitations on its ability to: undergo certain change of control events; convey, sell, lease, license, transfer or otherwise dispose of any equipment financed by loans under the loan agreement; create, incur, assume, guarantee or be liable with respect to indebtedness, subject to certain exceptions; grant liens on any equipment financed under the loan agreement; and make or permit any payment on specified subordinated debt. In addition, under the loan agreement, subject to certain exceptions, the Company is required to maintain with the lender its primary operating, other deposit and securities accounts.

Long-term debt and unamortized discount balances are as follows (in thousands):

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Face value of amended and restated loan</td>
<td>$10,585</td>
</tr>
<tr>
<td>Fair value of all warrants</td>
<td>$(536)</td>
</tr>
<tr>
<td>Accretion of debt discount</td>
<td>$319</td>
</tr>
<tr>
<td>Balance at September 30, 2015</td>
<td>$10,368</td>
</tr>
</tbody>
</table>
Future minimum payments under the amended and restated loan and security agreement are as follows:

<table>
<thead>
<tr>
<th>Year Ending December 31,</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015  $1,313</td>
</tr>
<tr>
<td></td>
<td>2016  5,530</td>
</tr>
<tr>
<td></td>
<td>2017  4,608</td>
</tr>
<tr>
<td>Total future minimum payments</td>
<td>11,451</td>
</tr>
<tr>
<td>Unamortized interest</td>
<td>(866)</td>
</tr>
<tr>
<td>Debt discount</td>
<td>(217)</td>
</tr>
<tr>
<td>Total minimum payment</td>
<td>10,368</td>
</tr>
<tr>
<td>Current portion</td>
<td>(4,722)</td>
</tr>
<tr>
<td>Long-term debt</td>
<td>$ 5,646</td>
</tr>
</tbody>
</table>

9. Stock Incentive Plans

2009 Non-Employee Director Grants

In September 2009, prior to the adoption of the 2009 Stock Incentive Plan, the Company’s Board of Directors approved the reservation and issuance of 8,000 nonstatutory stock options to the Company’s non-employee directors. The outstanding options vested on the one year anniversary of the vesting commencement date in October 2010, and are exercisable for up to 10 years from the grant date. No further shares may be granted under this plan and, as of September 30, 2015, 3,200 options were outstanding.

2009 Stock Incentive Plan

In October 2009, the Company’s stockholders approved the 2009 Stock Incentive Plan. In June 2014, the Company’s stockholders approved, among other items, the amendment and restatement of the 2009 Stock Incentive Plan, or the Stock Plan, to increase the number of common shares authorized to be issued pursuant to the Stock Plan to 3,760,000. Such shares of the Company’s common stock are reserved for issuance to employees, non-employee directors and consultants of the Company. The Stock Plan provides for the grant of incentive stock options, non-incentive stock options, stock appreciation rights, restricted stock awards, unrestricted stock awards, restricted stock unit awards and performance awards to eligible recipients. Recipients of stock options shall be eligible to purchase shares of the Company’s common stock at an exercise price equal to no less than the estimated fair market value of such stock on the date of grant. The maximum term of options granted under the Stock Plan is ten years. Employee option grants will generally vest 25% on the first anniversary of the original vesting commencement date, with the balance vesting monthly over the remaining three years. The vesting schedules for grants to non-employee directors and consultants will be determined by the Company’s Compensation Committee.

The following table summarizes stock option activity as of September 30, 2015 and the changes for the period then ended:

<table>
<thead>
<tr>
<th>Options Outstanding</th>
<th>Weighted-Average Exercise Price</th>
<th>Aggregate Intrinsic Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outstanding at December 31, 2014</td>
<td>2,231,800 $ 6.34 $ 8,323</td>
<td></td>
</tr>
<tr>
<td>Options Granted</td>
<td>1,328,600 $ 12.74</td>
<td></td>
</tr>
<tr>
<td>Options Canceled</td>
<td>(217,762) $ 7.02</td>
<td></td>
</tr>
<tr>
<td>Options Exercised</td>
<td>(272,338) $ 6.16</td>
<td></td>
</tr>
<tr>
<td>Outstanding at September 30, 2015</td>
<td>3,070,300 $ 8.84 $ (1,367)</td>
<td></td>
</tr>
</tbody>
</table>

The Company uses the Black-Scholes valuation model to calculate the fair value of stock options. The fair value of employee stock options was estimated at the grant date using the following assumptions:

<table>
<thead>
<tr>
<th>Weighted-average grant date fair value</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 11.56  $ 8.05</td>
</tr>
<tr>
<td>Dividend yield</td>
</tr>
<tr>
<td>$ —  $ —</td>
</tr>
<tr>
<td>Volatility</td>
</tr>
<tr>
<td>75% 78%</td>
</tr>
<tr>
<td>Risk-free interest rate</td>
</tr>
<tr>
<td>1.65% 1.95%</td>
</tr>
<tr>
<td>Expected life of options</td>
</tr>
<tr>
<td>6.1 years 6.1 years</td>
</tr>
</tbody>
</table>

The assumed dividend yield was based on the Company’s expectation of not paying dividends in the foreseeable future. Due to the Company’s limited historical data, the estimated volatility incorporates the historical and implied volatility of comparable
companies whose share prices are publicly available. The risk-free interest rate assumption was based on the U.S. Treasury’s rates for U.S. Treasury zero-coupon bonds with maturities similar to those of the expected term of the award being valued. The weighted average expected life of options was estimated using the average of the contractual term and the weighted average vesting term of the options.

The total employee stock-based compensation recorded as operating expenses was $2,373 and $490 for the three months ended September 30, 2015 and 2014, respectively, and $4,156 and $2,619 for the nine months ended September 30, 2015 and 2014, respectively.

The total unrecognized compensation cost related to unvested stock option grants as of September 30, 2015 was $8,509 and the weighted average period over which these grants are expected to vest is 2.6 years.

The Company records equity instruments issued to non-employees as expense at their fair value over the related service period as determined in accordance with the authoritative guidance and periodically revalues the equity instruments as they vest. Stock-based compensation expense related to non-employee consultants recorded as operating expenses was $280 and $136 for the three months ended September 30, 2015 and 2014, respectively, and $1,327 and $540 for the nine months ended September 30, 2015 and 2014, respectively.

### Common Stock Reserved for Future Issuance

Common stock reserved for future issuance consists of the following at September 30, 2015:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common stock warrants outstanding under the underwriters agreement</td>
<td>182,600</td>
</tr>
<tr>
<td>Common stock warrants outstanding under the loan and security agreement</td>
<td>65,892</td>
</tr>
<tr>
<td><strong>Common stock warrants outstanding under the Cambridge securities agreement</strong></td>
<td>1,724,138</td>
</tr>
<tr>
<td>Common stock options outstanding under the EIP</td>
<td>3,200</td>
</tr>
<tr>
<td>Authorized for future grant or issuance under the Stock Plan</td>
<td>330,862</td>
</tr>
<tr>
<td>Issuable under assignment agreement based upon achievement of certain milestones</td>
<td>80,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,386,692</strong></td>
</tr>
</tbody>
</table>

The Company had outstanding common share equivalents of 5,046,130 and 2,091,826 at September 30, 2015 and 2014, respectively.

### 10. Investment in Variable Interest Entity

The Company’s consolidated financial statements include the financial results of LA Cell, Inc. (LA Cell), a consolidated subsidiary of the Company and a variable interest entity in which the Company is the primary beneficiary.

In September 2015, LA Cell exclusively licensed certain technology from City of Hope. The technology includes cell-penetrating antibody therapies that enables modified monoclonal antibodies (mAbs) to penetrate into cells and target disease-causing molecules. Utilizing mAbs derived from the Company's antibody portfolio, LA Cell is focused on developing therapies against important oncology targets, including but not limited to c-MYC, mutated KRAS, STAT3, and FoxP3. Pursuant to the license agreement, LA Cell made a $2.0 million upfront payment to City of Hope and will pay an additional initial payment of $3.0 million to City of Hope by March 25, 2016, as well as license maintenance fees over the next six years. The license agreement also provides for development and sales milestone payments and royalties based on net sales, as defined in the license agreement.

Upon the formation of LA Cell, the Company held all of the outstanding stock of LA Cell. As of September 30, 2015, the Company held an aggregate of approximately a 43% ownership of outstanding shares but which include a majority of the voting rights.

For the three and nine months ended September 30, 2015, LA Cell recognized $2.0 million in acquired in-process research and development expense in the Company’s consolidated statements of operations and incurred minimal general and administrative expenses.

### 11. Income Taxes

The Company maintains deferred tax assets that reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. These deferred tax assets include net operating loss carryforwards, research credits and temporary differences. In assessing the Company's ability to
realize deferred tax assets, management considers, on a periodic basis, whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. As such, management has determined that it is appropriate to maintain a full valuation allowance against the Company's U.S. federal and state deferred tax assets, with the exception of an amount equal to its deferred tax liabilities, which can be expected to reverse over a definite life.

The Company is subject to taxation in the U.S. and various state jurisdictions. The Company's tax years for 2007 and later are subject to examination by the U.S. and state tax authorities due to the existence of the NOL carryforwards.

As of the September 30, 2015, the Company had approximately $800 of unrecognized tax benefits that, if recognized, would impact the effective income tax rate for continuing operations, subject to possible offset by an increase in the deferred tax asset valuation allowance. As of September 30, 2014, there were no unrecognized tax benefits.

Income taxes payable as of September 30, 2015, are included in accrued expenses in the Company’s consolidated balance sheet.

The Company recognizes interest and penalties related to unrecognized tax benefits in its provision for income taxes. For the nine months ended September 30, 2014 and September 30, 2015, expense was recorded related to interest and penalties. For the nine months ended September 30, 2014 and September 30, 2015, there was no material benefit recorded related to interest and penalties. The Company believes that no significant amount of the liabilities for uncertain tax positions will expire within twelve months of September 30, 2015.

A reconciliation of the income tax provision from operations computed by applying the statutory federal income tax rate of 35% to income (loss) from operations before income taxes to the income tax provision for the nine months ended September 30, 2015 was as follows (in thousands):

<table>
<thead>
<tr>
<th>September 30, 2015</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Income tax benefit at federal statutory rate</td>
<td>$ (9,828)</td>
</tr>
<tr>
<td>State, net of federal tax benefit</td>
<td>(957)</td>
</tr>
<tr>
<td>Non-deductible expense and other</td>
<td>4,576</td>
</tr>
<tr>
<td>Gain on sale of IgDraSol</td>
<td>6,055</td>
</tr>
<tr>
<td>Impact of indefinite lived deferred tax liabilities</td>
<td>36,661</td>
</tr>
<tr>
<td>Income tax credits</td>
<td>(4,641)</td>
</tr>
<tr>
<td>Increase in valuation allowance</td>
<td>3,262</td>
</tr>
<tr>
<td>Income tax provision</td>
<td>$ 35,128</td>
</tr>
</tbody>
</table>

12. Related Party Agreements

During the three and nine months ended September 30, 2015, the Company purchased products totaling $76 and $491, respectively, from Levena Biopharma Co., LTD (Levena), a Chinese Corporation. The Company’s Senior Vice President and Head of Antibody Drug Conjugates is also one of the owners of Levena.

In December 2014, the Company entered into a securities purchase agreement (the “Purchase Agreement”) with an affiliated entity of Dr. Patrick Soon-Shiong (the “Investor”) pursuant to which the Company agreed to issue and sell to the Investor an aggregate of approximately 7.2 million shares of the Company’s common stock at a price of $5.80 per share for an aggregate purchase price of $41,691. In connection with the Purchase Agreement, the Investor received a warrant to purchase approximately 1.7 million shares of the Company’s Common Stock. The warrant is exercisable for a period of three years from the date of issuance at an initial exercise price of $5.80 per share.

In December 2014, the Company entered into a joint development and license agreement with Conkwest Inc., which has changed its name to NantKwest, and of which Dr. Patrick Soon-Shiong is a majority owner. In addition, the Company purchased approximately 5.6 million shares of NantKwest common stock for $10 million.

As described more fully in Notes 1 and 3, during the nine months ended September 30, 2015, the Company entered into a joint venture called Immunotherapy NANTibody, LLC, with NantCell, a wholly-owned subsidiary of NantWorks, a private company owned by Dr. Patrick Soon-Shiong. In July 2015, the Company contributed its portion of the initial joint funding of $40 million to the Immunotherapy NANTibody joint venture. The Company and NantCell have also entered into a license agreement pursuant to which the Company received a $10 million upfront license payment and $100 million of vested NantCell common stock.

As described more fully in Notes 1 and 3, the Company entered into a joint venture called NantCancerStemCell, LLC, or NantStem, with NantBioScience, a wholly-owned subsidiary of NantWorks. In connection with negotiated changes to the structure of
NantStem the Company issued a call option on shares of NantKwest that it owned to Cambridge Equities, LP (Cambridge), a related party to the Company and to NantBioScience. The call option to Cambridge is on up to 2.0 million shares of NantKwest common stock held by the Company (the Option Agreement). The Company currently holds approximately 5.6 million shares of common stock of NantKwest, which is classified as available-for-sale in the consolidated financial statements. The Option Agreement gives Cambridge the right to purchase up to 2.0 million shares at a price of $15.295 from time to time in the first quarter of 2016. There is no option premium associated with this Option Agreement. The Option Agreement is a derivative as defined in ASC 815 and will be marked to fair value every reporting period the Option Agreement is in effect, with changes in fair value recognized in current earnings. In April 2015, the Company purchased 1.0 million shares of NantBioScience common stock for $10 million.

In May 2015, the Company entered into a stock sale and purchase agreement with NantPharma, a private company owned by NantWorks pursuant to which the Company sold its equity interests in IgDraSol, its wholly-owned subsidiary and holder of the rights to Cynviloq for an upfront payment of $90.05 million and potential regulatory and sales milestones of up to $1.2 billion. See Note 5.

### 13. Subsequent Events

On October 13, 2015, the Company wrote a call option to Cambridge Equities, LP (Cambridge), a related party, on up to 2.0 million shares of NantKwest, Inc (NantKwest) common stock held by the Company (the Option Agreement). The Company currently holds approximately 5.6 million shares of common stock of NantKwest, par value $.0001 per share, which is classified as available-for-sale in its consolidated financial statements. The Option Agreement gives Cambridge the right to purchase up to 2.0 million shares at a price of $15.295 from time to time in the first quarter of 2016. There is no option premium associated with this Option Agreement. The Option Agreement is a derivative as defined in ASC 815 and will be marked to fair value every reporting period the Option Agreement is in effect, with changes in fair value recognized in current earnings.

In August 2015, the Company and TNK entered into a binding term sheet to exclusively license the NanoVelcro Circulating Tumor Cell profiling assay (the “Technology”) from Cytolumina Technologies Corp. (“CTC”) and Fetolumina Technologies Corp. (“FTC”). Upon execution of definitive license agreements, CTC and FTC each agreed to grant to TNK an exclusive and perpetual license to the Technology to research, develop, use, offer for sale, sell, have sold, distribute, import, and export the Technology and any products developed from or includes the Technology (the “Product”) for all uses or applications for cell based therapies, including but not limited to CAR-T and CAR.TNK immunotherapies (the “TNK Field”). Additionally, CTC and FTC each agreed to grant to the Company an exclusive and perpetual license to the Technology to research, develop, use, offer for sale, sell, have sold, distribute, import and export the Technology and any Products that incorporate a Company proprietary antibody for uses or applications. As of September 30, 2015 this transaction had not closed.

Upon execution of final definitive license agreements, TNK shall acquire 4.166% of the capital stock of each of CTC and FTC for an aggregate purchase price of $5.0 million. In addition, the definitive license agreements shall provide that TNK, on the one hand, and CTC and FTC, on the other hand, shall share the profits from the net sales of TNK for any Product in the TNK Field on a 50/50 basis. The Company, on the one hand, and CTC and FTC, on the other hand, shall share the profits from net sales of the Company for any Product that incorporates a Company proprietary antibody outside the TNK Field on a 50/50 basis. CTC and FTC shall pay the Company 10% of the net profit of CTC and FTC, respectively, for sales of any Product that incorporates a Company proprietary antibody outside the TNK Field.
Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations.

This Quarterly Report on Form 10-Q contains “forward-looking statements” about our expectations, beliefs or intentions regarding our potential product offerings, business, financial condition, results of operations, strategies or prospects. You can identify forward-looking statements by the fact that these statements do not relate strictly to historical or current matters. Rather, forward-looking statements relate to anticipated or expected events, activities, trends or results as of the date they are made and are often identified by the use of words such as “assumes,” “plans,” “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “might,” or “will,” and similar expressions or variations. Because forward-looking statements relate to matters that have not yet occurred, these statements are inherently subject to risks and uncertainties that could cause our actual results to differ materially from any future results expressed or implied by the forward-looking statements. Many factors could cause our actual activities or results to differ materially from the activities and results anticipated in forward-looking statements. These factors include those described under the caption “Risk Factors” included elsewhere in this Quarterly Report on Form 10-Q and in our other filings with the Securities and Exchange Commission, or the SEC. Furthermore, such forward-looking statements speak only as of the date of this report. We undertake no obligation to update any forward-looking statements to reflect events or circumstances occurring after the date of such statements.

Overview

We are a biopharmaceutical company engaged in the discovery, acquisition, development and commercialization of proprietary drug therapeutics for addressing significant unmet medical needs in the U.S. as well as international markets. Our primary therapeutic focus is oncology, including the treatment of chronic cancer pain, but we are also developing therapeutic products for other indications, including immunology and infectious diseases. We currently have multiple clinical development programs underway: CAR-T programs for solid tumors, resiniferatoxin, or RTX, a non-opiate, ultra potent and selective agonist of the TRPV-1 receptor for intractable pain in end-stage disease and our clinical development program for our biosimilar/biobetter antibodies that we licensed from Mabtech Limited, a holding company for antibody development and manufacturing companies in China.

Our pipeline also includes preclinical fully human therapeutic monoclonal antibodies (mAbs), including our fully human anti-PD-L1 and anti-PD-1 checkpoint inhibitors derived from our proprietary G-MAB® library platform, antibody drug conjugates (ADCs), bispecific antibodies (BsAbs), as well as Chimeric Antigen Receptor-T cell (CAR-T) and Chimeric Antigen Receptor Tumor-attacking Neukoplast® (CAR.TNK™, pronounced “CARTANK”) for adoptive cellular immunotherapies (ACI). Our objective is to develop our antibody drug products and adoptive cellular immunotherapies as: (i) First in Class (FIC), and/or (ii) Best in Class (BIC), which may offer greater efficacy and/or fewer adverse events or side effects as compared to existing drugs, as well as fully human therapeutic antibodies derived from our proprietary G-MAB® library platform and antibody drug conjugates, or ADCs.

Through September 30, 2015, we identified and further developed a number of potential product candidates across various therapeutic areas, and intend to select several lead product candidates to further advance into preclinical development activities in 2016. It is too early to assess which of these candidates, if any, will merit further evaluation in clinical trials. Our libraries were designed to facilitate the rapid identification and isolation of highly specific, antibody therapeutic product candidates that are fully-human and that bind to disease targets appropriate for antibody therapy. We built our initial antibody expression and production capabilities to enable us to make sufficient product material to conduct preclinical safety and efficacy testing in animal models.

Although we intend to retain ownership and control of product candidates by advancing their development, we regularly also consider, (i) partnerships with pharmaceutical or biopharmaceutical companies and (ii) sale of our products in each case, in order to balance the risks and costs associated with drug discovery, development and commercialization with efforts to maximize our stockholders’ returns. Our partnering objectives include generating revenue through license fees, milestone-related development fees and royalties as well as profit shares or joint ventures to generate potential returns from our product candidates.

Recent Developments

In June 2015, the National Institutes of Health, or NIH announced that the Clinical Center suspended operations of its Pharmaceutical Development Section after FDA inspections that occurred in May 2015. An FDA inspection report issued on May 29, 2015 noted “deficiencies in the physical facility, including flaws in the air handling system, and operational failures including inadequate quality control, insufficient employee training, and lack of compliance with standard operating procedures”. As a result, 46 clinical programs, including the resiniferatoxin (RTX) study in patients with severe pain in advanced cancer, were placed on clinical hold by the FDA. NIH has developed an interim corrective action/preventative action plan which has not yet been approved by the FDA. The Company plans to continue with its already planned corporate IND for RTX.
In August 2015, we along with TNK Therapeutics, Inc. (“TNK”), our subsidiary entered into a Membership Interest Purchase Agreement (the “Membership Interest Purchase Agreement”) with CARgenix Holdings LLC (“CARgenix”) and the members of CARgenix (the “Members”) pursuant to which the Members sold all of their membership interests in CARgenix to TNK for: (1) a cash payment of $100.00, and (2) $6.0 million in shares of TNK Class A common stock, subject to adjustment in certain circumstances, to be issued to the Members upon a financing resulting in gross proceeds (individually or in the aggregate) to TNK of at least $50.0 million (a “Qualified Financing”). In the event a Qualified Financing does not occur by March 15, 2016 or TNK does not complete an initial public offering of shares of its capital stock by March 31, 2016, in lieu of receiving shares of TNK pursuant to the acquisition, the Members shall receive an aggregate of 309,917 shares of our common stock, subject to adjustment in certain circumstances. The Membership Interest Purchase Agreement further provides that 20% of the shares of TNK or ours, as applicable, issuable to the Members shall be held in escrow to secure certain post-closing adjustment and indemnification rights of TNK for a period of 12 months following the closing of the transaction. The aggregate purchase price of $6.0 million was recognized as acquired in-process research and development expense in the consolidated statement of operations.

In August 2015, we along with TNK entered into a Stock Purchase Agreement (the “Stock Purchase Agreement”) with BDL Products, Inc. (“BDL”) and the stockholders of BDL (“Stockholders”) pursuant to which the Stockholders sold all of their shares of capital stock in BDL to TNK for: (1) a cash payment of $100.00, and (2) $6.0 million in shares of TNK Class A common stock, subject to adjustment in certain circumstances, to be issued to the Stockholders upon a Qualified Financing. In the event a Qualified Financing does not occur by March 15, 2016 or TNK does not complete an initial public offering of shares of its capital stock by March 31, 2016, in lieu of receiving shares of TNK pursuant to the acquisition, the Stockholders shall receive an aggregate of 309,917 shares of our common stock, subject to adjustment in certain circumstances. The Stock Purchase Agreement further provides that 20% of the shares of TNK or ours, as applicable, issuable to the Stockholders shall be held in escrow to secure certain post-closing adjustment and indemnification rights of TNK for a period of 12 months following the closing of the transaction. The aggregate purchase price of $6.0 million was recognized as acquired in-process research and development expense in the consolidated statement of operations.

In August 2015, we entered into an exclusive licensing agreement to develop and commercialize multiple prespecified biosimilar or biobetter antibodies from Mabtech Limited. Under the terms of the agreement, we will develop and market these four monoclonal antibodies (mAbs) for the North American, European and Japanese market. We made an initial license payment of $10.0 million which was recognized as acquired in-process research and development expense in the consolidated statements of operations. The agreement includes additional payments totaling up to $190.0 million payable over the next five years.

In July 2015, we and NantBioScience established a new joint venture called NantCancerStemCell, LLC, or NantStem, as a stand-alone biotechnology company with $100 million initial joint funding. As initially organized, NantBioScience was obligated to make a $60 million cash contribution to NantStem for a 60% equity interest in NantStem, and we were obligated to make a $40 million cash contribution to NantStem for a 40% equity interest in NantStem. Fifty percent of these contributions were funded in July 2015 and the remaining amounts were be made by no later than September 30, 2015. We had NantPharma contribute our portion of the initial joint funding of $20 million to NantStem from the proceeds of the sale of IgDraSol. Pursuant to a Side Letter dated October 13, 2015, the NantStem joint venture agreement was amended to relieve us of the obligation to contribute the second $20 million payment, and our ownership interest in NantStem was reduced to 20%. NantBioScience’s funding obligations were unchanged. The Side Letter was negotiated at the same time we issued a call option on shares of NantKwest that we owned to Cambridge Equities, LP, a related party to us and to NantBioScience.

Critical Accounting Policies and Estimates

Management’s discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements which are prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets and liabilities, related disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. We continually evaluate our estimates and judgments, the most critical of which are those related to income taxes and stock-based compensation. We base our estimates and judgments on historical experience and other factors that we believe to be reasonable under the circumstances. Materially different results can occur as circumstances change and additional information becomes known.

During the quarter ended September 30, 2015, there were no significant changes to the items that we disclosed as our critical accounting policies and estimates in Note 2 to our consolidated financial statements for the year ended December 31, 2014 contained in our 2014 Form 10-K, as filed with the SEC.

Results of Operations

The following describes certain line items set forth in our consolidated statements of operations.
Comparison of the Three Months Ended September 30, 2015 and 2014

(figures in 000’s unless otherwise specified)

Revenues. Revenues were $1,103 for the three months ended September 30, 2015, as compared to $1,276 for the three months ended September 30, 2014. The net decrease of $173 is primarily due to lower sales and service revenues generated from the sale of customized reagents and providing contract development services partially offset by more active grants and an increase in activities under our active grants for the three months ended September 30, 2015 compared to the corresponding period of 2014.

In June 2014, the National Institute of Allergy and Infectious Diseases, or NIAID, a division of the National Institutes of Health, or NIH awarded us a Phase II STTR grant to support the advanced preclinical development of human bispecific antibody therapeutics to prevent and treat Staphylococcus aureus (S. aureus or Staph) infections, including methicillin-resistant S. aureus (MRSA), or the Staph Grant III award. The project period for this Phase II grant covers a two-year period which commenced in June 2014, with total funds available of approximately $1 million per year for up to 2 years. During the three months ended September 30, 2015 and 2014, we recorded $243 and $115 of revenue, respectively, associated with the Staph Grant III award.

In June 2014, we were awarded a Phase I STTR grant entitled “Anti-Pseudomonas Immunotherapy and Targeted Drug Delivery” from the NIAID. This grant will support the preclinical development of novel anti-Pseudomonas aeruginosa mAb immunotherapy or an antibody-mediated targeted antibiotic delivery vehicle. Each modality may be an effective and safe stand-alone therapy and/or a component of a “cocktail” therapeutic option for prevention and treatment of P. aeruginosa infections. The project period for this Phase I grant covers a two-year period which commenced in July 2014, with total funds available of approximately $300 per year for up to 2 years. During the three months ended September 30, 2015 and 2014, we recorded $73 and $11 of revenue, respectively, associated with the Phase I STTR grant award.

In July 2014, we were awarded a Phase I STTR grant from the National Cancer Institute (NCI), a division of the NIH, entitled “Targeting of Myc-Max Dimerization for the Treatment of Cancer”. This grant will support the preclinical development of the Myc inhibitor, which interferes with the protein-protein interaction (PPI) between Myc and its obligatory dimerization partner, Max, preventing sequence-specific binding to DNA and subsequent initiation of oncogenic transformation. The project period for this Phase I grant covers a one-year period which commenced in August 2014, with total funds available of approximately $225. During the three months ended September 30, 2015 and 2014, we recorded $10 and $19 of revenue, respectively associated with the Phase I STTR grant award.

In August 2014, we were awarded a Phase I Small Business Technology Transfer (SBIR) grant from the National Heart, Lung, and Blood Institute (NHBLI), a division of the NIH, entitled “Human Anti-WISP-1 Antibodies for Treatment of Idiopathic Pulmonary Fibrosis”. This grant will advance the Company’s immunotherapy targeting WNT-1 Inducible Signaling Protein-1(WISP1) for the treatment of Idiopathic Pulmonary Fibrosis (IPF). WISP1 is a protein that has been shown to be upregulated in IPF, linked to key growth factors, cellular proliferation, hyperplasia and is correlated with late stage cancers. IPF is a fatal disease, which results in progressive loss of lung function due to fibrosis of the lungs. The project period for this Phase I grant covers a one-year period which commenced in August 2014, with total funds available of approximately $225. During the three months ended September 30, 2015 and 2014, we recorded $31 and $2 of revenue, respectively, associated with the Phase I WISP1 grant award.

Revenues from a human immune-oncology anti PD-L1 license agreement for the three months ended September 30, 2015 and 2014, were $12 and $0, respectively. We had no other revenue during the three months ended September 30, 2015 and 2014 as we have not yet developed any product candidates for commercialization or earned any licensing or royalty payments.

We expect that any revenue we generate will fluctuate from quarter to quarter as a result of the unpredictability of the demand for products and services offered as well as the timing and amount of grant awards, research and development reimbursements and other payments received under any strategic collaborations, if any.

Cost of revenues. Cost of revenues for the three months ended September 30, 2015 and 2014 were $604 and $527, respectively, and relate to the sale of customized reagents and providing contract development services. The costs generally include employee-related expenses including salary and benefits, direct materials and overhead costs including rent, depreciation, utilities, facility maintenance and insurance.

Research and Development Expenses. Research and development expenses for the three months ended September 30, 2015 and 2014 were $7,244 and $5,440, respectively. Research and development expenses include the costs to advance our RTX program activities towards entering into future clinical trials, costs to identify, isolate and advance human antibody drug candidates derived from our libraries as well as advancing our ADC preclinical drug candidates, preclinical testing expenses and the expenses associated with fulfilling our development obligations related to the NIH grant awards, collectively the NIH Grants. Such expenses consist primarily of salaries and personnel related expenses, stock-based compensation expense, clinical development expenses, preclinical testing, lab supplies, consulting costs, depreciation and other expenses. The increase of $1,804 is primarily attributable to salaries and
compensation related expense, consulting and lab supply costs incurred in connection with our expanded research and development activities and activities to advance RTX into clinical trials and potentially pursue other development. We expect research and development expenses to increase in absolute dollars as we: (i) advance RTX into clinical trials and pursue other potential indications, the cost of acquiring, developing and manufacturing clinical trial materials, and other regulatory operating activities, (ii) incur incremental expenses associated with our efforts to further advance a number of potential product candidates into preclinical development activities, (iii) continue to identify and advance a number of fully human therapeutic antibody and ADC preclinical product candidates, (iv) incur higher salary, lab supply and infrastructure costs incurred in connection with supporting all of our programs, and (v) invest in our JV’s or other third party agreements.

**Acquired In-process Research and Development Expenses.** Acquired in-process research and development expenses for the three months ended September 30, 2015 and 2014 were $24,068 and $0, respectively. Acquired in-process research and development expenses for the three months ended September 30, 2015 include costs associated with the purchase price of the license rights from Mabtech Limited, the purchase price of the license rights from City of Hope and the purchase price of CARgenix and BDL.

**General and Administrative Expenses.** General and administrative expenses for the three months ended September 30, 2015 and 2014 were $4,711 and $1,854, respectively. General and administrative expenses consist primarily of salaries and personnel related expenses for executive, finance and administrative personnel, stock-based compensation expense, professional fees, infrastructure expenses, legal and accounting expenses and other general corporate expenses. The increase of $2,857 is primarily attributable to higher legal costs, higher stock-based compensation, higher salaries and related compensation expenses and rent and facility expenses partially offset by lower general corporate and IP matters and consulting and business development expenses. We expect general and administrative expenses to increase in absolute dollars as we: (i) incur incremental expenses associated with expanded operations and development efforts, (ii) compliance with our public reporting obligations, (iii) increased infrastructure costs, and (iv) invest in our JV’s or other third party agreements.

**Intangible Amortization.** Intangible amortization for the three months ended September 30, 2015 and 2014 was $111 and $586, respectively. The decrease in the three months ended September 30, 2015 as compared to the same period in 2014 is due to license rights being amortized on a straight line basis through the date those assets were sold.

**Gain on sale of IgDraSol.** Gain on sale of IgDraSol for the three months ended September 30, 2015 and 2014 was $69,274 and $0, respectively.

**Interest Expense.** Interest expense for the three months ended September 30, 2015 and 2014 was $396 and $476, respectively. The decrease in interest expense resulted primarily from lower average borrowings under the amended loan and security agreement.

**Interest Income.** Interest income for the three months ended September 30, 2015 and 2014 was $1 and $2, respectively. We expect that continued low interest rates will significantly limit our interest income in the near term.

**Income tax expense.** Income tax provision for the three months ended September 30, 2015 and 2014 was $35,323 and $0, respectively. The increase in income tax provision resulted mainly from the recognition of an indefinite-lived deferred tax liability.

**Net Loss.** Net loss for the three months ended September 30, 2015 and 2014 was $939 and $7,605, respectively. The decrease in net loss is mainly attributable to the gain on sale of IgDraSol partially offset by increased research and development activities, acquired in-process research and development expense and general and administrative expenses.

**Comparison of the Nine Months Ended September 30, 2015 and 2014**

**Revenues.** Revenues were $3,253 for the nine months ended September 30, 2015, as compared to $3,027 for the nine months ended September 30, 2014. The net increase of $226 is primarily due to more active grants and an increase in activities under our active grants for the nine months ending September 30, 2015 compared to the same period of 2014, partially offset by lower sales and service revenues generated from the sale of customized reagents and providing contract development services.

In June 2012, we were awarded a third Advanced Technology Small Business Technology Transfer Research (STTR) grant to support our program to generate and develop novel human antibody therapeutics to combat Staph infections, including Methicillin-resistant Staph, or the Staph Grant II award. The project period for the phase I grant covers a two-year period which commenced in June 2012, with a total grant award of $600. The Staph Grant II award revenues for the nine months ended September 30, 2015 and 2014, were $0 and $150, respectively.

In June 2014, the National Institute of Allergy and Infectious Diseases, or NIAID, a division of the National Institutes of Health, or NIH awarded us a Phase II STTR grant to support the advanced preclinical development of human bispecific antibody therapeutics to prevent and treat *Staphylococcus aureus* (*S. aureus* or Staph) infections, including methicillin-resistant *S. aureus* (MRSA), or the Staph Grant III award. The project period for this Phase II grant covers a two-year period which commenced in June 2014, with total
funds available of approximately $1 million per year for up to 2 years. During the nine months ended September 30, 2015 and 2014, we recorded $660 and $147 of revenue, respectively, associated with the Staph Grant III award.

In June 2014, we were awarded a Phase I STTR grant entitled “Anti-Pseudomonas Immunotherapy and Targeted Drug Delivery” from the NIAID. This grant will support the preclinical development of novel anti-*Pseudomonas aeruginosa* mAb immunotherapy or an antibody-mediated targeted antibiotic delivery vehicle. Each modality may be an effective and safe stand-alone therapy and/or a component of a “cocktail” therapeutic option for prevention and treatment of *P. aeruginosa* infections. The project period for this Phase I grant covers a two-year period which commenced in July 2014, with total funds available of approximately $300 per year for up to 2 years. During the nine months ended September 30, 2015 and 2014, we recorded $167 and $11 of revenue, respectively, associated with the Phase I STTR grant award.

In July 2014, we were awarded a Phase I STTR grant from the National Cancer Institute (NCI), a division of the NIH, entitled “Targeting of Myc-Max Dimerization for the Treatment of Cancer”. This grant will support the preclinical development of the Myc inhibitor, which interferes with the protein-protein interaction (PPI) between Myc and its obligatory dimerization partner, Max, preventing sequence-specific binding to DNA and subsequent initiation of oncogenic transformation. The project period for this Phase I grant covers a one-year period which commenced in August 2014, with total funds available of approximately $225. During the nine months ended September 30, 2015 and 2014, we recorded $139 and $19 of revenue, respectively associated with the Phase I Myc grant award.

In August 2014, we were awarded a Phase I Small Business Technology Transfer (SBIR) grant from the National Heart, Lung, and Blood Institute (NHBLI), a division of the NIH, entitled “Human Anti-WISP-1 Antibodies for Treatment of Idiopathic Pulmonary Fibrosis”. This grant will advance the Company’s immunotherapy targeting WNT-1 Inducible Signaling Protein-1 (WISP1) for the treatment of Idiopathic Pulmonary Fibrosis (IPF). WISP1 is a protein that has been shown to be upregulated in IPF, linked to key growth factors, cellular proliferation, hyperplasia and is correlated with late stage cancers. IPF is a fatal disease, which results in progressive loss of lung function due to fibrosis of the lungs. The project period for this Phase I grant covers a one-year period which commenced in August 2014, with total funds available of approximately $225. During the nine months ended September 30, 2015 and 2014, we recorded $61 and $2 of revenue, respectively, associated with the Phase I WISP1 grant award.

Revenues from a human immune-oncology anti PD-L1 license agreement for the nine months ended September 30, 2015 and 2014, were $37 and $0, respectively. We had no other revenue during the nine months ended September 30, 2015 and 2014 as we have not yet developed any product candidates for commercialization or earned any licensing or royalty payments.

Cost of revenues. Cost of revenues for the nine months ended September 30, 2015 and 2014 were $1,427 and $1,600, respectively, and relate to the sale of customized reagents and providing contract development services. The costs generally include employee-related expenses including salary and benefits, direct materials and overhead costs including rent, depreciation, utilities, facility maintenance and insurance.

Research and Development Expenses. Research and development expenses for the nine months ended September 30, 2015 and 2014 were $23,055 and $16,856, respectively. Research and development expenses include the costs related to Cynviloq prior to its sale in July 2015, costs to advance our RTX program activities towards entering into future clinical trials, costs to identify, isolate and advance human antibody drug candidates derived from our libraries as well as advancing our ADC preclinical drug candidates, preclinical testing expenses and the expenses associated with fulfilling our development obligations related to the NIH grant awards, collectively the NIH Grants. Such expenses consist primarily of salaries and personnel related expenses, stock-based compensation expense, clinical development expenses, preclinical testing, lab supplies, consulting costs, depreciation and other expenses. The increase of $6,199 is primarily attributable to preclinical testing and completion of our BE registration trial prior to its sale in July 2015, salaries and compensation related expense, consulting and lab supply costs incurred in connection with our expanded research and development activities and activities to advance RTX into clinical trials and potentially pursue other development. We expect research and development expenses to increase in absolute dollars as we: (i) advance RTX into clinical trials and pursue other development, the cost of acquiring, developing and manufacturing clinical trial materials, and other regulatory operating activities, (ii) incur incremental expenses associated with our efforts to further advance a number of potential product candidates into preclinical development activities, (iii) continue to identify and advance a number of fully human therapeutic antibody and ADC preclinical product candidates, (iv) incur higher salary, lab supply and infrastructure costs incurred in connection with supporting all of our programs, and (v) invest in our JV’s or other third party agreements.

Acquired In-process Research and Development Expenses. Acquired in-process research and development expenses for the nine months ended September 30, 2015 and 2014 were $24,068 and $209, respectively. Acquired in-process research and development expenses for the nine months ended September 30, 2015 include costs associated with the purchase price of the license rights from Mabtech Limited, the purchase price of the license rights from the City of Hope and the purchase price of CARgenix and BDL. Acquired in-process research and development expenses for the nine months ended September 30, 2014 include the costs associated with a research agreement.
General and Administrative Expenses. General and administrative expenses for the nine months ended September 30, 2015 and 2014 were $10,002 and $7,600, respectively. General and administrative expenses consist primarily of salaries and personnel related expenses for executive, finance and administrative personnel, stock-based compensation expense, professional fees, infrastructure expenses, legal and accounting expenses and other general corporate expenses. The increase of $2,402 is primarily attributable to higher salaries and related compensation expenses, stock-based compensation and legal costs related to general corporate and IP matters. We expect general and administrative expenses to increase in absolute dollars as we: (i) incur incremental expenses associated with expanded operations and development efforts, (ii) comply with our public reporting obligations, (iii) build our infrastructure, and (iv) invest in our JV’s or other third party agreements.

Intangible Amortization. Intangible amortization for the nine months ended September 30, 2015 and 2014 was $1,046 and $1,758, respectively. The decrease in the nine months ended September 30, 2015 as compared to the same period in 2014 is due to license rights being amortized on a straight line basis through the date those assets were sold.

Gain on sale of IgDraSol. Gain on sale of IgDraSol for the nine months ended September 30, 2015 and 2014 was $69,274 and $0, respectively.

Interest Expense. Interest expense for the nine months ended September 30, 2015 and 2014 was $1,277 and $1,167, respectively. The increase in interest expense resulted primarily from higher average borrowings under the amended loan and security agreement entered into in March 2014.

Interest Income. Interest income for the nine months ended September 30, 2015 and 2014 was $1 and $11, respectively. The decrease in interest income resulted from lower average cash balances in 2015 as compared to the same period in 2014. We expect that continued low interest rates will significantly limit our interest income in the near term.

Income tax expense. Income tax provision for the nine months ended September 30, 2015 and 2014 was $35,128 and $0, respectively. The increase in income tax provision resulted mainly from the recognition of an indefinite-lived deferred tax liability and return to provision adjustments.

Net Loss. Net loss for the nine months ended September 30, 2015 and 2014 was $22,335 and $26,152, respectively. The decrease in net loss is mainly attributable to the gain on sale of IgDraSol partially offset by increased research and development activities, acquired in-process research and development expenses and general and administrative expenses.

Liquidity and Capital Resources

As of September 30, 2015, we had $59.1 million in cash and cash equivalents attributable in part to the December 2014 issuance of 7.2 million shares of our common stock for cash to Cambridge Equities in a private equity financing totaling $41.7 million and the net proceeds from the sale of IgDraSol of $27.8 million. Our working capital as of September 30, 2015 was $98.7 million.

Cash Flows from Operating Activities. Net cash used for operating activities was $25,907 for 2015 and is primarily attributable to our net loss of $23,475 partially offset by our realized gain on sale of IgDraSol and an increase in deferred tax provision, acquired in-process research and development and deferred revenue and other working capital balances of $2,679, combined with $7,622 in non-cash activities relating to stock-based compensation, depreciation and amortization expense and other non-cash activities. Net cash used for operating activities was $21,108 for 2014 and primarily reflects a net loss of $26,152, which was partially offset by $6,080 in non-cash activities relating primarily to stock-based compensation, acquired in-process research and development and depreciation expense.

We expect to continue to incur substantial and increasing losses and negative net cash flows from operating activities as we seek to expand and support our clinical and preclinical development and research activities and fund our JV’s and collaborations.

Cash Flows from Investing Activities. Net cash provided by investing activities was $14,309 for 2015 as compared to cash used of $433 for 2014. The net cash provided related primarily to the net proceeds from the sale of IgDraSol partially offset by investments in common stock of a non-public entity and equipment acquired for research and development activities.

We expect to increase our investment in equipment as we seek to expand and progress our research and development capabilities.

Cash Flows from Financing Activities. Net cash used in financing activities was $1,237 for 2015 which was primarily for the payment of deferred compensation and principal payments under our amended and restated loan and security agreement partially offset by the proceeds from option exercises as compared to cash provided by financing activities of $34,143 in 2014 which was
Future Liquidity Needs. We have principally financed our operations through underwritten public offerings and private equity financings with aggregate net proceeds of $124,938, as we have not generated any product related revenue from our principal operations to date, and do not expect to generate significant revenue for several years, if ever. We will need to raise additional capital before we exhaust our current cash resources in order to continue to fund our research and development, including our plans for clinical and preclinical trials and new product development, as well as to fund operations generally. As and if necessary, we will seek to raise additional funds through various potential sources, such as equity and debt financings, or through corporate collaboration and license agreements. We can give no assurances that we will be able to secure such additional sources of funds to support our operations, or, if such funds are available to us, that such additional financing will be sufficient to meet our needs.

We anticipate that we will continue to incur net losses into the foreseeable future as we: (i) advance RTX into clinical trials and potentially pursue other development, (ii) continue to identify and advance a number of potential mAb and ADC product candidates into preclinical development activities, (iii) continue our development of, and seek regulatory approvals for, our product candidates, (iv) expand our corporate infrastructure, including the costs associated with being a NASDAQ listed public company, and (v) incur our share of JV and collaboration costs for our products and technologies. We believe we have the ability to meet all obligations due over the course of the next twelve months.

We plan to continue to fund our operating losses and capital funding needs through public or private equity or debt financings, strategic collaborations, licensing arrangements, asset sales, government grants or other arrangements. We filed a universal shelf registration statement on Form S-3 with the Securities and Exchange Commission (“SEC”), which was declared effective by the SEC in July 2013. The Shelf Registration Statement provides us the ability to offer up to $100 million of securities, including equity and other securities as described in the registration statement. After the May 2014 underwritten offering, we have the ability to offer up to $36.6 million of additional securities. In November 2014, we filed an additional universal shelf registration statement on Form S-3 with the SEC, which was declared effective by the SEC in December 2014. This Shelf Registration Statement provides us with the ability to offer up to $250 million of securities, including equity and other securities as described in the registration statement. Included in the November 2014 shelf registration is a sales agreement prospectus covering the offering, issuance and sale by us of up to a maximum aggregate offering price of $50 million of our common stock that may be issued and sold under a sales agreement with MLV & Co. LLC. Pursuant to these Shelf Registration Statements, we may offer such securities from time to time and through one or more methods of distribution, subject to market conditions and our capital needs. Specific terms and prices will be determined at the time of each offering under a separate prospectus supplement, which will be filed with the SEC at the time of any offering. However, we cannot be sure that such additional funds will be available on reasonable terms, or at all. If we are unable to secure adequate additional funding, we may be forced to make reductions in spending, extend payment terms with suppliers, liquidate assets where possible, and/or suspend or curtail planned programs. In addition, if we do not meet our payment obligations to third parties as they come due, we may be subject to litigation claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management. Any of these actions could materially harm our business, results of operations, and future prospects.

If we raise additional funds by issuing equity securities, substantial dilution to existing stockholders would result. If we raise additional funds by incurring debt financing, the terms of the debt may involve significant cash payment obligations as well as covenants and specific financial ratios that may restrict our ability to operate our business.

Off-Balance Sheet Arrangements

Since our inception through September 30, 2015, we have not engaged in any off-balance sheet arrangements as defined in Item 303(a)(4) of Regulation S-K.

New Accounting Pronouncements

Refer to Note 1, “Nature of Operations, Summary of Significant Accounting Polices and Business Activities,” in the accompanying notes to the consolidated financial statements for a discussion of recent accounting pronouncements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Interest Rate Risk. Our exposure to market risk is confined to our cash and cash equivalents. We have cash and cash equivalents and invest primarily in high-quality money market funds, which we believe are subject to limited credit risk. Due to the low risk profile of our investments, an immediate 10% change in interest rates would not have a material effect on the fair market value of our portfolio. Our amended and restated loan and security agreement has a fixed interest rate of 7.95% per annum through the loan maturity. We do not believe that we have any material exposure to interest rate risk arising from our investments.
Capital Market Risk. We currently do not have significant revenues from grants or sales and services and we have no product revenues from our planned principal operations and therefore depend on funds raised through other sources. One source of funding is through future debt or equity offerings. Our ability to raise funds in this manner depends upon, among other things, capital market forces affecting our stock price.

Item 4. Controls and Procedures.

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports filed under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s regulations, rules and forms and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow for timely decisions regarding required disclosure.

In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. As required by Rule 13a-15(b) promulgated by the SEC under the Exchange Act, we carried out an evaluation, under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on the foregoing, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this Quarterly Report on Form 10-Q.

Changes in Internal Control Over Financial Reporting

There has been no change in our internal control over financial reporting during the quarter ended September 30, 2015 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.
PART II. OTHER INFORMATION

Item 1. Legal Proceedings.

To the best of our knowledge, we are not a party to any legal proceedings that, individually or in the aggregate, are deemed to be material to our financial condition or results of operations.

Item 1A. Risk Factors.

Risks Related to Our Financial Position and Capital Requirements

We are a development-stage company subject to significant risks and uncertainties, including the risk that we or our partners may never develop, obtain regulatory approval or market any of our product candidates or generate product related revenues.

We are a development-stage biopharmaceutical company that began operating and commenced research and development activities in 2009. Pharmaceutical product development is a highly speculative undertaking and involves a substantial degree of risk. There is no assurance that our libraries of fully-human mAbs will be suitable for diagnostic or therapeutic use, or that we will be able to identify and isolate therapeutics product candidates, or develop, market and commercialize these candidates. We do not expect any of our fully-human mAb, ADC, RTX, biosimilar/biobetter antibodies, or related companion diagnostic product candidates to be commercially available for a few years, if at all. Even if we are able to commercialize our product candidates, there is no assurance that these candidates would generate revenues or that any revenues generated would be sufficient for us to become profitable or thereafter maintain profitability.

We do not have any products that are approved for commercial sale and therefore do not expect to generate any revenues from product sales in the foreseeable future, if ever.

We have not generated any product related revenues to date, and do not expect to generate any such revenues for at least the next several years, if at all. To obtain revenues from sales of our product candidates, we must succeed, either alone or with third parties, in developing, obtaining regulatory approval for, manufacturing and marketing products with commercial potential. We may never succeed in these activities, and we may not generate sufficient revenues to continue our business operations or achieve profitability.

We have incurred significant losses since inception and anticipate that we will incur continued losses for the foreseeable future.

As of September 30, 2015, December 31, 2014, 2013 and 2012, we had an accumulated deficit of $89.9 million, $67.5 million, $32.9 million and $11.0 million, respectively. We continue to incur significant research and development and other expenses related to our ongoing and acquired operations. We have incurred operating losses since our inception, expect to continue to incur significant operating losses for the foreseeable future, and we expect these losses to increase as we: (i) advance RTX into clinical trials and potentially pursue other human or veterinary indications, (ii) continue to identify and advance a number of potential mAb and ADC drug candidates into preclinical and clinical development activities, (iii) continue our development of, and seek regulatory approvals for, our product candidates, and begin to commercialize any approved products, and (iv) expand our corporate infrastructure, including the costs associated with being a NASDAQ public company. As such, we are subject to all risks incidental to the development of new biopharmaceutical products and related companion diagnostics, and we may encounter unforeseen expenses, difficulties, complications, delays and other unknown factors that may adversely affect our business. Our prior losses, combined with expected future losses, have had and will continue to have an adverse effect on our stockholders’ equity and working capital.

We will require substantial additional funding which may not be available to us on acceptable terms, or at all. If we fail to raise the necessary additional capital, we may be unable to complete the development and commercialization of our product candidates, or continue our development programs.

Our operations have consumed substantial amounts of cash since inception. We expect to significantly increase our spending to advance the preclinical and clinical development of our product candidates and launch and commercialize any product candidates for which we receive regulatory approval, including building our own commercial organizations to address certain markets. We will require additional capital for the further development and commercialization of our product candidates, as well as to fund our other operating expenses and capital expenditures.

We cannot be certain that additional funding will be available on acceptable terms, or at all. If we are unable to raise additional capital in sufficient amounts or on terms acceptable to us we may have to significantly delay, scale back or discontinue the development or commercialization of one or more of our product candidates. We may also seek collaborators for one or more of our current or future product candidates at an earlier stage than otherwise would be desirable or on terms that are less favorable than might otherwise be available. Any of these events could significantly harm our business, financial condition and prospects.
Our future capital requirements will depend on many factors, including:

- the progress of the development of our fully-human mAb, ADC, RTX, biosimilar/biobetter antibodies or related companion diagnostic product candidates;
- the number of product candidates we pursue;
- the time and costs involved in obtaining regulatory approvals;
- the costs involved in filing and prosecuting patent applications and enforcing or defending patent claims;
- our plans to establish sales, marketing and/or manufacturing capabilities;
- the effect of competing technological and market developments;
- the terms and timing of any collaborative, licensing and other arrangements that we may establish;
- general market conditions for offerings from biopharmaceutical companies;
- our ability to establish, enforce and maintain selected strategic alliances and activities required for product commercialization; and
- our revenues, if any, from successful development and commercialization of our product candidates.

In order to carry out our business plan and implement our strategy, we anticipate that we will need to obtain additional financing from time to time and may choose to raise additional funds through strategic collaborations, licensing arrangements, public or private equity or debt financing, bank lines of credit, asset sales, government grants, or other arrangements. We cannot be sure that any additional funding, if needed, will be available on terms favorable to us or at all. Furthermore, any additional equity or equity-related financing may be dilutive to our stockholders, and debt or equity financing, if available, may subject us to restrictive covenants and significant interest costs. If we obtain funding through a strategic collaboration or licensing arrangement, we may be required to relinquish our rights to certain of our product candidates or marketing territories.

Further, there is uncertainty related to future NIH grant funding, and the NIH plans for new grants or cooperative agreements may be re-scoped, delayed, or canceled depending on the nature of the work and the availability of resources. As a result, we cannot assure you that we will receive any additional funding under our existing NIH grants, and we may not be successful in securing additional grants from the NIH in the future.

Our inability to raise capital when needed would harm our business, financial condition and results of operations, and could cause our stock price to decline or require that we wind down our operations altogether.

Risks Related to Our Business and Industry

*We are heavily dependent on the success of our technologies and product candidates, and we cannot give any assurance that any of our product candidates will receive regulatory approval, which is necessary before they can be commercialized.*

To date, we have invested a significant portion of our efforts and financial resources in the acquisition and development of our product candidates. We have not demonstrated our ability to perform the functions necessary for the successful acquisition, development or commercialization of the technologies we are seeking to develop. As an early stage company, we have limited experience and have not yet demonstrated an ability to successfully overcome many of the risks and uncertainties frequently encountered by companies in new and rapidly evolving fields, particularly in the biopharmaceutical area. Our future success is substantially dependent on our ability to successfully develop, obtain regulatory approval for, and then successfully commercialize such product candidates. Our product candidates are currently in preclinical development or in clinical trials. Our business depends entirely on the successful development and commercialization of our product candidates, which may never occur. We currently generate no revenues from sales of any drugs, and we may never be able to develop or commercialize a marketable drug.

The successful development, and any commercialization, of our technologies and any product candidates would require us to successfully perform a variety of functions, including:

- developing our technology platform;
- identifying, developing, manufacturing and commercializing product candidates;
- entering into successful licensing and other arrangements with product development partners;
- participating in regulatory approval processes;
formulating and manufacturing products; and
conducting sales and marketing activities.

Our operations have been limited to organizing our company, acquiring, developing and securing our proprietary technology and identifying and obtaining early preclinical data or clinical data for various product candidates. These operations provide a limited basis for you to assess our ability to continue to develop our technology, identify product candidates, develop and commercialize any product candidates we are able to identify and enter into successful collaborative arrangements with other companies, as well as for you to assess the advisability of investing in our securities. Each of these requirements will require substantial time, effort and financial resources.

Each of our product candidates will require additional preclinical or clinical development, management of preclinical, clinical and manufacturing activities, regulatory approval in multiple jurisdictions, obtaining manufacturing supply, building of a commercial organization, and significant marketing efforts before we generate any revenues from product sales. We are not permitted to market or promote any of our product candidates before we receive regulatory approval from the U.S. Food and Drug Administration, or FDA, or comparable foreign regulatory authorities, and we may never receive such regulatory approval for any of our product candidates. In addition, our product development programs contemplate the development of companion diagnostics by our third-party collaborators. Companion diagnostics are subject to regulation as medical devices and must themselves be approved for marketing by the FDA or certain other foreign regulatory agencies before we may commercialize our product candidates.

**Drug development involves a lengthy and expensive process with an uncertain outcome, and results of earlier studies and trials may not be predictive of future trial results.**

Clinical testing is expensive and can take many years to complete, and its outcome is risky and uncertain. Failure can occur at any time during the clinical trial process. The results of preclinical studies and early clinical trials of our product candidates may not be predictive of the results of later-stage clinical trials. Product candidates in later stages of clinical trials may fail to show the desired safety and efficacy traits despite having progressed through preclinical studies and initial clinical trials. It is not uncommon for companies in the pharmaceutical industry to suffer significant setbacks in advanced clinical trials due to lack of efficacy or adverse safety profiles, notwithstanding promising results in earlier trials. Our future clinical trial results may not be successful.

This drug candidate development risk is heightened by any changes in the planned clinical trials compared to the completed clinical trials. As product candidates are developed through preclinical to early and late stage clinical trials towards approval and commercialization, it is customary that various aspects of the development program, such as manufacturing and methods of administration, are altered along the way in an effort to optimize processes and results. While these types of changes are common and are intended to optimize the product candidates for late stage clinical trials, approval and commercialization, such changes do carry the risk that they will not achieve these intended objectives.

We have not previously initiated or completed a corporate-sponsored clinical trial. Consequently, we may not have the necessary capabilities, including adequate staffing, to successfully manage the execution and completion of any clinical trials we initiate, including our planned clinical trials of RTX, and our biosimilar/biobetters antibodies in a way that leads to our obtaining marketing approval for our product candidates in a timely manner, or at all.

In the event we are able to conduct a pivotal clinical trial of a product candidate, the results of such trial may not be adequate to support marketing approval. Because our product candidates are intended for use in life-threatening diseases, in some cases we ultimately intend to seek marketing approval for each product candidate based on the results of a single pivotal clinical trial. As a result, these trials may receive enhanced scrutiny from the FDA. For any such pivotal trial, if the FDA disagrees with our choice of primary endpoint or the results for the primary endpoint are not robust or significant relative to control, are subject to confounding factors, or are not adequately supported by other study endpoints, including possibly overall survival or complete response rate, the FDA may refuse to approve a BLA based on such pivotal trial. The FDA may require additional clinical trials as a condition for approving our product candidates.

**Delays in clinical testing could result in increased costs to us and delay our ability to generate revenue.**

Although we are planning for certain clinical trials relating to RTX, there can be no assurance that the FDA will accept our proposed trial designs. We may experience delays in our clinical trials and we do not know whether planned clinical trials will begin on time, need to be redesigned, enroll patients on time or be completed on schedule, if at all. Clinical trials can be delayed for a variety of reasons, including delays related to:

- obtaining regulatory approval to commence a trial;
- reaching agreement on acceptable terms with prospective contract research organizations, or CROs, and clinical trial sites,
the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;

- obtaining institutional review board, or IRB, approval at each site;
- recruiting suitable patients to participate in a trial;
- clinical sites deviating from trial protocol or dropping out of a trial;
- having patients complete a trial or return for post-treatment follow-up;
- developing and validating companion diagnostics on a timely basis, if required;
- adding new clinical trial sites; or
- manufacturing sufficient quantities of product candidate for use in clinical trials.

Patient enrollment, a significant factor in the timing of clinical trials, is affected by many factors including the size and nature of the patient population, the proximity of patients to clinical sites, the eligibility criteria for the trial, the design of the clinical trial, competing clinical trials and clinicians’ and patients’ perceptions as to the potential advantages of the drug being studied in relation to other available therapies, including any new drugs that may be approved for the indications we are investigating. Furthermore, we intend to rely on CROs and clinical trial sites to ensure the proper and timely conduct of our clinical trials and we intend to have agreements governing their committed activities, we will have limited influence over their actual performance.

We could encounter delays if a clinical trial is suspended or terminated by us, by the IRBs of the institutions in which such trials are being conducted, by the Data Safety Monitoring Board, or DSMB, for such trial or by the FDA or other regulatory authorities. Such authorities may impose such a suspension or termination due to a number of factors, including failure to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols, inspection of the clinical trial operations or trial site by the FDA or other regulatory authorities resulting in the imposition of a clinical hold, unforeseen safety issues or adverse side effects, failure to demonstrate a benefit from using a drug, changes in governmental regulations or administrative actions or lack of adequate funding to continue the clinical trial.

If we experience delays in the completion of, or termination of, any clinical trial of our product candidates, the commercial prospects of our product candidates will be harmed, and our ability to generate product revenues from any of these product candidates will be delayed. In addition, any delays in completing our clinical trials will increase our costs, slow down our product candidate development and approval process and jeopardize our ability to commence product sales and generate revenues. Any of these occurrences may harm our business, financial condition and prospects significantly. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of our product candidates.

Competition for patients in conducting clinical trials may prevent or delay product development and strain our limited financial resources.

Many pharmaceutical companies are conducting clinical trials in patients with the disease indications that our potential drug products target. As a result, we must compete with them for clinical sites, physicians and the limited number of patients who fulfill the stringent requirements for participation in clinical trials. Also, due to the confidential nature of clinical trials, we do not know how many of the eligible patients may be enrolled in competing studies and who are consequently not available to us for our clinical trials. Our clinical trials may be delayed or terminated due to the inability to enroll enough patients. Patient enrollment depends on many factors, including the size of the patient population, the nature of the trial protocol, the proximity of patients to clinical sites and the eligibility criteria for the study. The delay or inability to meet planned patient enrollment may result in increased costs and delays or termination of the trial, which could have a harmful effect on our ability to develop products.

The regulatory approval processes of the FDA and comparable foreign authorities are lengthy, time consuming and inherently unpredictable, and if we are ultimately unable to obtain regulatory approval for our product candidates, our business will be substantially harmed.

The time required to obtain approval by the FDA and comparable foreign authorities is unpredictable but typically takes many years following the commencement of clinical trials and depends upon numerous factors, including the substantial discretion of the regulatory authorities. In addition, approval policies, regulations, or the type and amount of clinical data necessary to gain approval may change during the course of a product candidate’s clinical development and may vary among jurisdictions. We have not obtained regulatory approval for any product candidate and it is possible that none of our existing product candidates or any product candidates we may seek to develop in the future will ever obtain regulatory approval.
Our product candidates could fail to receive regulatory approval for many reasons, including the following:

- the FDA or comparable foreign regulatory authorities may disagree with the design or implementation of our clinical trials;
- we may be unable to demonstrate to the satisfaction of the FDA or comparable foreign regulatory authorities that a product candidate is safe and effective for its proposed indication;
- the results of clinical trials may not meet the level of statistical significance required by the FDA or comparable foreign regulatory authorities for approval;
- the FDA or comparable foreign regulatory authorities may disagree with our interpretation of data from preclinical studies or clinical trials;
- the data collected from clinical trials of our product candidates may not be sufficient to support the submission of an NDA or other submission or to obtain regulatory approval in the U.S. or elsewhere;
- the FDA or comparable foreign regulatory authorities may fail to approve the manufacturing processes or facilities of third-party manufacturers with which we contract for clinical and commercial supplies;
- the FDA or comparable foreign regulatory authorities may fail to approve the companion diagnostics we contemplate developing with partners; and
- the approval policies or regulations of the FDA or comparable foreign regulatory authorities may significantly change in a manner rendering our clinical data insufficient for approval.

This lengthy approval process as well as the unpredictability of future clinical trial results may result in our failing to obtain regulatory approval to market our product candidates, which would significantly harm our business, results of operations and prospects.

In addition, even if we were to obtain approval, regulatory authorities may approve any of our product candidates for fewer or more limited indications than we request, may not approve the price we intend to charge for our products, may grant approval contingent on the performance of costly post-marketing clinical trials, or may approve a product candidate with a label that does not include the labeling claims necessary or desirable for the successful commercialization of that product candidate. Any of the foregoing scenarios could materially harm the commercial prospects for our product candidates.

We have not previously submitted a biologics license application, or BLA, or a New Drug Application, or NDA, to the FDA, or similar drug approval filings to comparable foreign authorities, for any product candidate, and we cannot be certain that any of our product candidates will be successful in clinical trials or receive regulatory approval. Further, our product candidates may not receive regulatory approval even if they are successful in clinical trials. If we do not receive regulatory approvals for our product candidates, we may not be able to continue our operations. Even if we successfully obtain regulatory approvals to market one or more of our product candidates, our revenues will be dependent, in part, upon our collaborators’ ability to obtain regulatory approval of the companion diagnostics to be used with our product candidates, as well as the size of the markets in the territories for which we gain regulatory approval and have commercial rights. If the markets for patients that we are targeting for our product candidates are not as significant as we estimate, we may not generate significant revenues from sales of such products, if approved.

We plan to seek regulatory approval to commercialize our product candidates both in the U.S., the European Union and in additional foreign countries. While the scope of regulatory approval is similar in other countries, to obtain separate regulatory approval in many other countries we must comply with numerous and varying regulatory requirements of such countries regarding safety and efficacy and governing, among other things, clinical trials and commercial sales, pricing and distribution of our product candidates, and we cannot predict success in these jurisdictions.

Our approach to the discovery and development of product candidates that target ADCs is unproven, and we do not know whether we will be able to develop any products of commercial value.

ADCs are emerging technologies and, consequently, it is conceivable that such technologies may ultimately fail to identify commercially viable products to treat human patients with cancer or other diseases.

Our product candidates may cause undesirable side effects or have other properties that could delay or prevent their regulatory approval, limit the commercial profile of an approved label, or result in significant negative consequences following marketing approval, if any.

Undesirable side effects caused by our product candidates could cause us or regulatory authorities to interrupt, delay or halt clinical trials and could result in a more restrictive label or the delay or denial of regulatory approval by the FDA or other comparable foreign authorities. Results of our trials could reveal a high and unacceptable severity and prevalence of these or other side effects. In
such an event, our trials could be suspended or terminated and the FDA or comparable foreign regulatory authorities could order us to cease further development of or deny approval of our product candidates for any or all targeted indications. The drug-related side effects could affect patient recruitment or the ability of enrolled patients to complete the trial or result in potential product liability claims. Any of these occurrences may harm our business, financial condition and prospects significantly.

Additionally if one or more of our product candidates receives marketing approval, and we or others later identify undesirable side effects caused by such products, a number of potentially significant negative consequences could result, including:

- regulatory authorities may withdraw approvals of such products;
- regulatory authorities may require additional warnings on the label;
- we may be required to create a medication guide outlining the risks of such side effects for distribution to patients;
- we could be sued and held liable for harm caused to patients; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of the particular product candidate or for particular indications of a product candidate, if approved, and could significantly harm our business, results of operations and prospects.

*We rely on third parties to conduct our preclinical and clinical trials. If these third parties do not successfully perform their contractual legal and regulatory duties or meet expected deadlines, we may not be able to obtain regulatory approval for or commercialize our product candidates and our business could be substantially harmed.*

We have relied upon and plan to continue to rely upon third-party CROs to monitor and manage data for our ongoing preclinical and clinical programs. We rely on these parties for execution of our preclinical and clinical trials, and control only certain aspects of their activities. Nevertheless, we are responsible for ensuring that each of our studies is conducted in accordance with the applicable protocol, legal, regulatory and scientific standards, and our reliance on the CROs does not relieve us of our regulatory responsibilities. We and our CROs are required to comply with current good clinical practices, or cGCP, which are regulations and guidelines enforced by the FDA, the Competent Authorities of the Member States of the European Economic Area, or EEA, and comparable foreign regulatory authorities for all of our products in clinical development.

Regulatory authorities enforce these cGCPs through periodic inspections of trial sponsors, principal investigators and trial sites. If we or any of our CROs fail to comply with applicable cGCPs, the clinical data generated in our clinical trials may be deemed unreliable and the FDA, the European Medicines Agency, or EMA, or comparable foreign regulatory authorities may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials comply with cGCP regulations. In addition, our clinical trials must be conducted with product produced under current good manufacturing practices, or cGMP, regulations. Our failure to comply with these regulations may require us to perform additional clinical trials, which would delay the regulatory approval process.

If any of our relationships with these third-party CROs terminate, we may not be able to enter into arrangements with alternative CROs or to do so under commercial terms that are reasonable or acceptable. In addition, our CROs are not our employees, and except for remedies available to us under our agreements with such CROs, we cannot control whether or not they devote sufficient time and resources to our ongoing clinical, nonclinical and preclinical programs. If CROs do not successfully carry out their contractual duties or obligations or meet expected deadlines, if they need to be replaced or if the quality or accuracy of the clinical data they obtain is compromised due to the failure to adhere to our clinical protocols, regulatory requirements or for other reasons, our clinical trials may be extended, delayed or terminated and we may not be able to obtain regulatory approval for or successfully commercialize our product candidates. As a result, our results of operations and the commercial prospects for our product candidates would be harmed, our costs could increase and our ability to generate revenues could be delayed.

Switching or adding additional CROs involves additional cost and requires management time and focus. In addition, there is a natural transition period when a new CRO commences work. As a result, delays occur, which can materially impact our ability to meet our desired clinical development timelines. Though we carefully manage our relationships with our CROs, there can be no assurance that we will not encounter similar challenges or delays in the future or that these delays or challenges will not have a material adverse impact on our business, financial condition and prospects.
We rely on third parties to manufacture our clinical drug supplies and we intend to rely on third parties to produce commercial supplies of any approved product candidate, and our commercialization of any of our product candidates could be stopped, delayed or made less profitable if those third parties fail to obtain approval of the FDA or comparable foreign regulatory authorities, fail to provide us with sufficient quantities of drug product or fail to do so at acceptable quality levels or prices.

We do not currently have nor do we plan to acquire the infrastructure or capability internally to manufacture our clinical drug supplies for use in the conduct of our clinical trials, and we lack the resources and the capability to manufacture any of our product candidates on a clinical or commercial scale. We do not control the manufacturing process of, and are completely dependent on, our contract manufacturing partners for compliance with the cGMP regulatory requirements for manufacture of both active drug substances and finished drug products. If our contract manufacturers cannot successfully manufacture material that conforms to the strict regulatory requirements of the FDA or others, they will not be able to secure and/or maintain regulatory approval for their manufacturing facilities. In addition, we have no control over the ability of our contract manufacturers to maintain adequate quality control, quality assurance and qualified personnel. If the FDA or a comparable foreign regulatory authority does not approve these facilities for the manufacture of our product candidates or if it withdraws any such approval in the future, we may need to find alternative manufacturing facilities, which would significantly impact our ability to develop, obtain regulatory approval for or market our product candidates, if approved.

We currently have no sales and marketing organization. If any of our product candidates are approved by the FDA, we intend to continue to depend on third-party contract manufacturers for the foreseeable future. We have not entered into long-term agreements with all of our current contract manufacturers or with any alternate fill/finish suppliers, and though we intend to do so prior to commercial launch in order to ensure that we maintain adequate supplies of finished drug product, we may be unable to enter into such an agreement or do so on commercially reasonable terms, which could have a material adverse impact upon our business. We currently obtain our supplies of finished drug product through individual purchase orders.

We may not be able to manufacture our product candidates in commercial quantities, which would prevent us from commercializing our product candidates.

We are dependent on our third party manufacturers to conduct process development and scale-up work necessary to support greater clinical development and commercialization requirements for our product candidates. Carrying out these activities in a timely manner, and on commercially reasonable terms, is critical to the successful development and commercialization of our product candidates. We expect our third-party manufacturers are capable of providing sufficient quantities of our product candidates to meet anticipated clinical and full-scale commercial demands, however if third parties with whom we currently work are unable to meet our supply requirements, we will need to secure alternate suppliers. While we believe that there are other contract manufacturers having the technical capabilities to manufacture our product candidates, we cannot be certain that identifying and establishing relationships with such sources would not result in significant delay or material additional costs.

We currently have no sales and marketing organization. If we are unable to establish a direct sales force in the U.S. to promote our products, the commercial opportunity for our products may be diminished.

We currently have no sales and marketing organization. If any of our product candidates are approved by the FDA, we intend to market that product through our own sales force. We will incur significant additional expenses and commit significant additional management resources to establish our sales force. We may not be able to establish these capabilities despite these additional expenditures. We will also have to compete with other pharmaceutical and biotechnology companies to recruit, hire and train sales and marketing personnel. If we elect to rely on third parties to sell our product candidates in the U.S., we may receive less revenue than if we sold our products directly. In addition, although we would intend to use due diligence in monitoring their activities, we may have little or no control over the sales efforts of those third parties. In the event we are unable to develop our own sales force or collaborate
with a third party to sell our product candidates, we may not be able to commercialize our product candidates which would negatively impact our ability to generate revenue.

We may need others to market and commercialize our product candidates in international markets.

In the future, if appropriate regulatory approvals are obtained, we may commercialize our product candidates in international markets. However, we have not decided how to commercialize our product candidates in those markets. We may decide to build our own sales force or sell our products through third parties. If we decide to sell our product candidates in international markets through a third party, we may not be able to enter into any marketing arrangements on favorable terms or at all. In addition, these arrangements could result in lower levels of income to us than if we marketed our product candidates entirely on our own. If we are unable to enter into a marketing arrangement for our product candidates in international markets, we may not be able to develop an effective international sales force to successfully commercialize those products in international markets. If we fail to enter into marketing arrangements for our products and are unable to develop an effective international sales force, our ability to generate revenue would be limited.

Even if we receive regulatory approval for any of our product candidates, we will be subject to ongoing obligations and continued regulatory review, which may result in significant additional expense. Additionally, our product candidates, if approved, could be subject to labeling and other restrictions and market withdrawal and we may be subject to penalties if we fail to comply with regulatory requirements or experience unanticipated problems with our products.

Any regulatory approvals that we receive for our product candidates may also be subject to limitations on the approved indicated uses for which the product may be marketed or to the conditions of approval, or contain requirements for potentially costly post-marketing testing, including Phase IV clinical trials, and surveillance to monitor the safety and efficacy of the product candidate. In addition, if the FDA or a comparable foreign regulatory authority approves any of our product candidates, the manufacturing processes, labeling, packaging, distribution, adverse event reporting, storage, advertising, promotion and recordkeeping for the product will be subject to extensive and ongoing regulatory requirements. These requirements include submissions of safety and other post-marketing information and reports, registration, as well as continued compliance with cGMPs and cGCPs for any clinical trials that we conduct post-approval. The future discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, or with our third-party manufacturers or manufacturing processes, or failure to comply with regulatory requirements, may result in, among other things:

- restrictions on the marketing or manufacturing of the product, withdrawal of the product from the market, or voluntary or mandatory product recalls;
- fines, warning letters or holds on clinical trials;
- refusal by the FDA to approve pending applications or supplements to approved applications filed by us, or suspension or revocation of product license approvals;
- product seizure or detention, or refusal to permit the import or export of products; and
- injunctions or the imposition of civil or criminal penalties.

The FDA’s policies may change and additional government regulations may be enacted that could prevent, limit or delay regulatory approval of our product candidates. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any marketing approval that we may have obtained, which would adversely affect our business, prospects and ability to achieve or sustain profitability.

We will need to obtain FDA approval of any proposed product brand names, and any failure or delay associated with such approval may adversely impact our business.

A pharmaceutical product cannot be marketed in the U.S. or other countries until we have completed rigorous and extensive regulatory review processes, including approval of a brand name. Any brand names we intend to use for our product candidates will require approval from the FDA regardless of whether we have secured a formal trademark registration from the U.S. Patent and Trademark Office, or the PTO. The FDA typically conducts a review of proposed product brand names, including an evaluation of potential for confusion with other product names. The FDA may also object to a product brand name if we believe the name inappropriately implies medical claims. If the FDA objects to any of our proposed product brand names, we may be required to adopt an alternative brand name for our product candidates. If we adopt an alternative brand name, we would lose the benefit of our existing trademark applications for such product candidate and may be required to expend significant additional resources in an effort to identify a suitable product brand name that would qualify under applicable trademark laws, not infringe the existing rights of third parties and be acceptable to the FDA. We may be unable to build a successful brand identity for a new trademark in a timely manner or at all, which would limit our ability to commercialize our product candidates.
Our failure to successfully discover, acquire, develop and market additional product candidates or approved products would impair our ability to grow.

As part of our growth strategy, we intend to develop and market additional products and product candidates. We are pursuing various therapeutic opportunities through our pipeline. We may spend several years completing our development of any particular current or future internal product candidate, and failure can occur at any stage. The product candidates to which we allocate our resources may not end up being successful. In addition, because our internal research capabilities are limited, we may be dependent upon pharmaceutical and biotechnology companies, academic scientists and other researchers to sell or license products or technology to us. The success of this strategy depends partly upon our ability to identify, select, discover and acquire promising pharmaceutical product candidates and products. Failure of this strategy would impair our ability to grow.

The process of proposing, negotiating and implementing a license or acquisition of a product candidate or approved product is lengthy and complex. Other companies, including some with substantially greater financial, marketing and sales resources, may compete with us for the license or acquisition of product candidates and approved products. We have limited resources to identify and execute the acquisition or in-licensing of third-party products, businesses and technologies and integrate them into our current infrastructure. Moreover, we may devote resources to potential acquisitions or in-licensing opportunities that are never completed, or we may fail to realize the anticipated benefits of such efforts. We may not be able to acquire the rights to additional product candidates on terms that we find acceptable, or at all.

In addition, future acquisitions may entail numerous operational and financial risks, including:

- disruption of our business and diversion of our management’s time and attention to develop acquired products or technologies;
- incurrence of substantial debt, dilutive issuances of securities or depletion of cash to pay for acquisitions;
- higher than expected acquisition and integration costs;
- difficulty in combining the operations and personnel of any acquired businesses with our operations and personnel;
- increased amortization expenses;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership;
- inability to motivate key employees of any acquired businesses; and
- assumption of known and unknown liabilities.

Further, any product candidate that we acquire may require additional development efforts prior to commercial sale, including extensive clinical testing and approval by the FDA and applicable foreign regulatory authorities. All product candidates are prone to risks of failure typical of pharmaceutical product development, including the possibility that a product candidate will not be shown to be sufficiently safe and effective for approval by regulatory authorities.

Our commercial success depends upon us attaining significant market acceptance of our product candidates, if approved for sale, among physicians, patients, healthcare payors and major operators of cancer and other clinics.

Even if we obtain regulatory approval for our product candidates, the product may not gain market acceptance among physicians, health care payors, patients and the medical community, which are critical to commercial success. Market acceptance of any product candidate for which we receive approval depends on a number of factors, including:

- the efficacy and safety as demonstrated in clinical trials;
- the timing of market introduction of such product candidate as well as competitive products;
- the clinical indications for which the drug is approved;
- acceptance by physicians, major operators of cancer clinics and patients of the drug as a safe and effective treatment;
- the safety of such product candidate seen in a broader patient group, including its use outside the approved indications;
- the availability, cost and potential advantages of alternative treatments, including less expensive generic drugs;
- the availability of adequate reimbursement and pricing by third-party payors and government authorities;
- the product labeling or product insert required by the FDA or regulatory authority in other countries;
- the approval, availability, market acceptance and reimbursement for a companion diagnostic, if any;
• the prevalence and severity of adverse side effects; and

• the effectiveness of our sales and marketing efforts.

If any product candidate that we develop does not provide a treatment regimen that is as beneficial as, or is perceived as being as beneficial as, the current standard of care or otherwise does not provide patient benefit, that product candidate, if approved for commercial sale by the FDA or other regulatory authorities, likely will not achieve market acceptance. Our ability to effectively promote and sell any approved products will also depend on pricing and cost-effectiveness, including our ability to produce a product at a competitive price and our ability to obtain sufficient third-party coverage or reimbursement. If any product candidate is approved but does not achieve an adequate level of acceptance by physicians, patients and third-party payors, our ability to generate revenues from that product would be substantially reduced. In addition, our efforts to educate the medical community and third-party payors on the benefits of our product candidates may require significant resources, may be constrained by FDA rules and policies on product promotion, and may never be successful.

*If we cannot compete successfully against other biotechnology and pharmaceutical companies, we may not be successful in developing and commercializing our technology and our business will suffer.*

The biotechnology and pharmaceutical industries are characterized by intense competition and rapid technological advances, both in the U.S. and internationally. In addition, the competition in the oncology market is intense. Even if we are able to develop our proprietary platform technology and additional antibody libraries, each will compete with a number of existing and future technologies and product candidates developed, manufactured and marketed by others. Specifically, we will compete against fully integrated pharmaceutical companies and smaller companies that are collaborating with larger pharmaceutical companies, academic institutions, government agencies and other public and private research organizations. Many of these competitors have validated technologies with products already FDA-approved or in various stages of development. In addition, many of these competitors, either alone or together with their collaborative partners, operate larger research and development programs and have substantially greater financial resources than we do, as well as significantly greater experience in:

• developing product candidates and technologies generally;
• undertaking preclinical testing and clinical trials;
• obtaining FDA and other regulatory approvals of product candidates;
• formulating and manufacturing product candidates; and
• launching, marketing and selling product candidates.

Many of our competitors have substantially greater financial, technical and other resources, such as larger research and development staff and experienced marketing and manufacturing organizations. Additional mergers and acquisitions in the biotechnology and pharmaceutical industries may result in even more resources being concentrated in our competitors. As a result, these companies may obtain regulatory approval more rapidly than we are able and may be more effective in selling and marketing their products as well. Smaller or early-stage companies or generic pharmaceutical manufacturers may also prove to be significant competitors, particularly through collaborative arrangements with large, established companies. Competition may increase further as a result of advances in the commercial applicability of technologies and greater availability of capital for investment in these industries. Our competitors may succeed in developing, acquiring or licensing on an exclusive basis drug products that are more effective or less costly than any drug candidate that we are currently developing or that we may develop. If approved, our product candidates will face competition from commercially available drugs as well as drugs that are in the development pipelines of our competitors and later enter the market.

Established pharmaceutical companies may invest heavily to accelerate discovery and development of novel compounds or to in-license novel compounds that could make our product candidates less competitive. In addition, any new product that competes with an approved product must demonstrate compelling advantages in efficacy, convenience, tolerability and safety in order to overcome price competition and to be commercially successful. Accordingly, our competitors may succeed in obtaining patent protection, receiving FDA, EMA or other regulatory approval or discovering, developing and commercializing medicines before we do, which would have a material adverse impact on our business. If our technologies fail to compete effectively against third party technologies, our business will be adversely impacted.

We expect that our ability to compete effectively will depend upon our ability to:

• successfully and efficiently complete clinical trials and submit for and obtain all requisite regulatory approvals in a cost-effective manner;
• maintain a proprietary position for our products and manufacturing processes and other related product technology;
unsatisfactory levels, we may be unable to achieve or sustain profitability of our products in such country. Government and other third-party payors are increasingly attempting to contain healthcare costs by limiting both coverage and the level of reimbursement for new drugs and, as a result, they may not cover or provide adequate payment for our product candidates. These payors may conclude that our product candidates are less safe, less effective or less cost-effective than existing or future introduced products, and third-party payors may not approve our product candidates for coverage and reimbursement or may cease providing coverage and reimbursement for these product candidates. Obtaining coverage and reimbursement approval for a product from a government or other third-party payor is a time consuming and costly process that could require us to provide to the payor supporting scientific, clinical and cost-effectiveness data for the use of our products. We may not be able to provide data sufficient to gain acceptance with respect to coverage and reimbursement. If reimbursement of our future products is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, we may be unable to achieve or sustain profitability.

In some foreign countries, particularly in the European Union, the pricing of prescription pharmaceuticals is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a product candidate. To obtain reimbursement or pricing approval in some countries, we may be required to conduct additional clinical trials that compare the cost-effectiveness of our product candidates to other available therapies. If reimbursement of our product candidates is unavailable or limited in scope or amount in a particular country, or if pricing is set at unsatisfactory levels, we may be unable to achieve or sustain profitability of our products in such country.

Healthcare reform measures could hinder or prevent our product candidates’ commercial success.

In both the U.S. and certain foreign jurisdictions, there have been and we expect there will continue to be a number of legislative and regulatory changes to the health care system that could impact our ability to sell our products profitably. The U.S. government and other governments have shown significant interest in pursuing healthcare reform. In particular, the Medicare Modernization Act of 2003 revised the payment methodology for many products under the Medicare program in the U.S. This has resulted in lower rates of reimbursement. In 2010, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, collectively, the Healthcare Reform Law, was enacted. The Healthcare Reform Law substantially changes the way healthcare is financed by both governmental and private insurers. Such government-adopted reform measures may adversely impact the pricing of healthcare products and services in the United States or internationally and the amount of reimbursement available from governmental agencies or other third-party payors.

There have been, and likely will continue to be, legislative and regulatory proposals at the federal and state levels directed at broadening the availability of healthcare and containing or lowering the cost of healthcare. We cannot predict the initiatives that may be adopted in the future. The continuing efforts of the government, insurance companies, managed care organizations and other payors of healthcare services to contain or reduce costs of healthcare may adversely affect the demand for any drug products for which we may obtain regulatory approval, as well as our ability to set satisfactory prices for our products, to generate revenues, and to achieve and maintain profitability.

Certain of our potential product candidates are in early stages of development and any product candidates that we develop will require extensive preclinical and clinical testing before they are approved by the appropriate regulatory agency, if at all.

The FDA regulates, among other things, the development, testing, manufacture, safety, efficacy, record-keeping, labeling, storage, approval, advertising, promotion, sale and distribution of biopharmaceutical products. We are in the early stages of developing potential product candidates, and any candidates that we develop will require extensive preclinical and clinical testing
before they will be approved by the FDA or another regulatory authority in a jurisdiction outside the U.S., if at all. We have not yet developed any product candidate; if we were to do so there are a number of requirements that we would be required to satisfy in order to begin conducting preclinical trials and there can be no assurance that we will develop product candidates or complete the steps necessary to allow us to commence these trials. We cannot predict with any certainty the results of preclinical testing or whether such trials would yield sufficient data to permit us, or those with whom we collaborate, to proceed with clinical development and ultimately submit an application for regulatory approval of our product candidates in the U.S. or abroad, or whether such applications would be approved by the appropriate regulatory agency. Further, our product candidates may not receive regulatory approval even if they are successful in clinical trials. If we do not receive regulatory approvals for our product candidates, we may not be able to continue our operations.

**Failure to successfully validate, develop and obtain regulatory approval for companion diagnostics could harm our long-term drug development strategy.**

As one of the key elements of our clinical development strategy, we seek to identify patients within a disease category or indication who may derive selective and meaningful benefit from the product candidates we are developing. In collaboration with partners, we plan to develop companion diagnostics to help us to more accurately identify patients within a particular category or indication, both during our clinical trials and in connection with the commercialization of certain of our product candidates. Companion diagnostics are subject to regulation by the FDA and comparable foreign regulatory authorities as medical devices and require separate regulatory approval prior to commercialization. We do not develop companion diagnostics internally and thus we are dependent on the sustained cooperation and effort of our third-party collaborators in developing and obtaining approval for these companion diagnostics. We and our collaborators may encounter difficulties in developing and obtaining approval for the companion diagnostics, including issues relating to selectivity/specificity, analytical validation, reproducibility, or clinical validation. Any delay or failure by our collaborators to develop or obtain regulatory approval of the companion diagnostics could delay or prevent approval of our product candidates. In addition, our collaborators may encounter production difficulties that could constrain the supply of the companion diagnostics, and both they and we may have difficulties gaining acceptance of the use of the companion diagnostics in the clinical community. If such companion diagnostics fail to gain market acceptance, it would have an adverse effect on our ability to derive revenues from sales of our products. In addition, the diagnostic company with whom we contract may decide to discontinue selling or manufacturing the companion diagnostic that we anticipate using in connection with development and commercialization of our product candidates or our relationship with such diagnostic company may otherwise terminate. We may not be able to enter into arrangements with another diagnostic company to obtain supplies of an alternative diagnostic test for use in connection with the development and commercialization of our product candidates or do so on commercially reasonable terms, which could adversely affect and/or delay the development or commercialization of our product candidates.

**Our collaborations depend upon the efforts of third parties to fund and manage the development of many of our potential product candidates, and failure of those third party collaborators to assist or share in the costs of product development could materially harm our business, financial condition and results of operations.**

Our strategy for the development and commercialization of our proprietary product candidates has included the formation of joint ventures and collaborative arrangements with third parties. Potential third parties include biopharmaceutical, pharmaceutical and biotechnology companies, academic institutions and other entities. Third-party collaborators may assist us in:

- funding research, preclinical development, clinical trials and manufacturing;
- seeking and obtaining regulatory approvals; and
- successfully commercializing any future product candidates.

Our collaborations limit our ability to control the efforts devoted to many of our product candidates in such arrangements and our earlier stage pipeline is dependent upon identifying new potential collaborators. For example, our most recent joint ventures require us to conduct research and provide potential product candidates in addition to making capital contributions to continue the further development of those products. We do not have control over the management of the joint ventures and are minority holders in most of those ventures, which may result in limitations on our ability to successfully develop product candidates and fund clinical trials through those joint ventures.

In addition, if we are not able to establish further collaboration agreements, we may be required to undertake product development and commercialization at our own expense. Such an undertaking may limit the number of product candidates that we will be able to develop, significantly increase our capital requirements and place additional strain on our internal resources.

Our failure to enter into additional collaborations could materially harm our business, financial condition and results of operations.
In addition, our dependence on licensing, collaboration and other agreements with third parties may subject us to a number of risks. These agreements may not be on terms that prove favorable to us and may require us to relinquish certain rights in our product candidates. To the extent we agree to work exclusively with one collaborator in a given area, our opportunities to collaborate with other entities could be curtailed. Lengthy negotiations with potential new collaborators may lead to delays in the research, development or commercialization of product candidates. The decision by our collaborators to pursue alternative technologies or the failure of our collaborators to develop or commercialize successfully any product candidate to which they have obtained rights from us could materially harm our business, financial condition and results of operations.

**Adverse economic conditions may have material adverse consequences on our business, results of operations and financial condition.**

Unpredictable and unstable changes in economic conditions, including recession, inflation, increased government intervention, or other changes, may adversely affect our general business strategy. We rely upon our ability to generate additional sources of liquidity and we may need to raise additional funds through public or private debt or equity financings in order to fund existing operations or to take advantage of opportunities, including acquisitions of complementary businesses or technologies. Any adverse event would have a material adverse impact on our business, results of operations and financial condition.

**Because our development activities are expected to rely heavily on sensitive and personal information, an area which is highly regulated by privacy laws, we may not be able to generate, maintain or access essential patient samples or data to continue our research and development efforts in the future on reasonable terms and conditions, which may adversely affect our business.**

Although we are not subject to HIPAA, as neither a Covered Entity nor Business Associate (as defined in HIPAA and the HITECH Act), we may have access to very sensitive data regarding patients whose tissue samples are used in our studies. This data will contain information that is personal in nature. The maintenance of this data is subject to certain privacy-related laws, which impose upon us administrative and financial burdens, and litigation risks. For instance, the rules promulgated by the Department of Health and Human Services under the Health Insurance Portability and Accountability Act, or HIPAA, create national standards to protect patients’ medical records and other personal information in the U.S. These rules require that healthcare providers and other covered entities obtain written authorizations from patients prior to disclosing protected health care information of the patient to companies. If the patient fails to execute an authorization or the authorization fails to contain all required provisions, then we will not be allowed access to the patient’s information and our research efforts can be substantially delayed. Furthermore, use of protected health information that is provided to us pursuant to a valid patient authorization is subject to the limits set forth in the authorization (i.e., for use in research and in submissions to regulatory authorities for product approvals). As such, we are required to implement policies, procedures and reasonable and appropriate security measures to protect individually identifiable health information we receive from covered entities, and to ensure such information is used only as authorized by the patient. Any violations of these rules by us could subject us to civil and criminal penalties and adverse publicity, and could harm our ability to initiate and complete clinical studies required to support regulatory applications for our proposed products. In addition, HIPAA does not replace federal, state, or other laws that may grant individuals even greater privacy protections. We can provide no assurance that future legislation will not prevent us from generating or maintaining personal data or that patients will consent to the use of their personal information, either of which may prevent us from undertaking or publishing essential research. These burdens or risks may prove too great for us to reasonably bear, and may adversely affect our ability to achieve profitability or maintain profitability in the future.

**Our therapeutic product candidates for which we intend to seek approval as biological products may face competition sooner than expected.**

With the enactment of the Biologics Price Competition and Innovation Act of 2009, or BPCIA, as part of the Health Care Reform Law, an abbreviated pathway for the approval of biosimilar and interchangeable biological products was created. The new abbreviated regulatory pathway establishes legal authority for the FDA to review and approve biosimilar biologicals, including the possible designation of a biosimilar as “interchangeable.” The FDA defines an interchangeable biosimilar as a product that, in terms of safety or diminished efficacy, presents no greater risk when switching between the biosimilar and its reference product than the risk of using the reference product alone. Under the BPCIA, an application for a biosimilar product cannot be submitted to the FDA until four years, or approved by the FDA until 12 years, after the original brand product identified as the reference product was approved under a BLA. The new law is complex and is only beginning to be interpreted by the FDA. As a result, its ultimate impact, implementation and meaning are subject to uncertainty. While it is uncertain when any such processes may be fully adopted by the FDA, any such processes could have a material adverse effect on the future commercial prospects for our biological products.

We believe that if any of our product candidates were to be approved as biological products under a BLA, such approved products should qualify for the 12-year period of exclusivity. However, there is a risk that the U.S. Congress could amend the BPCIA to significantly shorten this exclusivity period as proposed by President Obama, potentially creating the opportunity for generic competition sooner than anticipated. Moreover, the extent to which a biosimilar, once approved, will be substituted for any one of our reference products in a way that is similar to traditional generic substitution for non-biological products is not yet clear, and will depend on a number of marketplace and regulatory factors that are still developing. In addition, a competitor could decide to forego
the biosimilar route and submit a full BLA after completing its own preclinical studies and clinical trials. In such cases, any
exclusivity to which we may be eligible under the BPCIA would not prevent the competitor from marketing its product as soon as it is
approved.

We may be exposed to liability claims associated with the use of hazardous materials and chemicals.

Our research and development activities may involve the controlled use of hazardous materials and chemicals. Although we
believe that our safety procedures for using, storing, handling and disposing of these materials comply with federal, state and local
laws and regulations, we cannot completely eliminate the risk of accidental injury or contamination from these materials. In the event
of such an accident, we could be held liable for any resulting damages and any liability could materially adversely affect our business,
financial condition and results of operations. We do not currently maintain hazardous materials insurance coverage. In addition, the
federal, state and local laws and regulations governing the use, manufacture, storage, handling and disposal of hazardous or
radioactive materials and waste products may require us to incur substantial compliance costs that could materially harm our business.

If we are unable to retain and recruit qualified scientists and advisors, or if any of our key executives, key employees or key
consultants discontinues his or her employment or consulting relationship with us, it may delay our development efforts or
otherwise harm our business.

We may not be able to attract or retain qualified management and scientific and clinical personnel in the future due to the
intense competition for qualified personnel among biotechnology, pharmaceutical and other businesses, particularly in the San Diego,
California area. Our industry has experienced a high rate of turnover of management personnel in recent years. If we are not able to
attract, retain and motivate necessary personnel to accomplish our business objectives, we may experience constraints that will
significantly impede the successful development of any product candidates, our ability to raise additional capital and our ability to
implement our overall business strategy.

We are highly dependent on key members of our management and scientific staff, especially Henry Ji, Ph.D, Chief Executive
Officer and President, and Mike Royal, Executive Vice President of Clinical and Regulatory Affairs. Our success also depends on our
ability to continue to attract, retain and motivate highly skilled junior, mid-level, and senior managers as well as junior, mid-level, and
senior scientific and medical personnel. The loss of any of our executive officers, key employees or key consultants and our inability
to find suitable replacements could impede the achievement of our research and development objectives, potentially harm our business,
financial condition and prospects. Furthermore, recruiting and retaining qualified scientific personnel to perform research and
development work in the future is critical to our success. We may be unable to attract and retain personnel on acceptable terms given
the competition among biotechnology, biopharmaceutical and health care companies, universities and non-profit research institutions
for experienced scientists. Certain of our current officers, directors, scientific advisors and/or consultants or certain of the officers,
directors, scientific advisors and/or consultants hereafter appointed may from time to time serve as officers, directors, scientific
advisors and/or consultants of other biopharmaceutical or biotechnology companies. We do not maintain “key man” insurance policies
on any of our officers or employees. All of our employees are employed “at will” and, therefore, each employee may leave our
employment at any time.

We may not be able to attract or retain qualified management and scientific personnel in the future due to the intense
competition for a limited number of qualified personnel among biopharmaceutical, biotechnology, pharmaceutical and other
businesses. Many of the other pharmaceutical companies that we compete against for qualified personnel have greater financial and
other resources, different risk profiles and a longer history in the industry than we do. They also may provide more diverse
opportunities and better chances for career advancement. Some of these characteristics may be more appealing to high quality
candidates than what we have to offer. If we are unable to continue to attract and retain high quality personnel, the rate and success at
which we can develop and commercialize product candidates will be limited.

We plan to grant stock options or other forms of equity awards in the future as a method of attracting and retaining employees,
motivating performance and aligning the interests of employees with those of our stockholders. If we are unable to implement and
maintain equity compensation arrangements that provide sufficient incentives, we may be unable to retain our existing employees and
attract additional qualified candidates. If we are unable to retain our existing employees, including qualified scientific personnel, and
attract additional qualified candidates, our business and results of operations could be adversely affected.

Our employees may engage in misconduct or other improper activities, including noncompliance with regulatory standards and
requirements, which could have a material adverse effect on our business.

We are exposed to the risk of employee fraud or other misconduct. Misconduct by employees could include intentional failures
to comply with FDA regulations, provide accurate information to the FDA, comply with manufacturing standards we have established,
comply with federal and state health-care fraud and abuse laws and regulations, report financial information or data accurately or
disclose unauthorized activities to us. In particular, sales, marketing and business arrangements in the healthcare industry are subject
to extensive laws and regulations intended to prevent fraud, kickbacks, self-dealing and other abusive practices. These laws and

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regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Employee misconduct could also involve the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. We have adopted a Code of Business Conduct and Ethics, but it is not always possible to identify and deter employee misconduct, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business and results of operations, including the imposition of significant fines or other sanctions.

We may be subject, directly or indirectly, to federal and state healthcare fraud and abuse laws, false claims laws and health information privacy and security laws. If we are unable to comply, or have not fully complied, with such laws, we could face substantial penalties.

If we obtain FDA approval for any of our product candidates and begin commercializing those products in the U.S., our operations may be directly, or indirectly through our customers, subject to various federal and state fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute and the federal False Claims Act. These laws may impact, among other things, our proposed sales, marketing and education programs. In addition, we may be subject to patient privacy regulation by both the federal government and the states in which we conduct our business. The laws that may affect our ability to operate include:

- the federal Anti-Kickback Statute, which prohibits, among other things, persons from knowingly and willfully soliciting, receiving, offering or paying remuneration, directly or indirectly, to induce, or in return for, the purchase or recommendation of an item or service reimbursable under a federal healthcare program, such as the Medicare and Medicaid programs;
- federal civil and criminal false claims laws and civil monetary penalty laws, which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other third-party payers that are false or fraudulent;
- HIPAA, which created new federal criminal statutes that prohibit executing a scheme to defraud any healthcare benefit program and making false statements relating to healthcare matters;
- HIPAA, as amended by the Health Information Technology and Clinical Health Act, or HITECH, and its implementing regulations, which imposes certain requirements relating to the privacy, security and transmission of individually identifiable health information; and
- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payer, including commercial insurers, and state laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

If our operations are found to be in violation of any of the laws described above or any other governmental regulations that apply to us, we may be subject to penalties, including civil and criminal penalties, damages, fines and the curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and our results of operations.

If product liability lawsuits are brought against us, we may incur substantial liabilities and may be required to limit commercialization of our product candidates.

We face an inherent risk of product liability as a result of the clinical testing of our product candidates and will face an even greater risk if we commercialize any products. For example, we may be sued if any product we develop allegedly causes injury or is found to be otherwise unsuitable during product testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability, and a breach of warranties. Claims could also be asserted under state consumer protection acts. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our product candidates, if approved. Even successful defense would require significant financial and management resources. Regardless of the merits or eventual outcome, liability claims may result in:

- decreased demand for our product candidates or products that we may develop;
- injury to our reputation;
- withdrawal of clinical trial participants;
- initiation of investigations by regulators;
costs to defend the related litigation;

• a diversion of management’s time and our resources;

• substantial monetary awards to trial participants or patients;

• product recalls, withdrawals or labeling, marketing or promotional restrictions;

• loss of revenues from product sales; and

• the inability to commercialize our product candidates.

Our inability to obtain and retain sufficient product liability insurance at an acceptable cost to protect against potential product liability claims could prevent or inhibit the commercialization of products we develop.

We are subject to the U.S. Foreign Corrupt Practices Act and other anti-corruption laws, as well as export control laws, customs laws, sanctions laws and other laws governing our operations. If we fail to comply with these laws, we could be subject to civil or criminal penalties, other remedial measures, and legal expenses, which could adversely affect our business, results of operations and financial condition.

Our operations are subject to certain anti-corruption laws, including the U.S. Foreign Corrupt Practices Act (“FCPA”), and other anti-corruption laws that apply in countries where we do business. The FCPA and other anti-corruption laws generally prohibit us and our employees and intermediaries from bribing, being bribed or making other prohibited payments to government officials or other persons to obtain or retain business or gain some other business advantage. We and our commercial partners operate in a number of jurisdictions that pose a high risk of potential FCPA violations and we participate in collaborations and relationships with third parties whose actions could potentially subject us to liability under the FCPA or local anti-corruption laws. In addition, we cannot predict the nature, scope or effect of future regulatory requirements to which our international operations might be subject or the manner in which existing laws might be administered or interpreted.

We are also subject to other laws and regulations governing our international operations, including regulations administered in the U.S. and in the EU, including applicable export control regulations, economic sanctions on countries and persons, customs requirements and currency exchange regulations (collectively, “Trade Control Laws”).

There can be no assurance that we will be completely effective in ensuring our compliance with all applicable anticorruption laws, including the FCPA or other legal requirements, such as Trade Control Laws. Any investigation of potential violations of the FCPA, other anti-corruption laws or Trade Control Laws by U.S., EU or other authorities could have an adverse impact on our reputation, our business, results of operations and financial condition. Furthermore, should we be found not to be in compliance with the FCPA, other anti-corruption laws or Trade Control Laws, we may be subject to criminal and civil penalties, disgorgement and other sanctions and remedial measures, as well as the accompanying legal expenses, any of which could have a material adverse effect on our reputation and liquidity, as well as on our business, results of operations and financial condition.

We will need to increase the size of our company and may not effectively manage our growth.

Our success will depend upon growing our business and our employee base. Over the next 12 months, we plan to add additional employees to assist us with research and development. Our future growth, if any, may cause a significant strain on our management, and our operational, financial and other resources. Our ability to manage our growth effectively will require us to implement and improve our operational, financial and management systems and to expand, train, manage and motivate our employees. These demands may require the hiring of additional management personnel and the development of additional expertise by management. Any increase in resources devoted to research and product development without a corresponding increase in our operational, financial and management systems could have a material adverse effect on our business, financial condition, and results of operations.
Any disruption in our research and development facilities could adversely affect our business, financial condition and results of operations.

Our principal executive offices, which house our research and development programs, are located in San Diego, California. Our facilities may be affected by natural or man-made disasters. Earthquakes are of particular significance since our facilities are located in an earthquake-prone area. We are also vulnerable to damage from other types of disasters, including power loss, attacks from extremist organizations, fire, floods and similar events. In the event that our facilities were affected by a natural or man-made disaster, we may be forced to curtail our operations and/or rely on third-parties to perform some or all of our research and development activities. Although we believe we possess adequate insurance for damage to our property and the disruption of our business from casualties, such insurance may not be sufficient to cover all of our potential losses and may not continue to be available to us on acceptable terms, or at all. In the future, we may choose to expand our operations in either our existing facilities or in new facilities. If we expand our worldwide manufacturing locations, there can be no assurance that this expansion will occur without implementation difficulties, or at all.

Our business and operations would suffer in the event of system failures.

Despite the implementation of security measures, our internal computer systems and those of our CROs and other contractors and consultants are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. While we have not experienced any such system failure, accident or security breach to date, if such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our drug development programs. For example, the loss of clinical trial data from completed or ongoing or planned clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach was to result in a loss of or damage to our data, or inappropriate disclosure of confidential or proprietary information, we could incur liability and the further development of our product candidates could be delayed.

If we acquire companies or technologies in the future, they could prove difficult to integrate, disrupt our business, dilute stockholder value, and adversely affect our operating results and the value of our common stock.

As part of our business strategy, we may acquire, enter into joint ventures with, or make investments in complementary or synergistic companies, services, and technologies in the future. Acquisitions and investments involve numerous risks, including:

- difficulties in identifying and acquiring products, technologies, or businesses that will help our business;
- difficulties in integrating operations, technologies, services, and personnel;
- diversion of financial and managerial resources from existing operations;
- the risk of entering new development activities and markets in which we have little to no experience;
- risks related to the assumption of known and unknown liabilities; and
- risks related to our ability to raise sufficient capital to fund additional operating activities.

As a result, if we fail to properly evaluate acquisitions or investments, we may not achieve the anticipated benefits of any such acquisitions, we may incur costs in excess of what we anticipate, and management resources and attention may be diverted from other necessary or valuable activities.

The terms of our secured debt facility require us to meet certain operating and financial covenants and place restrictions on our operating and financial flexibility. If we raise additional capital through debt financing, the terms of any new debt could further restrict our ability to operate our business.

Effective in March 2014, as amended and restated, we entered into a $12.5 million loan and security agreement with Oxford Finance and Silicon Valley Bank that is secured by a lien covering substantially all of our assets, excluding intellectual property. As of December 31, 2014, we had an outstanding principal balance of $12.5 million. The amended and restated loan and security agreement contains customary affirmative and negative covenants and events of default. The affirmative covenants include, among others, covenants requiring us to maintain our legal existence and governmental approvals, deliver certain financial reports and maintain insurance coverage. The negative covenants include, among others, restrictions on transferring collateral, changing our business, incurring additional indebtedness, engaging in mergers or acquisitions, paying dividends or making other distributions, making investments and creating other liens on our assets, in each case subject to customary exceptions. If we default under the loan agreement, the lenders may accelerate all of our repayment obligations and take control of our pledged assets, potentially requiring us to renegotiate our agreement on terms less favorable to us or to immediately cease operations. Further, if we are liquidated, the lender’s right to repayment would be senior to the rights of the holders of our common stock to receive any proceeds from the liquidation. The lenders could declare a default upon the occurrence of any event that they interpret as a material adverse change as defined under the loan agreement, thereby requiring us to repay the loan immediately or to attempt to reverse the declaration of default.
through negotiation or litigation. Any declaration by the lenders of an event of default could significantly harm our business and prospects and could cause the price of our common stock to decline. If we raise any additional debt financing, the terms of such additional debt could further restrict our operating and financial flexibility.

**Risks Related to Acquisitions**

*We have and plan to continue to acquire businesses and technologies and may fail to realize the anticipated benefits of the acquisitions, and acquisitions can be costly and dilutive.*

In the past 2 years, we acquired three companies. The success of any acquisitions depend on, among other things, our ability to combine our businesses in a manner that does not materially disrupt existing relationships and that allows us to achieve development and operational synergies. If we are unable to achieve these objectives, the anticipated benefits of the acquisition may not be realized fully or at all or may take longer to realize than expected. In particular, the acquisition may not be accretive to our stock value or development pipeline in the near or long term.

It is possible that the integration process could result in the loss of key employees; the disruption of our ongoing business or the ongoing business of the acquired companies; or inconsistencies in standards, controls, procedures, or policies that could adversely affect our ability to maintain relationships with third parties and employees or to achieve the anticipated benefits of the acquisition. Integration efforts between the two companies will also divert management’s attention from our core business and other opportunities that could have been beneficial to our stockholders. An inability to realize the full extent of, or any of, the anticipated benefits of the acquisition, as well as any delays encountered in the integration process, could have an adverse effect on our business and results of operations, which may affect the value of the shares of our common stock after the completion of the acquisition. If we are unable to achieve these objectives, the anticipated benefits of the acquisition may not be realized fully or at all or may take longer to realize than expected. In particular, the acquisition may not be accretive to our stock value or development pipeline in the near or long term.

During 2013, for example, we incurred significant legal and professional fees in connection with such acquisitions. We expect to incur additional costs integrating the companies’ operations, higher development and regulatory costs, and personnel, which cannot be estimated accurately at this time. If the total costs of the integration of our companies and advancement of acquired product candidates and technologies such as RTX and Concoritis assets exceed the anticipated benefits of the acquisition, our financial results could be adversely affected.

**Risks Related to Our Intellectual Property**

*Our ability to protect our intellectual property rights will be critically important to the success of our business, and we may not be able to protect these rights in the U.S. or abroad.*

Our success, competitive position and future revenues will depend in part on our ability to obtain and maintain patent protection for our product candidates, methods, processes and other technologies, to prevent third parties from infringing on our proprietary rights and to operate without infringing upon the proprietary rights of third parties. We will be able to protect our proprietary rights from unauthorized use by third parties only to the extent that our proprietary rights are covered by valid and enforceable patents or are effectively maintained as trade secrets. We attempt to protect our proprietary position by maintaining trade secrets and by filing U.S. and foreign patent applications related to our proprietary technology, inventions and improvements that are important to the development of our business. We have one issued U.S. patent covering our G-MAB® which expires in 2022 and the examination of its European equivalent is currently in progress. In 2011, several improvement patent applications were filed for our proprietary antibody library technology. However, due to the difficulties of enforcing such antibody library technology, we filed a key patent application in the U.S. only and requested nonpublication. In 2013 and 2014, we filed 18 antibody family patent applications. The first of the antibody family patents applications issued on October 14, 2014 as U.S. Patent 8,859,740. In 2013 and 2014, we filed five patent application families for the Concoritis conjugation chemistry associated with ADC’s.

We have commenced generating a patent application portfolio of patents to protect each product candidate in our pipeline. However, the patent position of biopharmaceutical companies involves complex legal and factual questions, and therefore we cannot predict with certainty whether any patent applications that we have filed or that we may file in the future will be approved or any resulting patents will be enforced. In addition, third parties may challenge, seek to invalidate or circumvent any of our patents, once they are issued. Thus, any patents that we own or license from third parties may not provide any protection against competitors. Any patent applications that we have filed or that we may file in the future, or those we may license from third parties, may not result in patents being issued. Also, patent rights may not provide us with adequate proprietary protection or competitive advantages against competitors with similar technologies.

In addition, the laws of certain foreign countries do not protect our intellectual property rights to the same extent as do the laws of the US. If we fail to apply for intellectual property protection or if we cannot adequately protect our intellectual property rights in these foreign countries, our competitors may be able to compete more effectively against us, which could adversely affect our competitive position, as well as our business, financial condition and results of operations.
If any of our trade secrets, know-how or other proprietary information is disclosed, the value of our trade secrets, know-how and other proprietary rights would be significantly impaired and our business and competitive position would suffer.

Our success also depends upon the skills, knowledge and experience of our scientific and technical personnel and our consultants and advisors, as well as our licensors. To help protect our proprietary know-how and our inventions for which patents may be unobtainable or difficult to obtain, we rely on trade secret protection and confidentiality agreements. Unlike some of our competitors, in addition to certain manufacturing processes, we maintain our proprietary libraries for ourselves as trade secrets, as we believe they have proven to be superior in obtaining strong binder product candidates. To this end, we require all of our employees, consultants, advisors and contractors to enter into agreements which prohibit the disclosure of confidential information and, where applicable, require disclosure and assignment to us of the ideas, developments, discoveries and inventions important to our business. These agreements may not provide adequate protection for our trade secrets, know-how or other proprietary information in the event of any unauthorized use or disclosure or the lawful development by others of such information. If any of our trade secrets, know-how or other proprietary information is disclosed, the value of our trade secrets, know-how and other proprietary rights would be significantly impaired and our business and competitive position would suffer.

Third party competitors may seek to challenge the validity of our patents, thereby rendering them unenforceable or we may seek to challenge third party competitor patents if such third parties seek to interpret or enforce a claim scope going well beyond the actual enabled invention.

Claims that we infringe upon the rights of third parties may give rise to costly and lengthy litigation, and we could be prevented from selling products, forced to pay damages, and defend against litigation.

Third parties may assert patent or other intellectual property infringement claims against us or our strategic partners or licensees with respect to our technologies and potential product candidates. If our products, methods, processes and other technologies infringe upon the proprietary rights of other parties, we could incur substantial costs and we may have to:

- obtain licenses, which may not be available on commercially reasonable terms, if at all, and may be non-exclusive, thereby giving our competitors access to the same intellectual property licensed to us;
- redesign our products or processes to avoid infringement;
- stop using the subject matter validly claimed in the patents held by others;
- pay damages; and
- defend litigation or administrative proceedings which may be costly whether we win or lose, and which could result in a substantial diversion of our valuable management resources.

Even if we were to prevail, any litigation could be costly and time-consuming and would divert the attention of our management and key personnel from our business operations. Furthermore, as a result of a patent infringement suit brought against us or our strategic partners or licensees, we or our strategic partners or licensees may be forced to stop or delay developing, manufacturing or selling technologies or potential products that are claimed to infringe a third party’s intellectual property unless that party grants us or our strategic partners’ or licensees’ rights to use its intellectual property. Ultimately, we may be unable to develop some of our technologies or potential products or may have to discontinue development of a product candidate or cease some of our business operations as a result of patent infringement claims, which could severely harm our business.

Our position as a relatively small company may cause us to be at a significant disadvantage in defending our intellectual property rights and in defending against infringement claims by third parties.

Litigation relating to the ownership and use of intellectual property is expensive, and our position as a relatively small company in an industry dominated by very large companies may cause us to be at a significant disadvantage in defending our intellectual property rights and in defending against claims that our technology infringes or misappropriates third party intellectual property rights. However, we may seek to use various post-grant administrative proceedings, including new procedures created under the America Invents Act, to invalidate potentially overly-broad third party rights. Even if we are able to defend our position, the cost of doing so may adversely affect our ability to grow, generate revenue or become profitable. Although we have not yet experienced patent litigation, we may in the future be subject to such litigation and may not be able to protect our intellectual property at a reasonable cost, or at all, if such litigation is initiated. The outcome of litigation is always uncertain, and in some cases could include judgments against us that require us to pay damages, enjoins us from certain activities or otherwise affect our legal or contractual rights, which could have a significant adverse effect on our business.
Third-party claims of intellectual property infringement may prevent or delay our drug discovery and development efforts.

Our commercial success depends in part on our avoiding infringement of the patents and proprietary rights of third parties. There is a substantial amount of litigation involving patent and other intellectual property rights in the biotechnology and pharmaceutical industries, including Patent Office administrative proceedings, such as inter parties reviews, and reexamination proceedings before the U.S. PTO or oppositions and revocations and other comparable proceedings in foreign jurisdictions. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which we are developing product candidates. As the biotechnology and pharmaceutical industries expand and more patents are issued, the risk increases that our product candidates may give rise to claims of infringement of the patent rights of others.

Despite safe harbor provisions, third parties may assert that we are employing their proprietary technology without authorization. There may be third-party patents, of which we are currently unaware, with claims to materials, formulations, methods of doing research or library screening, methods of manufacture or methods for treatment related to the use or manufacture of our product candidates. Because patent applications can take many years to issue, there may be currently pending patent published applications which may later result in issued patents that our product candidates may infringe. In addition, third parties may obtain patents in the future and claim that use of our technologies infringes upon these patents. If any third-party patents were held by a court of competent jurisdiction to cover the manufacturing process of any of our product candidates, any molecules formed during the manufacturing process or any final product itself, the holders of any such patents may be able to block our ability to commercialize such product candidate unless we obtain a license under the applicable patents, or until such patents expire or they are finally determined to be held invalid or unenforceable. Similarly, if any third-party patent were held by a court of competent jurisdiction to cover aspects of our formulations, processes for manufacture or methods of use, including combination therapy or patient selection methods, the holders of any such patent may be able to block our ability to develop and commercialize the applicable product candidate unless we obtain a license, limit our uses, or until such patent expires or is finally determined to be held invalid or unenforceable. In either case, such a license may not be available on commercially reasonable terms or at all.

Parties making claims against us may obtain injunctive or other equitable relief, which could effectively block our ability to further develop and commercialize one or more of our product candidates. Defense of these claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of employee resources from our business. In the event of a successful claim of infringement against us, we may have to pay substantial damages, including treble damages and attorneys’ fees for willful infringement, obtain one or more licenses from third parties, limit our uses, pay royalties or redesign our infringing product candidates, which may be impossible or require substantial time and monetary expenditure. We cannot predict whether any such license would be available at all or whether it would be available on commercially reasonable terms. Furthermore, even in the absence of litigation, we may need to obtain licenses from third parties to advance our research or allow commercialization of our product candidates. We may fail to obtain any of these licenses at a reasonable cost or on reasonable terms, if at all. In that event, we would be unable to further develop and commercialize one or more of our product candidates, which could harm our business significantly.

We may not be able to protect our intellectual property rights throughout the world.

Filing, prosecuting and defending patents on all of our product candidates throughout the world would be prohibitively expensive. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and further, may export otherwise infringing products to territories where we have patent protection, but enforcement is not as strong as that in the U.S. These products may compete with our products in jurisdictions where we do not have any issued patents and our patent claims or other intellectual property rights may not be effective or sufficient to prevent them from so competing.

Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents and other intellectual property protection, particularly those relating to biopharmaceuticals, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our proprietary rights generally. Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial cost and divert our efforts and attention from other aspects of our business.

Confidentiality agreements with employees and others may not adequately prevent disclosure of our trade secrets and other proprietary information and may not adequately protect our intellectual property, which could limit our ability to compete.

Because we operate in the highly technical field of research and development of small molecule drugs, we rely in part on trade secret protection in order to protect our proprietary trade secrets and unpatented know-how. However, trade secrets are difficult to protect, and we cannot be certain that others will not develop the same or similar technologies on their own. We have taken steps, including entering into confidentiality agreements with our employees, consultants, outside scientific collaborators, sponsored researchers and other advisors, to protect our trade secrets and unpatented know-how. These agreements generally require that the other party keep confidential and not disclose to third parties all confidential information developed by the party or made known to the party by us during the course of the party’s relationship with us. We also typically obtain agreements from these parties which provide
that inventions conceived by the party in the course of rendering services to us will be our exclusive property. However, these agreements may not be honored and may not effectively assign intellectual property rights to us. Enforcing a claim that a party illegally obtained and is using our trade secrets or know-how is difficult, expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the U.S. may be less willing to protect trade secrets or know-how. The failure to obtain or maintain trade secret protection could adversely affect our competitive position.

**If we breach any of the agreements under which we license commercialization rights to our product candidates from third parties, we could lose license rights that are important to our business.**

We license the use, development and commercialization rights for all of our product candidates, and may enter into similar licenses in the future. Under each of our existing license agreements we are subject to commercialization and development, diligence obligations, milestone payment obligations, royalty payments and other obligations. If we fail to comply with any of these obligations or otherwise breach our license agreements, our licensing partners may have the right to terminate the license in whole or in part.

Generally, the loss of any one of our three current licenses or other licenses in the future could materially harm our business, prospects, financial condition and results of operations.

**Intellectual property rights do not necessarily address all potential threats to our competitive advantage.**

The degree of future protection afforded by our intellectual property rights is uncertain because intellectual property rights have limitations, and may not adequately protect our business, or permit us to maintain our competitive advantage. The following examples are illustrative:

- Others may be able to make compounds that are similar to our product candidates but that are not covered by the claims of the patents that we own or have exclusively licensed;
- We or our licensors or strategic partners might not have been the first to make the inventions covered by the issued patent or pending patent application that we own or have exclusively licensed;
- We or our licensors or strategic partners might not have been the first to file patent applications covering certain of our inventions;
- Others may independently develop similar or alternative technologies or duplicate any of our technologies without infringing our intellectual property rights;
- It is possible that our pending patent applications will not lead to issued patents;
- Issued patents that we own or have exclusively licensed may not provide us with any competitive advantages, or may be held invalid or unenforceable, as a result of legal challenges by our competitors;
- Our competitors might conduct research and development activities in countries where we do not have patent rights and then use the information learned from such activities to develop competitive products for sale in our major commercial markets;
- We may not develop additional proprietary technologies that are patentable; and
- The patents of others may have an adverse effect on our business.

Should any of these events occur, they could significantly harm our business, results of operations and prospects.

**From time to time we may need to license patents, intellectual property and proprietary technologies from third parties, which may be difficult or expensive to obtain.**

We may need to obtain licenses to patents and other proprietary rights held by third parties to successfully develop, manufacture and market our drug products. As an example, it may be necessary to use a third party’s proprietary technology to reformulate one of our drug products in order to improve upon the capabilities of the drug product. If we are unable to timely obtain these licenses on reasonable terms, our ability to commercially exploit our drug products may be inhibited or prevented.

**We remain subject to the Exclusive Distribution Agreement with Samyang Biopharmaceuticals Corporation and are required to pay all milestone and license fees pursuant to such agreement.**

As a result of our acquisition of IgDraSol Inc. in September 2013, we became a party to an Exclusive Distribution Agreement, as amended, with Samyang Biopharmaceuticals Corporation, or Samyang, in connection with our development of Cynviloq which contained various milestone and license fees to be paid to Samyang. On May 14, 2015, we sold all of our equity interests in IgDraSol
Inc. to NantPharma, LLC, or NantPharma. As part of the sale, we agreed with NantPharma to be responsible for and pay all milestone and license fees required to be paid to Samyang under the Exclusive Distribution Agreement following notification from NantPharma when such milestone and license fees become due and payable. While there are milestone payments to be paid to us from NantPharma as part of the sale of IgDraSol, in the event milestone payments are not paid to us, we will still be responsible for any and all milestone and license fees to be paid to Samyang pursuant to the Exclusive Distribution Agreement.

**Risks Related to Ownership of Our Common Stock**

The market price of our common stock may fluctuate significantly, and investors in our common stock may lose all or a part of their investment.

The market prices for securities of biotechnology and pharmaceutical companies have historically been highly volatile, and the market has from time to time experienced significant price and volume fluctuations that are unrelated to the operating performance of particular companies. The market price of our common stock may fluctuate significantly in response to numerous factors, some of which are beyond our control, such as:

- actual or anticipated adverse results or delays in our clinical trials;
- our failure to commercialize our product candidates, if approved;
- unanticipated serious safety concerns related to the use of any of our product candidates;
- adverse regulatory decisions;
- changes in laws or regulations applicable to our product candidates, including but not limited to clinical trial requirements for approvals;
- legal disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our product candidates, government investigations and the results of any proceedings or lawsuits, including patent or stockholder litigation;
- our decision to initiate a clinical trial, not initiate a clinical trial or to terminate an existing clinical trial;
- our dependence on third parties, including CROs;
- announcements of the introduction of new products by our competitors;
- market conditions in the pharmaceutical and biotechnology sectors;
- announcements concerning product development results or intellectual property rights of others;
- future issuances of common stock or other securities;
- the addition or departure of key personnel;
- failure to meet or exceed any financial guidance or expectations regarding development milestones that we may provide to the public;

- actual or anticipated variations in quarterly operating results;
- our failure to meet or exceed the estimates and projections of the investment community;
- overall performance of the equity markets and other factors that may be unrelated to our operating performance or the operating performance of our competitors, including changes in market valuations of similar companies;
- conditions or trends in the biotechnology and biopharmaceutical industries;
- introduction of new products offered by us or our competitors;
- announcements of significant acquisitions, strategic partnerships, joint ventures or capital commitments by us or our competitors;
- issuances of debt or equity securities;
- sales of our common stock by us or our stockholders in the future;
- trading volume of our common stock;
- ineffectiveness of our internal controls;
- publication of research reports about us or our industry or positive or negative recommendations or withdrawal of research
coverage by securities analysts;

• failure to effectively integrate the acquired companies operations;

• general political and economic conditions;

• effects of natural or man-made catastrophic events; and

• other events or factors, many of which are beyond our control.

Further, the equity markets in general have recently experienced extreme price and volume fluctuations. Continued market fluctuations could result in extreme volatility in the price of our common stock, which could cause a decline in the value of our common stock. Price volatility of our common stock might worsen if the trading volume of our common stock is low. The realization of any of the above risks or any of a broad range of other risks, including those described in these “Risk Factors,” could have a dramatic and material adverse impact on the market price of our common stock.

We have not paid cash dividends in the past and do not expect to pay cash dividends in the foreseeable future. Any return on investment may be limited to the value of our common stock.

We have never paid cash dividends on our common stock and do not anticipate paying cash dividends on our common stock in the foreseeable future. The payment of dividends on our capital stock will depend on our earnings, financial condition and other business and economic factors affecting us at such time as the board of directors may consider relevant. If we do not pay dividends, our common stock may be less valuable because a return on your investment will only occur if the common stock price appreciates.

Our strategic investments may result in losses.

We periodically make strategic investments in various public and private companies with businesses or technologies that may complement our business. The market values of these strategic investments may fluctuate due to market conditions and other conditions over which we have no control. Other-than-temporary declines in the market price and valuations of the securities that we hold in other companies would require us to record losses related to our investment. This could result in future charges to our earnings. It is uncertain whether or not we will realize any long-term benefits associated with these strategic investments.

Dr. Patrick Soon-Shiong, one of our principal stockholders, has significant interests in other companies which may conflict with our interests.

One of our principal stockholders, Dr. Patrick Soon-Shiong, is the founder of NantWorks, Inc., and a large stockholder in NantKwest, Inc. Both NantKwest and the various NantWorks companies are currently exploring opportunities in the immunotherapy, infectious disease and inflammatory disease fields. As a result, they or other companies affiliated with Dr. Soon-Shiong may compete with us for business opportunities or, in the future, develop products that are competitive with ours (including products in the other therapeutic fields in which we may target in the future). As a result Dr. Soon-Shiong’s interests may not be aligned with our other stockholders and he may from time to time be incentivized to take certain actions that benefit his other interests and that our other stockholders do not view as being in their interest as investors in our company. Moreover, even if they do not directly relate to us, actions taken by Dr. Soon-Shiong and the companies with which he is involved could impact us.

A sale of a substantial number of shares of the common stock may cause the price of our common stock to decline.

If our stockholders sell, or the market perceives that our stockholders intend to sell for various reasons, substantial amounts of our common stock in the public market, including shares issued in connection with the exercise of outstanding options or warrants, the market price of our common stock could fall. Sales of a substantial number of shares of our common stock may make it more difficult for us to sell equity or equity-related securities in the future at a time and price that we deem reasonable or appropriate. We may become involved in securities class action litigation that could divert management’s attention and harm our business.

The stock markets have from time to time experienced significant price and volume fluctuations that have affected the market prices for the common stock of biotechnology and biopharmaceutical companies. These broad market fluctuations may cause the market price of our common stock to decline. In the past, securities class action litigation has often been brought against a company following a decline in the market price of our securities. This risk is especially relevant for us because biotechnology and biopharmaceutical companies have experienced significant stock price volatility in recent years. We may become involved in this type of litigation in the future. Litigation often is expensive and diverts management’s attention and resources, which could adversely affect our business.
Our quarterly operating results may fluctuate significantly.

We expect our operating results to be subject to quarterly fluctuations. Our net loss and other operating results will be affected by numerous factors, including:

- variations in the level of expenses related to our development programs;
- the addition or termination of clinical trials;
- any intellectual property infringement lawsuit in which we may become involved;
- regulatory developments affecting our product candidates; and
- our execution of any collaborative, licensing or similar arrangements, and the timing of payments we may make or receive under these arrangements.

If our quarterly operating results fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. Furthermore, any quarterly fluctuations in our operating results may, in turn, cause the price of our common stock to fluctuate substantially.

Existing stockholders’ interest in us may be diluted by additional issuances of equity securities and raising funds through acquisitions, lending and licensing arrangements may restrict our operations or require us to relinquish proprietary rights.

We may issue additional equity securities to fund future expansion and pursuant to employee benefit plans. We may also issue additional equity for other purposes. These securities may have the same rights as our common stock or, alternatively, may have dividend, liquidation or other preferences to our common stock. The issuance of additional equity securities will dilute the holdings of existing stockholders and may reduce the share price of our common stock.

If we raise additional funds through collaboration, licensing or other similar arrangements, it may be necessary to relinquish potentially valuable rights to our product candidates, potential products or proprietary technologies, or grant licenses on terms that are not favorable to us. If adequate funds are not available, our ability to achieve profitability or to respond to competitive pressures would be significantly limited and we may be required to delay, significantly curtail or eliminate the development of our product candidates.

Directors, executive officers, principal stockholders and affiliated entities own a significant percentage of our capital stock, and they may make decisions that you do not consider to be in your best interests or those of our other stockholders.

As of September 30, 2015, our directors, executive officers and principal stockholders beneficially owned, in the aggregate, approximately 30.3% of our outstanding voting securities. As a result, if some or all of them acted together, they would have the ability to exert significant influence over the election of our board of directors and the outcome of issues requiring approval by our stockholders. This concentration of ownership may also have the effect of delaying or preventing a change in control of our company that may be favored by other stockholders. This could prevent transactions in which stockholders might otherwise recover a premium for their shares over current market prices.

Our ability to use our net operating loss carry forwards may be subject to limitation.

Generally, a change of more than 50% in the ownership of a company’s stock, by value, over a three-year period constitutes an ownership change for U.S. federal income tax purposes. An ownership change may limit our ability to use our net operating loss carryforwards attributable to the period prior to the change. As a result, if we earn net taxable income, our ability to use our pre-change net operating loss carryforwards to offset U.S. federal taxable income may become subject to limitations, which could potentially result in increased future tax liability for us.

Our certificate of incorporation, as amended, and bylaws provide for indemnification of officers and directors at our expense and limits their liability, which may result in a major cost to us and hurt the interests of our stockholders because corporate resources may be expended for the benefit of our officers and/or directors.

Our certificate of incorporation, as amended, bylaws and applicable Delaware law provide for the indemnification of our directors, officers, employees, and agents, under certain circumstances, against attorney’s fees and other expenses incurred by them in any litigation to which they become a party arising from their association with or activities on our behalf. We will also bear the expenses of such litigation for any of our directors, officers, employees, or agents, upon such person’s promise to repay us, therefore if it is ultimately determined that any such person shall not have been entitled to indemnification. This indemnification policy could result in substantial expenditures by us, which we will be unable to recover.
Our corporate documents and Delaware law contain provisions that could discourage, delay or prevent a change in control of our company, prevent attempts to replace or remove current management and reduce the market price of our common stock.

Provisions in our certificate of incorporation, as amended, and bylaws may discourage, delay or prevent a merger or acquisition involving us that our stockholders may consider favorable. For example, our certificate of incorporation, as amended, authorizes our board of directors to issue up to 100,000,000 shares of “blank check” preferred stock. As a result, without further stockholder approval, the board of directors has the authority to attach special rights, including voting and dividend rights, to this preferred stock. With these rights, preferred stockholders could make it more difficult for a third party to acquire us.

We are also subject to the anti-takeover provisions of the Delaware General Corporation Law. Under these provisions, if anyone becomes an “interested stockholder,” we may not enter into a “business combination” with that person for three years without special approval, which could discourage a third party from making a takeover offer and could delay or prevent a change in control of us. An “interested stockholder” means, generally, someone owning 15% or more of our outstanding voting stock or an affiliate of ours that owned 15% or more of our outstanding voting stock within the past three years, subject to certain exceptions as described in the Delaware General Corporation Law.

We have adopted a shareholder rights plan, the purpose of which is, among other things, to enhance our Board’s ability to protect shareholder interests and to ensure that stockholders receive fair treatment in the event any coercive takeover attempt of our company is made in the future. The shareholder rights plan could make it more difficult for a third party to acquire, or could discourage a third party from acquiring, our company or a large block of our common stock.

Compliance with changing regulations concerning corporate governance and public disclosure may result in additional expenses.

There have been changing laws, regulations and standards relating to corporate governance and public disclosure, including the Dodd-Frank Wall Street Reform and Consumer Protection Act, or the Dodd-Frank Act, the Sarbanes-Oxley Act of 2002, or Sarbanes-Oxley, new regulations promulgated by the SEC and rules promulgated by the national securities exchanges. The Dodd-Frank Act, enacted in July 2010, expands federal regulation of corporate governance matters and imposes requirements on public companies to, among other things, provide stockholders with a periodic advisory vote on executive compensation and also adds compensation committee reforms and enhanced pay-for-performance disclosures. While some provisions of the Dodd-Frank Act are effective upon enactment, others will be implemented upon the SEC’s adoption of related rules and regulations. The scope and timing of the adoption of such rules and regulations is uncertain and, accordingly, the cost of compliance with the Dodd-Frank Act is also uncertain.

These new or changed laws, regulations and standards are, or will be, subject to varying interpretations in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies, which could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. As a result, our efforts to comply with evolving laws, regulations and standards are likely to continue to result in increased general and administrative expenses and a diversion of management time and attention from revenue-generating activities to compliance activities. Members of our board of directors and our principal executive officer and principal financial officer could face an increased risk of personal liability in connection with the performance of their duties. As a result, we may have difficulty attracting and retaining qualified directors and executive officers, which could harm our business. If the actions we take in our efforts to comply with new or changed laws, regulations and standards differ from the actions intended by regulatory or governing bodies, we could be subject to liability under applicable laws or our reputation may be harmed.

If we fail to comply with the rules under the Sarbanes-Oxley Act of 2002 related to accounting controls and procedures, or, if we discover material weaknesses and deficiencies in our internal control and accounting procedures, our stock price could decline significantly and raising capital could be more difficult.

Sarbanes-Oxley specifically requires, among other things, that we maintain effective internal controls for financial reporting and disclosure of controls and procedures. In particular, we must perform system and process evaluation and testing of our internal controls over financial reporting to allow management to report on the effectiveness of our internal controls over financial reporting, as required by Section 404 of Sarbanes-Oxley. Our testing, or the subsequent testing by our independent registered public accounting firm, if and when required, may reveal deficiencies in our internal controls over financial reporting that are deemed to be material weaknesses. Our compliance with Section 404 will require that we incur substantial accounting expense and expend significant management efforts. We currently do not have an internal audit group, and we will need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge. Moreover, if we are not able to comply with the requirements of Section 404 in a timely manner, or if we or our independent registered public accounting firm identifies deficiencies in our internal controls over financial reporting that are deemed to be material weaknesses, the market price of our stock could decline, and we could be subject to sanctions or investigations by the SEC or other regulatory authorities, which would require additional financial and management resources.

The exhibits listed in the Exhibit Index immediately preceding the exhibits are filed as part of this Quarterly Report on Form 10-Q and such Exhibit Index is incorporated herein by reference.
SIGNATURES

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

Sorrento Therapeutics, Inc.

Date: November 13, 2015

By: /s/ Henry Ji, PH.D.

Henry Ji, Ph.D.
Director, Chief Executive Officer & President
(Principal Executive Officer)

Date: November 13, 2015

By: /s/ Douglas Langston

Douglas Langston
Vice President of Finance
(Principal Financial and Accounting Officer)
EXHIBIT INDEX

10.1 Membership Interest Purchase Agreement by and among TNK Therapeutics, Inc., CARgenix Holdings LLC, the Members of CARgenix Holdings LLC, Jaymin Patel as the Members Representative and Sorrento Therapeutics, Inc. dated as of August 7, 2015**.

10.2 Stock Purchase Agreement by and among TNK Therapeutics, Inc., BDL Products, Inc., the Stockholders of BDL Products, Inc., Richard Junghans, M.D., Ph.D. as the Stockholders’ Representative and Sorrento Therapeutics, Inc. dated as of August 7, 2015**.

10.3 Binding Term Sheet with NanoVelcro Circulating Tumor Cell

10.4 Exclusive License Agreement dated September 25, 2015 by and between LA Cell, Inc. and City of Hope*

31.1 Certification of Henry Ji, Ph.D., Principal Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, as amended.

31.2 Certification of Douglas Langston, Principal Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, as amended.

32.1 Certification of Henry Ji, Ph.D., Principal Executive Officer, and Douglas Langston, Principal Financial Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended.

101.INS XBRL Instance Document

101.SCH XBRL Taxonomy Extension Schema Document

101.CAL XBRL Taxonomy Extension Calculation Linkbase Document

101.DEF XBRL Taxonomy Extension Definition Linkbase Document

101.LAB XBRL Taxonomy Extension Label Linkbase Document

101.PRE XBRL Taxonomy Extension Presentation Linkbase Document

*Portions of this exhibit were omitted and filed separately with the U.S. Securities and Exchange Commission pursuant to a request for confidential treatment.

**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.
MEMBERSHIP INTEREST PURCHASE AGREEMENT

by and among

TNK THERAPEUTICS, INC.,

CARGENIX HOLDINGS LLC

THE MEMBERS OF CARGENIX HOLDINGS LLC,

JAYMIN PATEL, AS THE MEMBERS’ REPRESENTATIVE

And, solely with respect to Sections 1.4, 1.6 and 1.7 and Article XI,

SORRENTO THERAPEUTICS, INC.

Dated as of August 7, 2015
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MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AGREEMENT is made and entered into as of August 7, 2015, by and among TNK Therapeutics, Inc., a Delaware corporation (the “Purchaser”), CARgenix Holdings LLC, a Rhode Island and Providence Plantations limited liability company (the “Company”), the members of the Company set forth on the signature pages to this Agreement (collectively, the “Members” and, individually, a “Member”), Jaymin Patel, an individual resident of Rhode Island, as representative of the Members pursuant to Article X (the “Members’ Representative”), and, solely with respect to Sections 1.4, 1.6 and 1.7 and Article XI, Sorrento Therapeutics Inc., a Delaware corporation (“Sorrento”).

RECITALS

WHEREAS, the Members own all of the issued and outstanding membership or other equity interests of the Company (the “Membership Interests”); and

WHEREAS, upon the terms and conditions set forth in this Agreement, the Members propose to sell to the Purchaser and the Purchaser proposes to purchase from the Members, all of the Membership Interests in exchange for the consideration set forth in this Agreement.

NOW, THEREFORE, in consideration of the respective covenants, agreements and representations and warranties set forth in this Agreement, the parties to this Agreement, intending to be legally bound, agree as follows:

ARTICLE I
DESCRIPTION OF TRANSACTION

Section 1.1 Agreement to Purchase and Sell. Subject to the terms and conditions in this Agreement, at the Closing, the Members shall sell, assign, transfer and deliver to the Purchaser, and the Purchaser shall purchase and acquire from the Members, all right, title and interest in and to the Membership Interests, free and clear of all Liens.

Section 1.2 Payment of Closing Consideration.

(a) At the Closing, the Purchaser shall deliver the Closing Consideration, by wire transfer of immediately available funds, to the Members’ Representative for distribution to the Members based on each Member’s pro rata ownership of the Membership Interests.

(b) At the Closing, the Members shall transfer, grant, convey, sell and assign to the Purchaser all of the issued and outstanding Membership Interests. At the Closing and thereafter, each Member shall enter into such instruments of transfer and assignments as may be requested by the Purchaser to evidence such transfer and shall deliver to the Purchaser all physical original certificates evidencing all such securities or rights, if any, with assignments appropriately completed and signed.

Section 1.3 Net Debt Adjustment.

(a) No later than five (5) Business Days prior to the Closing Date, the Company shall deliver to the Purchaser a calculation of the estimated Net Debt of the Company at and as of immediately prior to the Closing, which sets forth a good faith estimate of the Net Debt as of such time (the “Estimated Net Debt”). The Estimated Net Debt calculation shall be prepared by the Company in accordance with past practices consistently applied. The Purchaser and its Representatives, including the Purchaser’s independent accountants, shall have access to all work papers of the Company and its Representatives, including its independent accountants, relating to the Estimated Net Debt. If the Purchaser disputes the Estimated Net Debt (or any portion thereof) prior to the Closing, then the Purchaser and the Company shall negotiate in good faith to resolve any such dispute at or prior to the Closing. For avoidance of doubt, if the Estimated Net Debt is a positive number, then no Net Debt-related adjustment shall be made to the Purchaser Stock Consideration.
(b) As promptly as practicable, but no later than 75 days after the Closing Date, the Purchaser shall cause to be prepared and delivered to the Members’ Representative a calculation of the Net Debt of the Company at and as of immediately prior to the Closing, which shall set forth the Purchaser’s good faith calculation of the Net Debt as of such time (the “Final Net Debt”). The Final Net Debt calculation shall be prepared by the Purchaser or its Representatives in accordance with the Company’s past practices consistently applied.

(c) If the Members’ Representative disagrees with the Purchaser’s calculation of the Final Net Debt delivered pursuant to Section 1.3(b), then the Members’ Representative may, within 45 days after delivery of the Final Net Debt calculation, deliver a written statement (the “Statement of Objection”) to the Purchaser disagreeing with such calculation that: (i) specifies the Members’ Representative’s calculation of the Final Net Debt, (ii) indicates each item or amount in the calculation of the Net Debt disputed by the Members’ Representative, and (iii) sets forth in detail the Members’ Representative’s grounds for disputing each individual item or amount in the Final Net Debt calculation. The Members’ Representative may only deliver one Statement of Objection to the Purchaser, and the Members’ Representative shall not raise any disagreements with the Final Net Debt calculation other than the disagreements set forth in the Statement of Objection, nor shall the Members’ Representative assert any claims that the value of any item or amount is greater or less than the value claimed in the Statement of Objection. Failure by the Members’ Representative to deliver a Statement of Objection within such 45 day period shall be deemed to constitute acceptance by the Members’ Representative of the Purchaser’s calculation of the Final Net Debt, and shall be final and binding upon, and non-appealable by, the Purchaser, the Members’ Representative and, for the avoidance of doubt, the Members.

(d) If a Statement of Objection shall be delivered to the Purchaser pursuant to Section 1.3(c), the Purchaser and the Members’ Representative shall, during the 15 days following such delivery, use commercially reasonable, good faith efforts to reach agreement on the disputed items or amounts in order to determine, as may be required, the amount of the Final Net Debt. If the Purchaser and the Members’ Representative are able to reach such agreement during such 15 day period, the Final Net Debt, with such changes as may have been previously agreed in writing by the Purchaser and the Members’ Representative, shall be final and binding upon, and non-appealable by, the Purchaser, the Members’ Representative and, for the avoidance of doubt, the Members.

(e) If the Purchaser and the Members’ Representative are unable to reach such agreement during such 15 day period, they shall promptly jointly retain a firm of independent accountants of internationally recognized standing reasonably satisfactory to the Members’ Representative and the Purchaser (who shall not have any material relationship with the Members’ Representative or the Purchaser) (the “Accounting Referee”) and cause the Accounting Referee promptly to review this Agreement and such disputed amounts. The Accounting Referee shall be instructed to resolve such disputes within 60 days of retention of the Accounting Referee. The Accounting Referee shall address only those matters in dispute and may not allow a value greater than the greatest value for such item claimed by either party or smaller than the smallest value for such item claimed by either party. The Accounting Referee shall deliver to the Purchaser and the Members’ Representative, as promptly as practicable, a report setting forth such calculation. Such report shall be final and binding upon, and non-appealable by, the Purchaser, the Members’ Representative and, for the avoidance of doubt, the Members. The cost of such review and report shall be borne by the Purchaser, on the one hand, and the Members (payable by the Members’ Representative on their behalf), on the other, in inverse proportion as the Purchaser and the Members’ Representative (on behalf of the Members), respectively, may prevail on the matters resolved by the Accounting Referee, which proportionate allocation shall also be determined by the Accounting Referee and be included in the Accounting Referee report.

(f) The Purchaser and the Members’ Representative agree that they will, and agree to cause their respective independent accountants to, cooperate and assist in the preparation of the calculation of the Final Net Debt, including making available, to the extent necessary, books, records, work papers and personnel.

(g) If the Final Net Debt is less (that is, more negative) than the Estimated Net Debt, the Purchaser shall be entitled to recover, pursuant to the Escrow Agreement, such number of Escrow Shares as is equal to the quotient obtained by dividing: (i) the amount by which the Final Net Debt is less (that is, more negative) than the Estimated Net Debt (such amount, the “Net Debt Adjustment Amount”), by (ii) the Per Share Price, rounded up to the nearest whole share, within five Business Days from when the Final Net Debt has become final, binding and non-appealable in accordance with Sections 1.3(c), (d) or (e); provided, however, that the Purchaser shall in no event be entitled to recover any Escrow
Shares pursuant to this Section 1.3(g) if the Final Net Debt is a positive number; and provided, further, that if, as of the date that the Final Net Debt has become final, binding and non-appealable in accordance with Sections 1.3(c), (d) or (e), the Purchaser has not yet delivered the Initial Escrow Shares in accordance with Section 1.4(b), then the Initial Escrow Shares to be delivered to the Escrow Agent in accordance with Section 1.4(b) shall be reduced by such number of shares of Purchaser Common Stock as is equal to the quotient obtained by dividing (i) the Net Debt Adjustment Amount, by (ii) the Per Share Price, rounded up to the nearest whole share.

Section 1.4 Issuance of Non-Escrow Shares.

(a) In the event a Qualified Financing occurs, then on the date that is 10 Business Days after the closing of the Qualified Financing, the Purchaser shall:

(i) deliver to the Members’ Representative (for distribution to the Members) the stock certificates representing the Non-Escrow Shares in the name of each Member, in each case for such number of shares of Purchaser Common Stock as is equal to the product of the total number of Non-Escrow Shares, less the Restrictive Agreement Shares, multiplied by the percentage of Membership Interests owned by such Member as of immediately prior to the Closing;

(ii) deliver to the Members’ Representative (for distribution to Mr. Sampath and Mr. Katz) the stock certificates representing the Restrictive Agreement Shares in the name of Mr. Sampath and Mr. Katz, in each case for such number of shares of Purchaser Common Stock calculated in accordance with Section 6.8; and

(iii) deliver to the Escrow Agent under the Escrow Agreement a stock certificate in the name of the Escrow Agent representing the Initial Escrow Shares;

provided that the certificates representing Purchaser Common Stock to be delivered to a Member shall, in each case, represent only whole shares of Purchaser Common Stock. In lieu of any fractional shares to which such Member would otherwise be entitled, after combining any fractional interests of such Member into as many whole shares as is possible, such Member shall be paid in cash an amount equal to the dollar amount (rounded to the nearest whole cent) determined by multiplying the Per Share Price by the fraction of a share of Purchaser Common Stock that would otherwise be deliverable to such Member under Section 1.4(a). Notwithstanding the foregoing, the Purchaser may deliver to the Escrow Agent one certificate representing the total number of shares of Purchaser Common Stock to be held in escrow pursuant to this Section 1.4 in lieu of issuing separate certificates representing such Member’s pro rata portion of the Initial Escrow Shares (such pro rata portion to be determined based on the percentage of Membership Interests owned by such Member as of immediately prior to the Closing).

(b) In the event a Qualified Financing does not occur, then on or before April 15, 2016, the Purchaser shall, or shall cause Sorrento to:

(i) deliver to the Members’ Representative (for distribution to the Members) the stock certificates representing the Non-Escrow Shares in the name of each Member, in each case for such number of shares of Sorrento Common Stock as is equal to the product of the total number of Non-Escrow Shares (less the Restrictive Agreement Shares) multiplied by the percentage of Membership Interests owned by such Member as of immediately prior to the Closing;

(ii) deliver to the Members’ Representative (for distribution to Mr. Sampath and Mr. Katz) the stock certificates representing the Restrictive Agreement Shares in the name of Mr. Sampath and Mr. Katz, in each case for such number of shares of Sorrento Common Stock calculated in accordance with Section 6.8; and

(iii) deliver to the Escrow Agent under the Escrow Agreement a stock certificate in the name of the Escrow Agent representing the Initial Escrow Shares;

provided that the certificates representing Sorrento Common Stock to be delivered to a Member shall, in each case, represent only whole shares of Sorrento Common Stock. In lieu of any fractional shares to which such Member would
otherwise be entitled, after combining any fractional interests of such Member into as many whole shares as is possible, such Member shall be paid in cash an amount equal to the dollar amount (rounded to the nearest whole cent) determined by multiplying the Per Share Price by the fraction of a share of Sorrento Common Stock that would otherwise be deliverable to such Member under Section 1.4(a). Notwithstanding the foregoing, the Purchaser may deliver to the Escrow Agent one certificate representing the total number of shares of Sorrento Common Stock to be held in escrow pursuant to this Section 1.4 in lieu of issuing separate certificates representing such Member’s pro rata portion of the Initial Escrow Shares (such pro rata portion to be determined based on the percentage of Membership Interests owned by such Member as of immediately prior to the Closing).

Section 1.5 Escrow.

(a) Upon the issuance of the Non-Escrow Shares in accordance with Section 1.4, the Purchaser shall withhold the Initial Escrow Shares and deliver such shares of Purchaser Common Stock to Wilmington Trust N.A., as escrow agent (the “Escrow Agent”), to be held by the Escrow Agent as collateral to secure the rights of the Purchaser pursuant to Section 1.3(a) and of the Purchaser Indemnified Parties under Article IX. The Escrow Shares shall be held pursuant to the provisions of an escrow agreement substantially in the form of EXHIBIT C hereto (the “Escrow Agreement”). The Escrow Shares will be held by the Escrow Agent until the date that is 12 months after the Closing Date (the “Escrow Period”); provided, however, that in the event any Purchaser Indemnified Party has made a claim under Article IX prior to the end of the Escrow Period, then, in accordance with and subject to the terms and conditions of the Escrow Agreement, the Escrow Period shall continue (and the Escrow Agent will continue to hold such number of Escrow Shares in escrow as is equal to the quotient obtained by dividing: (a) any claimed amounts by (b) the Per Share Price, rounded up to the nearest whole share) until such claim is fully and finally resolved. By virtue of the execution of this Agreement by a Member, without any further act of any Member, such Member shall be deemed to have consented to and approved (i) the use of the Escrow Shares as collateral to secure the rights of the Purchaser pursuant to Section 1.3(a) in the manner set forth herein and in the Escrow Agreement, (ii) the use of the Escrow Shares as collateral to secure the rights of the Purchaser Indemnified Parties under Article IX in the manner set forth herein and in the Escrow Agreement, and (iii) the appointment of the Members’ Representative as the representative under the Escrow Agreement of the Members under this Agreement and as the attorney-in-fact and agent for and on behalf of such Member.

(b) Upon the release of Escrow Shares by the Escrow Agent, the Purchaser shall promptly deliver, or cause to be delivered, to the Members’ Representative (for distribution to the Members) stock certificates representing the Initial Escrow Shares or the Sorrento Escrow Shares, as applicable, in the name of each Member, in each case for such number of shares of Sorrento Common Stock or Purchaser Common Stock, as applicable, as is equal to the product of the total number of Initial Escrow Shares or Sorrento Escrow Shares being released by the Escrow Agent pursuant to the Escrow Agreement multiplied by the percentage of Membership Interests owned by such Member as of immediately prior to the Closing.

Section 1.6 Purchase of Purchaser Stock Consideration by Sorrento.

(a) In the event that a Qualified Financing has occurred and the closing of the IPO has not occurred on or before March 31, 2016, as promptly as possible, and in no event later than April 15, 2016 (the “Repurchase Closing”), Sorrento shall purchase the Purchaser Stock Consideration (including the Restrictive Agreement Shares) from the Members (the “Repurchase”). The aggregate consideration payable to the Members in connection with the Repurchase shall be the Repurchase Sorrento Shares.

(b) At the Repurchase Closing, Sorrento shall:

(i) deliver to the Members’ Representative (for distribution to the Members) the stock certificates representing the Non-Escrow Sorrento Shares in the name of each Member, in each case for such number of shares of Sorrento Common Stock as is equal to the product of the total number of Non-Escrow Sorrento Shares (less the Restrictive Agreement Shares) multiplied by the percentage of Membership Interests owned by such Member as of immediately prior to the Closing;
(ii) deliver to the Members’ Representative (for distribution to Prakash Sampath and Steven Katz) the stock certificates representing the Restrictive Agreement Shares in the name of Mr. Sampath and Mr. Katz, in each case for such number of shares of Sorrento Common Stock calculated in accordance with Section 6.8; and

(iii) if the Escrow Period has not expired, deliver to the Escrow Agent, under the Escrow Agreement a stock certificate in the name of the Escrow Agent representing the Sorrento Escrow Shares;

provided that the certificates representing Sorrento Repurchase Shares to be delivered to a Member shall, in each case, represent only whole shares of Sorrento Common Stock. In lieu of any fractional shares to which such Member would otherwise be entitled, after combining any fractional interests of such Member into as many whole shares as is possible, such Member shall be paid in cash an amount equal to the dollar amount (rounded to the nearest whole cent) determined by multiplying the Sorrento Closing Price by the fraction of a share of Sorrento Common Stock that would otherwise be deliverable to such Member under Section 1.6(b)(i). Notwithstanding the foregoing, Sorrento may deliver to the Escrow Agent one certificate representing the total number of shares of Sorrento Common Stock to be held in escrow pursuant to this Section 1.6 in lieu of issuing separate certificates representing such Member’s pro rata portion of the Sorrento Escrow Shares (such pro rata portion to be determined based on the percentage of Membership Interests owned by such Member as of immediately prior to the Closing).

(c) At the Repurchase Closing, the Members shall transfer, grant, convey, sell and assign to Sorrento all of the Purchaser Stock Consideration. At the Repurchase Closing and thereafter, each Member shall enter into such instruments of transfer, including stock powers and stock transfer agreements, as may be requested by Sorrento to evidence such transfer and shall deliver to Sorrento all physical original certificates evidencing all such securities or rights with stock transfer powers appropriately completed and signed.

(d) Upon the Repurchase, the Members’ Representative shall cause the Escrow Agent to release the Initial Escrow Shares to Sorrento.

(c) If any certificate representing any portion of the Purchaser Stock Consideration shall have been lost, stolen, mutilated or destroyed, at or prior to the Repurchase Closing, the holder thereof must deliver an indemnity, in form satisfactory to Sorrento, and, if requested by Sorrento, delivery of a bond in such sum as Sorrento may reasonably direct.

Section 1.7 Condition to Issuance of Non-Escrow Shares and Escrow Shares. Notwithstanding anything herein to the contrary, Purchaser shall not be required to issue any Non-Escrow Shares or any Escrow Shares unless and until each of the License Agreements has been executed by RWMC and delivered to Purchaser.

Section 1.8 Definitions. Capitalized terms used in this Agreement but not otherwise defined in this Agreement shall have the meanings set forth in EXHIBIT A attached to this Agreement.

ARTICLE II
REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE MEMBERS

Except as set forth on the Disclosure Schedule, the Company and the Members hereby, jointly and severally, represent and warrant to the Purchaser as of the date of this Agreement and as of the Closing Date, as set forth below.

Section 2.1 Organization and Good Standing.

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, has all requisite and necessary power and authority to own, lease, use and operate its properties and assets, to carry on and conduct its business as now being conducted and to perform its obligations under all Material Contracts, and is duly qualified or registered to do business and is in good standing as a foreign corporation (or equivalent status in the relevant jurisdiction) in each jurisdiction set forth on Section 2.1(a) of the Disclosure Schedule, which jurisdictions constitute as of the date of this Agreement the only jurisdictions in which the character of the properties it owns, operates or leases or the nature of its activities makes such qualification necessary or advisable. The Company has full limited liability company power and authority to do and perform all acts and things to be done by it under this Agreement.
(b) The Company has not conducted any business under or otherwise used, for any purpose or in any jurisdiction, any fictitious name, assumed name, trade name or other name.

(c) Section 2.1(c) of the Disclosure Schedule sets forth (i) the names of the members and managers of the Company, and (ii) the names and titles of the officers of the Company.

(d) The Company has provided to the Purchaser true, correct and complete copies of: (i) the Organizational Documents of the Company, as in effect on the date of this Agreement, and such copies reflect all amendments made thereto at any time prior to the date of this Agreement, and (ii) the minutes and other records of the meetings and other proceedings (including any actions taken by written consent or otherwise without a meeting) of the members of the Company (subsections (i) and (ii), collectively, the “Company Constituent Documents”). There have been no formal meetings or other proceedings of the members of the Company that are not fully reflected in the Company Constituent Documents. There has not been any violation of the Company Constituent Documents, and the Company has not taken any action that is inconsistent with the Company Constituent Documents. The books and records of the Company are up to date, true, correct and complete in all material respects. All the records of the Company have been maintained in accordance with applicable Laws and prudent business practices and are in the actual possession and direct control of the Company.

Section 2.2 Capitalization.

(a) The Members own one hundred percent (100%) of the Membership Interests, and the percentage of Membership Interests owned by each Member is as set forth on EXHIBIT D hereto. All of the Membership Interests have been duly authorized and validly issued, and are fully paid and non-assessable. There are no other equity interests, rights to acquire or instruments, Contracts or obligations for or that may become convertible into or exchangeable for, any equity interests in the Company aside from the Membership Interests.

(b) The Company is not a party to or bound by any, and to the Knowledge of the Company, there are no, agreements or understandings with respect to the voting (including pooling agreements, voting trusts and proxies) or sale or transfer (including agreements imposing transfer restrictions) of any equity interests of the Company.

(c) None of the Membership Interests are entitled or subject to any purchase option, call option, right of first refusal, preemptive right, right of participation, subscription right or any similar right (whether pursuant to the Company Constituent Documents or any Contract or any statute to which the Company is subject) and except for the Company Constituent Documents, there is no Contract relating to information rights, financial statement requirements, the voting or registration of, or restricting any Person from purchasing, selling, pledging, transferring or otherwise disposing of (or granting any option or similar right with respect to), the Company’s equity interests. The Company is not under any obligation, or bound by any Contract pursuant to which it may become obligated (i) to repurchase, redeem or otherwise acquire any outstanding equity interest in the Company, or (ii) make any investment (in the form of a loan or capital contribution) in any other Entity.

(d) The Company has never repurchased, redeemed or otherwise reacquired any of its equity interests or other securities.

(e) The Company is not now, nor has it ever been, required to file any periodic or other reports, or any registration statement, with any applicable securities regulatory authority, including the United States Securities and Exchange Commission, pursuant to any securities legislation, regulations or rules or policies promulgated thereunder, including the Securities Act and the rules and regulations promulgated thereunder, or the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

Section 2.3 Subsidiaries; Successor Entities.

(a) The Company has no Subsidiaries and has never had any Subsidiaries. The Company does not own, and has never owned, beneficially or otherwise, any shares or other securities of, or any direct or indirect equity or other financial interest in, any Entity. The Company has neither agreed nor is obligated to make any future investment in or capital
contribution to any Entity. The Company has neither guaranteed nor is responsible or liable for any obligation of any Entity. Neither the Company nor any of its members has ever approved or commenced any proceeding, or made any election contemplating, the dissolution or liquidation of the business or affairs of the Company. There are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights or other Contracts or commitments that could require the Company to issue, sell or otherwise cause to become outstanding any of its own equity interests or that otherwise could affect rights or obligations of the holders of the equity interests of the Company.

(b) CARgenix, Inc., a Rhode Island corporation, does not own, and has never owned, any assets.

Section 2.4 Authority, No Conflict; Required Filings and Consents.

(a) The Company has all requisite limited liability company power and authority to enter into this Agreement and any Member Related Agreement to which it is a party, perform its obligations under this Agreement and any Member Related Agreement to which it is a party and to consummate the transactions contemplated by this Agreement and any Member Related Agreement to which it is a party. The execution, delivery and performance of this Agreement and any Member Related Agreement to which it is a party and the consummation of the transactions contemplated by this Agreement and any Member Related Agreement to which it is a party by the Company have been duly authorized by all necessary limited liability company action on the part of the Company. This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to creditors’ rights generally, and (ii) the availability of injunctive relief and other equitable remedies.

(b) Neither the execution, delivery or performance by the Company or any of the Members of this Agreement or any of the Member Related Agreements, nor the consummation of the transactions contemplated by this Agreement or any of the Member Related Agreements, will directly or indirectly (with or without notice or lapse of time, or both): (i) contravene, conflict with, or result in any violation or breach of, any Company Constituent Document, (ii) contravene, conflict with, or result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of modification, termination, cancellation or acceleration of any obligation or loss of any material benefit) under, require notice to any Person or a consent or waiver under, constitute a change in control under, require the payment of a fee or penalty under or result in the creation or imposition of any Lien upon or with respect to any asset owned or used by the Company under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, Contract or other agreement, instrument or obligation to which the Company is a party or by which it or any of its properties or assets may be bound, (iii) contravene, conflict with or violate, or give any Person the right to challenge any of the transactions contemplated by this Agreement or any of the Member Related Agreements or to exercise any remedy or obtain any relief under, any Law or any order, writ, injunction, judgment or decree to which the Company is subject, or (iv) 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, used or controlled by the Company.

(c) No Governmental Authorization, or registration, declaration, notice or filing with, any Governmental Body is required by or with respect to the Company: in connection with the execution and delivery of this Agreement or any of the Member Related Agreements by the Company or the consummation by the Company of the transactions contemplated by this Agreement or any of the Member Related Agreements.

Section 2.5 Company Financial Statements. The Company has no, and has never prepared any, draft or final financial statements, balance sheets, or statements of income, members’ equity or cash flow.

Section 2.6 Indebtedness. The Company has no Indebtedness except for Indebtedness arising in the ordinary course of business, which in the aggregate is not in excess of $25,000 and which will be satisfied and discharged by the Company as of immediately prior to the Closing.
Section 2.7 No Company Material Adverse Effect. Since the Company’s inception there has not been (a) any event, occurrence, development or state of circumstances or facts that has had, or could reasonably be expected to result in, a Company Material Adverse Effect, or (b) any event, occurrence, development or state of circumstances or facts that has the effect of preventing, delaying, making illegal or otherwise interfering with the transactions contemplated by this Agreement.

Section 2.8 Absence of Certain Changes or Events. Since the Company’s inception, the Company has not:

(a) other than the Membership Interests, issued (i) any notes, bonds or other debt securities, (ii) any equity securities or any securities or rights convertible into or exchangeable or exercisable for any equity securities, (iii) rights to acquire any equity interests in the Company, or (iv) entered into any instruments, Contracts or obligations for or that may become convertible into or exchangeable for, any equity interests in the Company;

(b) borrowed any amount or incurred or become subject to any liabilities, except liabilities incurred in the ordinary course of business consistent with past practice, which in the aggregate are not in excess of $25,000 and which will be satisfied and discharged by the Company as of immediately prior to the Closing;

(c) discharged or satisfied any Lien or paid any obligation or liability, other than current liabilities paid in the ordinary course of business consistent with past practice;

(d) declared, accrued, set aside or made any payment or distribution of cash or other property to any of its equityholders or its other Affiliates with respect to such equityholder’s equity interests or otherwise, or purchased, redeemed or otherwise acquired any of its equity interests (including any rights to acquire its equity interests);

(e) mortgaged or pledged any of its properties or assets or subjected them to any Lien, except for Permitted Liens;

(f) (i) acquired, leased or licensed any right or other asset from any Person, (ii) sold, assigned, transferred, leased or licensed to any Person, or otherwise encumbered, any of its assets, except in each case, in the ordinary course of business consistent with past practice, or canceled any debts or claims;

(g) sold, assigned, transferred, leased, licensed or otherwise encumbered any Intellectual Property Rights, disclosed any Confidential Information to any Person (other than to the Purchaser and its Affiliates and other than in the ordinary course of business consistent with past practice in circumstances in which it has imposed reasonable confidentiality restrictions), or abandoned or permitted to lapse any Intellectual Property Rights;

(h) (i) granted any severance or termination pay to any Person, (ii) entered into any employment, deferred compensation or other similar agreement (or any amendment to any such existing agreement) with any Person, or (iii) established, adopted or amended (except as required by applicable Laws) any collective bargaining, works council, stock option, restricted stock, bonus, insurance, severance, deferred compensation, pension, retirement, profit sharing, or any other benefit plan, agreement or arrangement covering any Person;

(i) suffered any damage, destruction or casualty loss exceeding in the aggregate $25,000, whether or not covered by insurance;

(j) made capital expenditures or commitments therefor that exceed $25,000 individually or $50,000 in the aggregate;

(k) delayed or postponed the payment of any accounts payable or commissions or any other liability or obligation or agreed or negotiated with any party to extend the payment date of any accounts payable or commissions or any other material liability or obligation or accelerated the collection of (or discounted) any accounts or notes receivable outside the ordinary course of business consistent with past practice;

(l) made any loans or advances to, guaranties for the benefit of, or any investments in, any Person;
(m) suffered any extraordinary losses or waived any rights of value (whether or not in the ordinary course of business or consistent with past practice) in excess of $25,000 in the aggregate;

(n) made any change in any method of accounting or accounting policies or made any write-down in the value of its inventory or made any accruals for Tax liability, in each case that is other than in the ordinary course of business consistent with past practice or reversed any accruals (whether or not in the ordinary course of business consistent with past practice);

(o) (i) written off as uncollectible, or established any extraordinary reserve with respect to, any billed or unbilled account receivable or other Indebtedness outside existing reserves, or (ii) increased any reserves for contingent liabilities (excluding any adjustment to bad debt reserves in the ordinary course of business consistent with past practices);

(p) except for an election made by the Company to be treated as a corporation for federal income Tax purposes, made or changed any Tax election, changed any annual tax accounting period, changed or adopted any method of tax accounting, filed any amended Tax Returns or claims for Tax refunds, entered into any closing agreement, settled any Tax claim, audit or assessment, or surrendered any right to claim a Tax refund, offset or other reduction;

(q) threatened, commenced or settled any Legal Proceeding;

(r) made any investment in or taken any steps to incorporate or form any Subsidiary or to acquire any equity interest or other interest in any other Entity;

(s) amended any of its Organizational Documents or effected or been a party to any Acquisition Transaction, recapitalization, reclassification of membership interests, membership interest split, reverse membership interest split or similar transaction;

(t) entered into any agreement or arrangement prohibiting or restricting it from freely engaging in any business, from competing with any Person in any line of business that is material to the Company or otherwise restricting the conduct of its business anywhere in the world;

(u) entered into, amended or terminated any material Contract other than in the ordinary course of business consistent with past practice;

(v) received notice, whether written or oral, from any party to a Company Contract of such party’s intention not to renew, not to extend, to cancel or otherwise terminate or materially modify its business relationship with the Company;

(w) entered into any transaction with its Affiliates;

(x) entered into any other material transaction (other than the entry into this Agreement and the Member Related Agreements and the agreements and transactions contemplated by this Agreement and the Member Related Agreements), or materially changed any business practice; or

(y) agreed, whether orally or in writing, to do any of the foregoing.

Section 2.9 Taxes.

(a) All Tax Returns required to have been filed by or on behalf of, or with respect to the assets of, the Company through the date of this Agreement have been timely filed in accordance with all applicable Laws (pursuant to an extension of time or otherwise) and are true, correct and complete in all material respects. The Company has provided to the Purchaser true, correct and complete copies of all Tax Returns.
(b) Rhode Island is the only state in which the Company is required to file Tax Returns. No claim has ever been made by a Governmental Body in a jurisdiction where the Company does not file Tax Returns that it is or may be subject to taxation or to a requirement to file Tax Returns in that jurisdiction.

(c) All Taxes, estimated Taxes due and owing by or on behalf of the Company (whether or not shown on any Tax Return) have been or will be timely paid in full through the Closing.

(d) The amounts so paid, together with all amounts accrued as liabilities for Taxes (including Taxes accrued as currently payable but excluding any accrual to reflect timing differences between book and Tax income) on the books of the Company, shall be adequate based on the tax rates and applicable Laws in effect to satisfy all liabilities for Taxes of the Company in any jurisdiction through the Closing Date, including Taxes accruable upon income earned through the Closing Date.

(e) The Company has withheld all amounts of Taxes required to be withheld from its employees, agents, contractors, creditors, Members and third parties and remitted such amounts to the proper Governmental Body and filed all federal, state, local and foreign Tax Returns and reports with respect to employee income Tax withholding, social security, unemployment, and other similar Taxes, all in material compliance with the withholding provisions of the Code, or any prior provision of the Code and other applicable Laws.

(f) The Company has collected all material sales, value-added and use Taxes required to be collected, and have remitted, or will remit on a timely basis, such amounts to the appropriate Governmental Body (or have been furnished properly completed exemption certificates and have maintained all such records and supporting documents in the manner required by all applicable sales and use Tax statutes and regulations).

(g) No claims have been asserted and no proposals or deficiencies for any Taxes of the Company are being asserted, proposed or, to the Knowledge of the Company, threatened, and no Legal Proceeding, audit, examination or investigation of any Tax Return of the Company is currently underway, pending or, to the Knowledge of the Company, threatened. There have been no examinations or audits of any Tax Return of the Company.

(h) All Tax deficiencies asserted as a result of any examination by a Governmental Body of a Tax Return of the Company have been paid in full, accrued on the books of the Company, as applicable, or finally settled, and no indication of a Tax increase or other issue has been raised in any such examination that, by application of the same or similar principles, could reasonably be expected to result in a proposed Tax deficiency for any other period not so examined.

(i) There are no outstanding waivers or agreements between any Governmental Body and the Company for the extension of time for the assessment of any Taxes (except for extensions requested in the ordinary course of business, as set forth on Section 2.9(i) of the Disclosure Schedule) or deficiency thereof, nor are there any requests for rulings, outstanding subpoenas or requests for information, notices of proposed reassessment of any property owned or leased by the Company or any other matter pending between the Company and any Governmental Body.

(j) There are, except with respect to Taxes not yet due and payable, no Liens for Taxes with respect to the Company or the assets or properties of the Company, nor is there any Lien that is pending or, to the Knowledge of the Company, threatened.

(k) The Company has not been a member of an “affiliated group” of companies (within the meaning of Section 1504 of the Code) filing a consolidated federal income tax return (other than a group, the common parent of which was the Company).

(l) The Company has no liability for the Taxes of any Person (other than for itself) under Treasury Regulation Section 1.1502-6 (or any similar provision of national, provincial, territorial, state, local or foreign Law), as a transferee or successor, by Contract or otherwise.

(m) The Company is not a party to or bound by any Tax allocation, indemnification or sharing agreement.
(n) The Company has not made any payments, is not obligated to make any payments, and is not a party to any Contract that would obligate it to make any payments that will not be deductible under Section 280G of the Code (or any similar provision of national, provincial, territorial, state, local or foreign Law).

(o) The Company has not constituted either a “distributing corporation” or a “controlled corporation” in a distribution of stock qualifying for tax free treatment under Section 355 of the Code (i) since the Company’s inception, or (ii) in a distribution which would otherwise constitute part of a “plan” or “series of related transactions” (within the meaning of Section 355(e) of the Code) in connection with the transactions contemplated by this Agreement.

(p) The Company has no net operating losses or other tax attributes presently subject to limitation under Sections 382, 383, 384 of the Code or the federal consolidated return regulations (or any corresponding or similar provision of state, local or foreign income Tax law).

(q) The Company will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any Tax period after the date of this Agreement as a result of any (i) 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, (ii) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of national, provincial, territorial, state, local or foreign income Tax Law) executed on or prior to the date of this Agreement, (iii) installment sale or open transaction disposition made on or prior to the date of this Agreement, (iv) prepaid amount received on or prior to the date of this Agreement, (v) reserve claimed in respect of a taxation year ending prior to the date of this Agreement, or (vi) change in method of accounting for a Tax period ending on or prior to the Closing Date.

(r) The Company has not, directly or indirectly, transferred property to or acquired property from a Person with whom it was not dealing at arm’s length for consideration other than consideration equal to the fair market value of the property at the time of the disposition or acquisition thereof and has complied with all material transfer pricing disclosure, reporting and other similar requirements under Section 482 of the Code (or any corresponding provision of any state, local or foreign Tax Law).

(s) The Company has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(t) The Company (i) does not have a permanent establishment, office or other fixed place of business, and (ii) has never filed or had any obligation to file, and currently does not have any obligation to file, any Tax Return based on income or otherwise, in each case in any jurisdiction other than the United States.

(u) None of the Company’s Tax Returns contains any position which is or would be subject to penalties under Section 6662 of the Code (or any similar provision of national, provincial, territorial, state, local or foreign law) and the Treasury Regulations issued thereunder.

(v) The Company is, and has at all times since its inception, been in compliance with the provisions of Sections 6011, 6111 and 6112 of the Code relating to tax shelter disclosure, registration and list maintenance and with the Treasury Regulations thereunder.

(w) The Company has not at any time engaged in or entered into a “listed transaction” within the meaning of Treasury Regulation Sections 1.6011-4(b)(2), 301.6111-2(b)(2) or 301.6112-1(b)(2)(A), and no IRS Form 8886 has been filed with respect to the Company, nor has the Company entered into any tax shelter or listed transaction with the sole or dominant purpose of the avoidance or reduction of a Tax liability with respect to which there is a significant risk of challenge of such transaction by a Governmental Body.

Section 2.10 Real Property. The Company does not own, lease or sublease and has never owned, leased or subleased any real property, and the Company is not obligation to and has no option to acquire an ownership interest in or lease or sublease of any real property.
Section 2.11 Personal Property. The Company has no, and has never had any, equipment, tangible assets or other tangible personal property.

Section 2.12 Intellectual Property.

(a) Section 2.12(a) of the Disclosure Schedule sets forth all Company Registrations and Company Owned Intellectual Property since the Company’s inception. The Company has never made any filings with the U.S. Patent and Trademark Office. The Company exclusively owns or possesses sufficient legal rights to all Intellectual Property Rights used in or necessary to the conduct of the Company’s business as now conducted and as contemplated to be conducted by the Company as of the Closing, free and clear of any Liens, and all such Intellectual Property Rights are set forth on Section 2.12(a) of the Disclosure Schedule.

(b) The Company has taken commercially reasonable measures to maintain and protect the proprietary nature of each item of Company Intellectual Property, and to maintain in confidence all trade secrets and Confidential Information comprising a part thereof. The Company has complied with all applicable contractual and legal requirements pertaining to data collection, use, privacy, protection and security. No complaint relating to an improper use or disclosure of, or a breach in the security of, any such information has been made or, to the Knowledge of the Company, threatened against the Company. There has been no unauthorized disclosure of any third-party proprietary or Confidential Information in the possession, custody or control of the Company.

(c) No product, product candidate or service marketed or sold (or proposed to be marketed or sold) by the Company or the conduct of the business of the Company, as it is currently conducted and as it is contemplated to be conducted by the Company as of the Closing, infringes, violates or constitutes a misappropriation, or will infringe, violate or constitute a misappropriation, of any Intellectual Property Rights of any third-party. The Company has not received any complaint, claim or notice (i) alleging any such infringement, violation or misappropriation, or that, by conducting its business, the Company would infringe, violate or misappropriate any Intellectual Property Rights of any other Person, or (ii) advising that such Person is challenging or threatening to challenge the ownership, use, legality, validity or enforceability of any Company Intellectual Property.

(d) To the Knowledge of the Company, no Person (including any current or former employee or consultant of the Company) has infringed, violated or misappropriated, or is infringing, violating or misappropriating, the Company Intellectual Property and there are no facts or circumstances that could reasonably be expected to result in any of the foregoing or of any current or anticipated claims against a third Person relating to the foregoing.

(e) The Company has not assigned, transferred, licensed, distributed or otherwise granted any right to any Person (including any current or former employee or consultant of the Company) has infringed, violated or misappropriated, or is infringing, violating or misappropriating, the Company Intellectual Property and there are no facts or circumstances that could reasonably be expected to result in any of the foregoing or of any current or anticipated claims against a third Person relating to the foregoing.

(f) Section 2.12(f) of the Disclosure Schedule sets forth (i) each item of Company Licensed Intellectual Property and the license or agreement pursuant to which the Company Exploits it (excluding currently-available, off the shelf software programs that are licensed by the Company pursuant to “shrink wrap” licenses, the total fees associated with which are less than $5,000), and (ii) each agreement, assignment or other instrument pursuant to which the Company has obtained any joint or sole ownership interest in or to each item of Company Owned Intellectual Property.

(g) The Company is not subject to any proceeding or outstanding decree, order, judgment, agreement or stipulation (i) restricting in any manner the use, transfer or licensing by the Company of the Company Intellectual Property, or (ii) that may affect the validity, use or enforceability of the Company Intellectual Property or any product, product candidate or service of the Company related thereto.

(h) Each independent contractor of or consultant to the Company has executed a valid and binding written agreement, substantially in the form or forms provided to the Purchaser (each, an “Assignment Agreement”), expressly
assigning to the Company all right, title and interest in any inventions and works of authorship, whether or not patentable, invented, created, developed, conceived and/or reduced to practice during the term of such independent contractor’s work for the Company, and all Intellectual Property Rights therein, and has waived all moral rights therein to the extent legally permissible. All Company Owned Intellectual Property was developed by agents, consultants, contractors or other Persons who have executed appropriate Assignment Agreements. To the extent that any Company Intellectual Property has been developed or created by a third party for the Company, the Company has a written agreement with such third party with respect thereto and the Company thereby either (x) has obtained ownership of and is the exclusive owner of, or (y) has obtained a license (sufficient for the conduct of its business as currently conducted) to, all of such third party’s Intellectual Property in such work, material or invention by operation of law or by valid assignment.

(i) No current or former independent contractor of or consultant to the Company has any rights in or to the Company Intellectual Property.

(j) The execution and delivery of this Agreement by the Company and the Members, the consummation by the Company and the Members of the transactions contemplated by this Agreement and the Member Related Agreements and the Company continuing to operate its business immediately after the Closing in the same manner as operated immediately prior to the Closing after giving effect to the consummation of the transactions contemplated by this Agreement and the Member Related Agreements will not result in the breach of, or create on behalf of any third-party the right to terminate or modify, (i) any license, sublicense or other agreement relating to any Company Intellectual Property, or (ii) any license, sublicense and other agreement to which the Company is a party and pursuant to which the Company is authorized to use any third-party Intellectual Property Rights that are useful to the business of the Company, as it is currently conducted and as it is contemplated to be conducted by the Company as of the Closing.

(k) Since its inception, the Company has not used and does not use any software except currently-available, off the shelf software programs that are licensed by the Company pursuant to “shrink wrap” licenses, the total fees associated with which are less than $5,000.

Section 2.13 Agreements.

(a) The Company is not a party to or bound by any written or oral:

(i) pension, profit sharing, stock option, employee stock purchase, bonus or other plan or arrangement providing for deferred or other compensation to employees, former employees or consultants, or any other employee benefit plan or arrangement, or any collective bargaining agreement or any other Contract with any labor union, or severance agreements, programs, policies or arrangements;

(ii) contract for the employment of any officer, individual employee or other Person on a full-time, part-time, consulting or other basis or relating to loans to officers, directors, managers or Affiliates;

(iii) Contract providing for indemnification of any officer, director, employee or agent;

(iv) Contract under which the Company has advanced or loaned any other Person amounts in the aggregate exceeding $25,000;

(v) agreement or indenture relating to borrowed money or other Indebtedness or the mortgaging, pledging or otherwise placing or creating of a Lien on any asset or group of assets of the Company;

(vi) guaranty, pledge, performance or completion bond, surety or similar agreement or arrangement;

(vii) Contract creating or relating to any partnership or joint venture or any sharing of revenues, profits, losses, costs or liabilities;
(viii) lease or agreement under which the Company is lessee of or holds or operates any property, real or personal, owned by any other party, except for any lease of real or personal property under which the aggregate annual rental payments do not exceed $25,000;

(ix) lease or agreement under which the Company is lessor of or permits any third party to hold or operate any property, real or personal, owned or controlled by the Company;

(x) Contract or group of related Contracts with the same party or group of affiliated parties, the performance of which involves consideration in the aggregate in excess of $50,000, other than purchase and sales orders incurred in the ordinary course of business consistent with past practice;

(xi) assignment, license, indemnification or agreement with respect to any intangible property (including any Intellectual Property Rights);

(xii) Contract relating to the acquisition, transfer, use, development, sharing or license of any technology or any Intellectual Property Rights, except for licenses to use shrink-wrap or off-the-shelf software with a cost to the Company of less than $10,000 per user or per copy, as applicable;

(xiii) warranty agreement with respect to its services rendered or its products sold or leased;

(xiv) Contract relating to the purchase or sale of any product, product candidate or other asset by or to, or the performance of any services by or for, any Related Party;

(xv) sales, distribution, supply or franchise agreement or other agreement involving an agency relationship;

(xvi) advertising, vendor rebate or product purchase or sale discount agreement;

(xvii) Contract for capital expenditures or the acquisition or construction of fixed assets requiring the payment by the Company of an amount in excess of $25,000;

(xviii) Contract constituting or relating to a Government Contract or Government Bid;

(xix) Contract providing for an “earn out”, “performance guarantee” or other similar contingent payments by or to the Company;

(xx) Contracts for the cleanup, abatement or other actions in connection with any Materials of Environmental Concern, the remediation of any existing environmental condition or relating to the performance of any environmental audit or study;

(xxii) Contract granting any Person an option or a right of first refusal, first-offer or similar preferential right to purchase or acquire any assets of the Company;

(xxii) Contract for the granting or receiving of a license, sublicense or franchise or under which any Person is obligated to pay or has the right to receive a royalty, license fee, franchise fee or similar payment, except for Contracts relating to the use of shrink-wrap or off-the-shelf software with a cost to the Company of less than $10,000 per user or per copy, as applicable;

(xxiii) outstanding power of attorney empowering any Person to act on behalf of the Company;

(xxiv) tax-sharing Contracts;

(xxv) Contract that was entered into outside the ordinary course of business or was inconsistent with the Company’s past practices;
(xxvi) agreement with a term of more than 60 days which is not terminable by the Company upon less than 30 days’ notice without penalty and involves a consideration in excess of $50,000 annually;

(xxvii) Contract regarding voting, transfer, issuance or other arrangements related to the Company’s equity interests or rights to acquire the Company’s equity interests;

(xxviii) Contract that (A) limits the ability of the Company, or any officers or directors, employees, members or other equityholders, agents or Representatives of the Company (in their capacities as such) to compete in any line of business or with any Person or in any geographic area or during any period of time, (B) would by its terms purport to be binding upon or impose any obligation upon the Purchaser or any of its Affiliates, (C) contains any so-called “most favored nation” provisions or any similar provision requiring the Company to offer a third party terms or concessions (including levels of service or content offerings) at least as favorable as offered to one or more other parties, or (D) provides for “exclusivity,” preferred treatment or any similar requirement or under which the Company is restricted, or which after the Closing would restrict the Purchaser or any of its Affiliates, with respect to distribution, licensing, marketing, co-marketing or development; or

(xxix) other agreement which is material to its operations and business prospects or involves a consideration in excess of $25,000 annually.

(b) The Contracts, leases, agreements and instruments set forth or required to be set forth on Section 2.13(a) of the Disclosure Schedule (the “Material Contracts”) are in full force and effect and are valid, binding and enforceable in accordance with their respective terms. (i) The Company has performed all material obligations required to be performed by it and is not in default under or in breach of nor in receipt of any claim of default or breach under any Material Contract; (ii) no event has occurred which (with or without the passage of time or the giving of notice or both) would, or could reasonably be expected to, (A) result in a default, breach or event of noncompliance by the Company under any Material Contract, (B) give any Person the right to declare a default or exercise any remedy under any Material Contract, (C) give any Person the right to accelerate the maturity or performance of any Material Contract, or (D) give any Person the right to cancel, terminate or modify any Material Contract; (iii) the Company has no present expectation or intention of not fully performing all such obligations; and (iv) there is no breach or anticipated breach by the other parties to any Material Contract. The consummation of the transactions contemplated by this Agreement and the Member Related Agreements shall not (either alone or upon the occurrence of additional acts or events) result in any payment or payments becoming due from the Company or the Purchaser or any of its Affiliates to any Person or give any Person the right to terminate or alter the provisions of any Material Contract.

(c) The Company has not received any notice or other communication regarding any actual or possible violation or breach of, or default under, any Material Contract;

(d) The Company has not waived any of its rights under any Material Contract;

(e) The Company is not a party to any Contract, agreement or commitment the performance of which could reasonably be expected to have a Company Material Adverse Effect.

(f) There is no term, obligation, understanding or agreement that would modify any term of a written Material Contract or any right or obligation of a party thereunder which is not reflected on the face of such Material Contract.

(g) No Person is renegotiating, or has a right pursuant to the terms of any Material Contract to renegotiate, any amount paid or payable to the Company under any Material Contract or any other material term or provision of any Material Contract. The Company is not a party to any Contract that obligates the Company to provide products or services below the Company’s cost of such product or service.

(h) The Company has provided to the Purchaser a true, correct and complete copy of each of the written Material Contracts, and a written summary description of each of the oral Material Contracts, if any, together with all amendments, waivers or other changes thereto.
Section 2.14 Litigation.

(a) There are no Legal Proceedings pending or, to the Knowledge of the Company, threatened (i) against or affecting the Company or any of the assets owned, used or controlled by the Company or any Person whose liability the Company has or may have retained or assumed, either contractually or by operation of law (or pending or, to the Knowledge of the Company, threatened against or affecting any of the Members or the officers, directors, managers or employees of the Company with respect to its business or proposed business activities), or pending or threatened by the Company against any Person, at law or in equity, or before or by any Governmental Body (including any Legal Proceedings with respect to the transactions contemplated by this Agreement), or (ii) that relate to the ownership of any equity interest in the Company, or any right to receive consideration as a result of this Agreement.

(b) The Company has never been subject to any Legal Proceedings under collective bargaining agreements or otherwise or any governmental investigations or inquiries.

(c) There is no reasonable basis for any of the foregoing. The Company is not subject to any judgment, order or decree of any court or other Governmental Body, and the Company has not received any notice from legal counsel to the effect that it is exposed, from a legal standpoint, to any material liabilities. There are no actions, suits, proceedings (including any arbitration proceedings), orders, investigations or claims pending or, to the Knowledge of the Company, threatened against or affecting any Member in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with the transactions contemplated by this Agreement.

Section 2.15 Environmental Matters. The Company is in compliance with all applicable Environmental Laws; 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.

Section 2.16 Employee Matters.

(a) The Company does not have, and since its inception has not had, any employees, including any temporary or leased employees.

(b) Section 2.16(b) of the Disclosure Schedule sets forth a true, correct and complete list of all consultants and independent contractors used by the Company as of the date of this Agreement, specifying the name of the consultant or independent contractor, type of services provided, fees paid to such consultant or independent contractor since the Company’s inception, work location and address, their approximate dates of service, and a true, correct and complete description of the Company’s obligations to each such consultant and independent contractor. The Company has provided to the Purchaser a true, correct and complete copy of each written agreement with each consultant and independent contractor set forth on Section 2.16(b) of the Disclosure Schedule. Each of the consultant and independent contractor relationships with the Persons set forth on Section 2.16(b) of the Disclosure Schedule is terminable at will without notice and without pay (except for fees or other sums payable through the date of termination, each as set forth in the Disclosure Schedule). The Company has never made use of consultants, independent contractors or other non-employee service providers who performed services of the type customarily performed by employees.

(c) The Company has not made any written or verbal commitments to any officer, employee, former employee, consultant or independent contractor of the Company with respect to compensation, promotion, retention, termination, severance or similar matter in connection with the transactions contemplated by this Agreement or otherwise.

(d) Each Person classified as an independent contractor or other non-employee service provider of the Company has, at all times, properly been classified and treated as an independent contractor or other non-employee service provider for all purposes including, but not limited to, Tax purposes. The Company is, and has at all times been, in compliance with all applicable Laws and contracts relating to its independent contractors and other non-employee service providers. There are no claims pending or threatened against the Company, by any independent contractor, other non-employee service provider or third party, in respect of any accident or injury.
(e) All amounts due in relation to independent contractors or other non-employee service providers of the Company have been paid.

(f) The Company is not a federal or state contractor.

Section 2.17 Employee Benefit Plans. The Company does not maintain, and since its inception has not maintained, any bonus, pension, stock option, stock purchase, benefit, welfare, profit-sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation and other similar fringe or employee benefit plans, funds, programs or arrangements, whether written or oral, in each of the foregoing cases which cover, are maintained for the benefit of, or relate to any or all current or former employees of the Company and any other Entity related to the Company under Sections 414(b), (c), (m) and (o) of the Code (an “Employee Plan”). The Company has not announced or entered into any plan or binding commitment to create, adopt or cause to exist any Employee Plan.

Section 2.18 Compliance With Laws; Governmental Authorizations.

(a) The Company is, and has at all times been, in compliance with all applicable Laws, except where non-compliance could not reasonably be expected to result in a Company Material Adverse Effect. The Company has not received any notice or other communication from any Governmental Body or any other Person regarding any actual, alleged, possible or potential material violation of, or failure to materially comply with, any Law.

(b) The Company does not own or possess, and has not since its inception owned or possessed, or been required to own or possess, any Governmental Authorizations.

Section 2.19 Insurance. Section 2.19 of the Disclosure Schedule sets forth a true, correct and complete list of all insurance policies and fidelity bonds maintained by, at the expense of or for the benefit of the Company and its employees, officers and directors for the current policy year, and the Company has provided to the Purchaser true, correct and complete copies of the insurance policies set forth on Section 2.19 of the Disclosure Schedule. Since its inception, the Company has not received any notice or other communication regarding any actual or possible (a) cancellation or invalidation of any insurance policy, (b) refusal of any coverage or rejection of any claim under any insurance policy, (c) material adjustment in the amount of the premiums payable with respect to any insurance policy, or (d) denial of coverage with respect to any claim submitted by the Company to an insurer. All premiums required to be paid with respect thereto covering all periods up to and including the Closing Date have been or will be paid in a timely fashion and there has been no lapse in coverage under such policies or failure of payment that will cause coverage to lapse during any period for which the Company has conducted its operations. The Company does not have any obligation for retrospective premiums for any period prior to the Closing Date.

Section 2.20 Brokerage and Transaction Bonuses. There are no claims for brokerage commissions, finders’ fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement binding upon the Company. The Members shall pay, and hold the Company, the Purchaser and its Affiliates harmless against, any liability, loss or expense (including reasonable attorneys’ fees and out of pocket expenses) arising in connection with any such claim, brokerage commission, finders’ fee or special bonus or other similar compensation.

Section 2.21 Title to and Sufficiency of Assets. The Company owns, and has good, valid, transferable and marketable title to all of the rights of the Company under the Material Contracts. The Company owns or has the valid and enforceable right to use all assets, tangible or intangible, necessary for the conduct of its business as presently conducted.

Section 2.22 Inventory. The Company does not have, and has not since its inception had, any inventory.

Section 2.23 Bank Accounts. Section 2.23 of the Disclosure Schedule sets forth true, correct and complete information with respect to each account maintained by or for the benefit of the Company at any bank or other financial institution, including the name of the bank or financial institution, the account number, the balance as of the date of this Agreement (and whether any cash comprising such balances is “restricted cash”) and the names of all individuals authorized to draw on or make withdrawals from such accounts (and no changes to such information shall have occurred as of the Closing Date).
Section 2.24 Accounts Receivable and Payable. The Company has no accounts receivable. Except for the Transaction Expenses and other expenses incurred in respect of the Company’s legal counsel, advisors and consultants, and the Company’s website and marketing efforts, which expenses will be satisfied by the Company as of immediately prior to the Closing, in each case as described on Section 2.24 of the Disclosure Schedule, the Company has no accounts payable or other financial obligations.

Section 2.25 Product and Service Warranties. Since its inception the Company has not sold or licensed any products, rendered any services or issued any product or service guaranty, warranty or indemnity.

Section 2.26 Related Party Transactions. No Related Party has, or has at any time had, any direct or indirect interest in any asset used in or otherwise relating to the business of the Company. No Related Party is, or has been, indebted to the Company. No Related Party is competing, or has since the Company’s inception competed, directly or indirectly, with the Company. No 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. No Related Party has any claim or right against the Company.

Section 2.27 Customers and Suppliers. Since its inception the Company has not had, and does not currently have, any Customers or Suppliers.

Section 2.28 Import/Export Control. Since its inception the Company has not imported or exported, and does not currently import or export, any products or services.

Section 2.29 Certain Payments. Neither the Company nor any manager, officer, employee, agent, consultant or other Person associated with or acting for or on behalf of the Company, has at any time, directly or indirectly: (a) used any corporate funds (i) to make any unlawful political contribution or gift or for any other unlawful purpose relating to any political activity, (ii) to make any unlawful payment to any governmental official or employee, including without limitation any payments made in violation of the FCPA or the UK Bribery Act, or (iii) to establish or maintain any unlawful or unrecorded fund or account of any nature; (b) made any false or fictitious entry, or failed to make any entry that should have been made, in any of the books of account or other records of the Company; (c) made any payoff, influence payment, bribe, rebate, kickback or unlawful payment to any Person; (d) performed any favor or given any gift which was not deductible for federal income tax purposes; (e) made any payment (whether or not lawful) to any Person, or provided (whether lawfully or unlawfully) any favor or anything of value (whether in the form of property or services, or in any other form) to any Person, for the purpose of obtaining or paying for (i) favorable treatment in securing business, or (ii) any other special concession; or (f) agreed, committed, offered or attempted to take any of the actions described in clauses (a) through (e) above.

Section 2.30 Personal Information and Privacy. Since its inception the Company has not collected Personal Information, and the Company has been and is now in compliance with the requirements of all Privacy Laws applicable to it which govern the collection, use and disclosure of Personal Information.

Section 2.31 Manufacturing. Since its inception the Company has not maintained any manufacturing facilities or operations.

Section 2.32 Regulatory Filings. The Company has made all required registrations and filings with and submissions to all applicable Governmental Bodies relating to the operation of the business of the Company. All such registrations, filings and submissions were in compliance in all material respects with all Laws and other requirements when filed. No material deficiencies have been asserted by any such applicable Governmental Bodies with respect to such registrations, filings or submissions and no facts or circumstances exist which would indicate that a material deficiency may be asserted by any such authority with respect to any such registration, filing or submission.

Section 2.33 Product Candidates. Since its inception the Company (i) has not had any products or product candidates, and (ii) has not conducted any pre-clinical or clinical trials.

Section 2.34 Full Disclosure. Neither this Agreement nor the Disclosure Schedule (a) contains any representation, warranty or information that is false or misleading with respect to any fact, or (b) omits to state any fact necessary in order
to make the representations, warranties and information contained in this Agreement and the Disclosure Schedule, in the light of the circumstances under which such representations, warranties and information were or will be made or provided, not false or misleading.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF EACH MEMBER

Except as set forth on the Disclosure Schedule, each Member hereby, severally and not jointly, represents and warrants to the Purchaser, as of the date of this Agreement and as of the Closing Date, as set forth below.

Section 3.1 Authority, No Conflict; Required Filings and Consents.

(a) The Member has full power and authority to do and perform all acts and things to be done by it under this Agreement. The Member has all requisite power and authority to enter into this Agreement and any Member Related Agreement to which it is a party, perform its obligations under this Agreement and any Member Related Agreement to which it is a party and to consummate the transactions contemplated by this Agreement and any Member Related Agreement to which it is a party. This Agreement has been duly executed and delivered by the Member and constitutes the legal, valid and binding obligation of the Member, enforceable against the Member in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to creditors’ rights generally, and (ii) the availability of injunctive relief and other equitable remedies.

(b) Neither the execution, delivery or performance by the Member of this Agreement or any of the Member Related Agreements, nor the consummation of the transactions contemplated by this Agreement or any of the Member Related Agreements, will directly or indirectly (with or without notice or lapse of time, or both): (i) contravene, conflict with, or result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of modification, termination, cancellation or acceleration of any obligation or loss of any material benefit) under, require notice to any Person or a consent or waiver under, constitute a change in control under, require the payment of a fee or penalty under or result in the creation or imposition of any Lien upon or with respect to any asset owned or used by the Member under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, Contract or other agreement, instrument or obligation to which the Member is a party or by which it or any of its properties or assets may be bound; (ii) contravene, conflict with or violate, or give any Person the right to challenge any of the transactions contemplated by this Agreement or any of the Member Related Agreements or to exercise any remedy or obtain any relief under, any Law or any order, writ, injunction, judgment or decree to which the Member is subject; or (iii) 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 Member or that otherwise relates to the business of the Member or to any of the assets owned, used or controlled by the Member.

Section 3.2 Ownership; Title to Membership Interests.

(a) The Member is the record and beneficial owner of the Membership Interests shown as owned by the Member on Section 3.2 of the Disclosure Schedule. The Member has, and immediately prior to the Closing, will have, good and valid title to the Membership Interests to be sold by the Member pursuant to this Agreement, free and clear of all Liens.

(b) Upon: (i) receipt by the Member of the Member’s portion of the Purchaser Stock Consideration in accordance with Section 1.4, and (ii) transfer of the Membership Interests owned by the Member to the Purchaser in accordance with the terms of this Agreement, the Purchaser will receive good and valid title to such Membership Interests, free and clear of all Liens.

(c) There are no options, warrants, equity securities, calls, rights, commitments or agreements of any character to which the Member is a party or by which the Member is bound obligating the Member to exchange, transfer, deliver or sell, or cause to be exchanged, transferred, delivered or sold, the Membership Interests or other equity interests of the
Company owned by the Member or any security or rights convertible into or exchangeable or exercisable for any such Membership Interests or other equity interests. The Member is not a party to or bound by any agreements or understandings with respect to the voting (including pooling agreements, voting trusts and proxies) or sale or transfer (including agreements imposing transfer restrictions) of any of the Membership Interests or other equity interests of the Company owned by the Member.

Section 3.3 Litigation. There are no Legal Proceedings pending or, to the Knowledge of the Member, threatened that relate to the Membership Interests or any right to receive consideration as a result of this Agreement. There are no actions, suits, proceedings (including any arbitration proceedings), orders, investigations or claims pending or, to the Knowledge of the Member, threatened against or affecting the Member in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with the transactions contemplated by this Agreement.

Section 3.4 Brokerage and Transaction Bonuses. There are no claims for brokerage commissions, finders’ fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement binding upon the Member. There are no special bonuses or other similar compensation payable to any employee of the Member in connection with the transactions contemplated by this Agreement and the Member Related Agreements. The Member shall pay, and hold the Company, the Purchaser and its Affiliates harmless against, any liability, loss or expense (including reasonable attorneys’ fees and out of pocket expenses) arising in connection with any such claim, brokerage commission, finders’ fee or special bonus or other similar compensation.

Section 3.5 Restricted Securities. The Member understands that the shares of Purchaser Common Stock and the Sorrento Common Stock have not been, and will not be, registered under the Securities Act, by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Member’s representations as expressed herein. The Member understands that the shares of Purchaser Common Stock and Sorrento Common Stock are “restricted securities” under applicable U.S. federal and state securities laws and that, pursuant to these laws, the Member must hold the shares of Purchaser Common Stock and Sorrento Common Stock indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. The Member acknowledges that neither the Purchaser nor Sorrento has any obligation to register or qualify the Purchaser Common Stock or the Sorrento Common Stock for resale. The Member further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Purchaser Common Stock and the Sorrento Common Stock, and on requirements relating to the Purchaser and Sorrento which are outside of the Member’s control, and which the Purchaser and Sorrento are under no obligation and may not be able to satisfy.

Section 3.6 No Public Market. The Member understands that no public market now exists for the Purchaser Common Stock, and that the Company has made no assurances that a public market will ever exist for the Purchaser Common Stock.

Section 3.7 Accredited Investor. The Member is an “accredited investor” as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

Section 3.8 Investment Experience. The Member represents that he, she or it is a sophisticated investor experienced in evaluating and investing in private placement transactions of securities of companies in similar stage of development as the Purchaser and Sorrento and acknowledges that the Member can bear the economic risk of its investment for an indefinite period of time, and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the investment in the Purchaser Common Stock and the Sorrento Common Stock.

Section 3.9 Foreign Investors. If the Member is not a United States person (as defined by Section 7701(a)(30) of the Code), the Member hereby represents that he, she or it has satisfied himself, herself or itself as to the full observance of the laws of his, her or its jurisdiction in connection with any invitation to subscribe for the Purchaser Common Stock or the Sorrento Common Stock or any use of this Agreement, including (a) the legal requirements within its jurisdiction for the purchase of the Purchaser Common Stock and the Sorrento Common Stock, (b) any foreign exchange restrictions applicable to such purchase, (c) any governmental or other consents that may need to be obtained, and (d) the income tax
and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale or transfer of the Purchaser Common Stock and the Sorrento Common Stock. The Member’s beneficial ownership of the Purchaser Common Stock or the Sorrento Common Stock will not violate any applicable securities or other laws of the Member’s jurisdiction.

Section 3.10 **No General Solicitation.** Neither the Member, nor any of his, her or its officers, managers, employees, agents, members or partners has either directly or indirectly, including through a broker or finder (a) engaged in any general solicitation, or (b) published any advertisement in connection with the offer and sale of the Purchaser Common Stock or the Sorrento Common Stock.

Section 3.11 **Residence.** The Member resides in the state or province identified in the address of the Member set forth on Section 3.11 of the Disclosure Schedule. The state or province in which the Member resides is not a community property state.

Section 3.12 **Legends.** The Member understands that the Purchaser Common Stock and the Sorrento Common Stock acquired hereunder and any securities issued in respect of or exchange therefor may bear any one or more of the following legends: (a) any legend required by the securities laws of any state to the extent such laws are applicable to the Purchaser Common Stock or the Sorrento Common Stock represented by the certificate so legended, (b) customary legends to the effect that the Purchaser Common Stock and the Sorrento Common Stock have not been registered under the Securities Act and that the transfer thereof may be accordingly restricted, and (c) the legend set forth in Section 5.5.

Section 3.13 **Investment Purpose; Disclosure of Information.**

(a) The Member has requested, received, reviewed and considered all the information the Member deems necessary, appropriate or relevant as a prudent and knowledgeable investor in evaluating the investment in Purchaser Common Stock and the Sorrento Common Stock. The Member further represents that the Member has had an opportunity to ask questions of and receive answers from the Purchaser regarding the terms and conditions of the offering of the shares of Purchaser Common Stock and the Sorrento Common Stock and the business, prospects and financial condition of the Purchaser and Sorrento necessary to verify the accuracy of any information furnished to the Member or to which the Member had access.

(b) The Member is acquiring the shares of Purchaser Common Stock or Sorrento Common Stock pursuant to this Agreement in the ordinary course of the Member’s business and for the Member’s own account for investment purposes only and with no present intention of distributing any Purchaser Common Stock or Sorrento Common Stock, and no arrangement or understanding exists with any other persons regarding the distribution of Purchaser Common Stock or Sorrento Common Stock.

ARTICLE IV

**REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser represents and warrants to the Company and each of the Members, as of the date of this Agreement and as of the Closing Date, as set forth below.

Section 4.1 **Organization and Good Standing.** The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, has all requisite and necessary power and authority to own, lease, use and operate its properties and assets and to carry on and conduct its business as now being conducted and as proposed to be conducted as of the Closing Date and is in good standing as a foreign corporation (or equivalent status in the relevant jurisdiction) in each jurisdiction in which the character of the properties it owns, operates or leases or the nature of its activities makes such qualification necessary or advisable. The Purchaser has full corporate power and authority to do and perform all acts and things to be done by it under this Agreement.
Section 4.2 Authority, No Conflict; Required Filings and Consents.

(a) The Purchaser has all requisite corporate power and authority to enter into this Agreement and any Purchaser Related Agreement to which it is a party, perform its obligations under this Agreement and any Purchaser Related Agreement to which it is a party and to consummate the transactions contemplated by this Agreement and any Purchaser Related Agreement to which it is a party. The execution and delivery of this Agreement and any Purchaser Related Agreement to which it is a party and the consummation of the transactions contemplated by this Agreement and any Purchaser Related Agreement to which it is a party by the Purchaser have been duly authorized by all necessary corporate action on the part of the Purchaser, and no other corporate action or proceeding on the part of the Purchaser or its board of directors is necessary to authorize the execution, delivery or performance of this Agreement, any Purchaser Related Agreement to which it is a party or the transactions contemplated by this Agreement or any Purchaser Related Agreement to which it is a party. This Agreement has been duly executed and delivered by the Purchaser and constitutes the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to creditors’ rights generally, and (ii) the availability of injunctive relief and other equitable remedies.

(b) Neither the execution, delivery or performance by the Purchaser of this Agreement or any of the Purchaser Related Agreements, nor the consummation of the transactions contemplated by this Agreement or any of the Purchaser Related Agreements, will directly or indirectly (with or without notice or lapse of time, or both): (i) contravene, conflict with, or result in any violation or breach of, any of the Purchaser’s Organizational Documents, (ii) contravene, conflict with, or result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of modification, termination, cancellation or acceleration of any obligation or loss of any material benefit) under, require notice to any Person or a consent or waiver under, constitute a change in control under, require the payment of a fee or penalty under or result in the creation or imposition of any Lien upon or with respect to any asset owned or used by the Purchaser under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, Contract or other agreement, instrument or obligation to which the Purchaser is a party or by which it or any of its properties or assets may be bound, (iii) contravene, conflict with or violate, or give any Person the right to challenge any of the transactions contemplated by this Agreement or any of the Purchaser Related Agreements or to exercise any remedy or obtain any relief under, any Law or any order, writ, injunction, judgment or decree to which the Purchaser is subject, or (iv) 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 Purchaser or that otherwise relates to the business of the Purchaser or to any of the assets owned, used or controlled by the Purchaser.

(c) No Governmental Authorization, or registration, declaration, notice or filing with, any Governmental Body is required by or with respect to the Purchaser: (i) in connection with the execution and delivery of this Agreement or any of the Purchaser Related Agreements by the Purchaser or the consummation by the Purchaser of the transactions contemplated by this Agreement or any of the Purchaser Related Agreements, or (ii) necessary for the Purchaser to operate its business immediately after the Closing in the same manner as operated immediately prior to the Closing after giving effect to the consummation of the transactions contemplated by this Agreement and the Purchaser Related Agreements.

Section 4.3 United States Person. Each of Purchaser and Sorrento is a “United States person” for United States tax purposes.

Section 4.4 Purchaser Stock Consideration.

(a) Each of Purchaser and Sorrento have taken all actions necessary to authorize and approve the issuance of the Purchaser Stock Consideration to be issued pursuant to this Agreement and, upon issuance, the Purchaser Stock Consideration to be issued pursuant to this Agreement will be validly issued, fully paid and non-assessable. There are no statutory or contractual stockholder preemptive rights or rights of refusal with respect to the issuance of the Purchaser Stock Consideration.
(b) The Purchaser Stock Consideration will be, prior to the issuance, duly authorized, and when issued in accordance with the terms of this Agreement, will be validly issued, fully paid and nonassessable. The creation, issue and allotment of the Purchaser Stock Consideration to the Members will comply with the Securities Act and the rules and regulations of all applicable Governmental Bodies.

(c) The Sorrento Common Stock is listed on The Nasdaq Stock Market LLC.

ARTICLE V
CERTAIN COVENANTS AND AGREEMENTS

Section 5.1 Tax Matters.

(a) Tax Periods Ending on or Before the Closing Date. The Members’ Representative shall prepare or cause to be prepared and timely file or cause to be timely filed all Tax Returns for the Company for all Tax periods ending on or prior to the Closing Date that are due after the Closing Date (each, a “Pre-Closing Tax Period”). The Members’ Representative shall provide Purchaser with copies of such Tax Returns at least ten Business Days prior to filing.

(b) Tax Periods Beginning Before and Ending After the Closing Date. The Purchaser shall prepare or cause to be prepared and timely file or cause to be timely filed any Tax Returns of the Company for Tax periods that begin before the Closing Date and end after the Closing Date (each, a “Straddle Tax Period”).

(c) Payment of Taxes. The Members shall be responsible for, and shall indemnify the Purchaser from and against, any Tax with respect to the Company that is attributable to a Pre-Closing Tax Period or to that portion of a Straddle Tax Period that ends on the Closing Date. Within five days prior to the due date for the payment of any such Tax, the Members shall pay to the Purchaser an amount equal to such excess. For purposes of this Section 5.1, in the case of any Taxes that are imposed on a periodic basis and are payable for a Straddle Tax Period, the portion of such Tax that relates to the portion of such Taxable period ending on the Closing Date shall (i) in the case of any Taxes other than Taxes based upon or related to income or receipts, be deemed to be the amount of such Tax for the entire Tax period multiplied by a fraction the numerator of which is the number of days in the Tax period ending on the Closing Date and the denominator of which is the number of days in the entire Tax period, and (ii) in the case of any Tax based upon or related to income or receipts be deemed equal to the amount that would be payable if the relevant Tax period ended on the Closing Date.

(d) Cooperation on Tax Matters. The Purchaser, the Company and the Members shall cooperate as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns pursuant to this Section 5.1 and any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party’s request) the provision of records and information that are reasonably relevant to any such audit, litigation or other proceeding and making employees or agents available on a mutually convenient basis to provide additional information and explanation of any material provided under this Section 5.1(d).

(e) Transfer Taxes. Any Taxes or recording fees payable as a result of the purchase and sale of the Membership Interests or any other action contemplated by this Agreement (other than any federal, state, local or foreign Taxes measured by or based upon income or gains imposed upon the Purchaser) shall be paid by the Members. The parties shall cooperate in the preparation, execution and filing of all returns, questionnaires, applications and other documents regarding Taxes and all transfer, recording, registration and other fees that become payable in connection with the transactions contemplated by this Agreement that are required or permitted to be filed at or prior to the Closing.

Section 5.2 Accounts and Notes Receivable. From and after the Closing, if any Member receives or collects any Receivables, the Member shall remit any such amounts to the Purchaser or the Company within five days of each day on which the Member receives such sum.

Section 5.3 Cooperation with Financial Reporting. The Members shall cooperate to the extent reasonably requested by the Purchaser after the Closing, in connection with the preparation and auditing of financials for the Company. The Members shall provide all of the financial records and supporting documentation of the Company within 10 days
following the Closing and shall make employees or agents available on a mutually convenient basis to provide additional information and explanation of any information provided under this Section 5.3.

Section 5.4 Release. In consideration for the Closing Consideration, as of and following the Closing Date, each Member knowingly, voluntarily and unconditionally releases, forever discharges, and covenants not to sue the Company from or for any and all claims, causes of action, demands, suits, debts, obligations, liabilities, damages, losses, costs and expenses (including attorneys’ fees) of every kind or nature whatsoever, known or unknown, actual or potential, suspected or unsuspected, fixed or contingent, that such Member has or may have, now or in the future, arising out of, relating to, or resulting from any act or omission, error, negligence, breach of contract, tort, violation of law, matter or cause whatsoever from the beginning of time to the Closing Date; provided, however, that the foregoing release shall not apply to any claims arising out of this Agreement.

Section 5.5 Restrictions on Transfers of Purchaser Common Stock. Each Member hereby agrees that such Member may not, in addition to any other applicable restrictions on transfer, without the Purchaser’s prior written consent, at any time on or prior to April 30, 2016, transfer all or any portion of the shares of Purchaser Common Stock issued to such Member pursuant to this Agreement. In furtherance of the foregoing, each Member acknowledges and agrees that, until April 30, 2016, the shares of Purchaser Common Stock acquired under this Agreement and any securities issued in respect of or exchange therefor will bear the following legend:

“THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, AS SET FORTH IN A MEMBERSHIP INTEREST PURCHASE AGREEMENT AMONG THE COMPANY AND THE ORIGINAL HOLDERS OF THESE SHARES, A COPY OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE COMPANY.”

Section 5.6 Public Announcements. Following the Closing, none of the Members shall issue any press release or make any public statement regarding this Agreement or any of the transactions contemplated by this Agreement without the Purchaser’s prior written consent; provided, however, that nothing in this Agreement shall be deemed to prohibit any of the Members from making any public disclosure that such Member deems required under applicable Law; provided, further, that without the prior written consent of the Purchaser, no Member shall at any time disclose to any Person the fact that this Agreement has been entered into or any of the terms of this Agreement other than to such parties’ advisors who such Member reasonably determines needs to know such information for the purpose of advising such Member, it being understood that such advisor will be informed of the confidential nature of this Agreement and the terms of this Agreement and will be directed to treat such information as confidential in accordance with the terms of this Agreement.

Section 5.7 Reasonable Efforts; Further Assurances; Cooperation. Subject to the other provisions of this Agreement, each party shall use its reasonable, good faith efforts to perform its obligations under this Agreement and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable under applicable Law to cause the transactions contemplated by this Agreement to be effected as soon as practicable in accordance with the terms of this Agreement, and shall cooperate fully with each other party and its Representatives in connection with any step required to be taken as a part of its obligations under this Agreement, including the following:

(a) Each party shall promptly notify the other parties of (and provide written copies of) any communications from or with any Governmental Body in connection with the transactions contemplated by this Agreement;

(b) In the event any claim, action, suit, investigation or other proceeding by any Governmental Body or other Person is commenced that questions the validity or legality of the transactions contemplated by this Agreement or seeks damages in connection therewith, the parties shall (i) cooperate and use all reasonable efforts to defend against such claim, action, suit, investigation or other proceeding, (ii) in the event an injunction or other order is issued in any such action, suit or other proceeding, use all reasonable efforts to have such injunction or other order lifted, and (iii) cooperate reasonably regarding any other impediment to the consummation of the transactions contemplated by this Agreement; and

(c) The Company and the Members shall, at the Company’s sole cost and expense (or, at the Member’s sole cost and expense if after the Closing), give all notices to third parties and use its best efforts (in consultation with the Purchaser) to obtain all third-party consents (i) necessary, proper or advisable to consummate the transactions
contemplated by this Agreement, (ii) required to be given or obtained in connection with the transactions contemplated by this Agreement, or (iii) required to prevent a Company Material Adverse Effect, whether prior to or as a result of the Closing.

Section 5.8 Execution of Exclusive License Agreements. The Company, the Members and the Purchaser shall each use, in good faith, their commercially reasonable efforts to negotiate and cause the finalization and execution of those certain draft Exclusive License Agreements between Prospect CharterCare RWM C, LLC d/b/a Roger Williams Medical Center (“RWMC”) and the Company with respect to the IL-13 R-CAR, the Anti-kit CAR-T, and Anti-HIV Designer T Cells, respectively (the “License Agreements”), in each case in substantially the same form as has been previously requested by the Purchaser. The Purchaser acknowledges and agrees that any and all fees or costs due to RWMC pursuant to the execution of the License Agreements shall be payable by the Purchaser, on behalf of the Company, following the Closing, in accordance with the terms of the License Agreements, and that the Members shall not be responsible for any such fees.

Section 5.9 Dissolution of CARgenix, Inc. Within thirty days of the Closing, the Members’ Representative shall deliver to the Purchaser evidence reasonably satisfactory to the Purchaser that CARgenix, Inc. has been dissolved in accordance with applicable Laws.

ARTICLE VI
CONDITIONS PRECEDENT TO THE OBLIGATIONS OF THE PURCHASER

The obligations of the Purchaser to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or written waiver by the Purchaser), at or prior to the Closing, of each of the following conditions:

Section 6.1 Accuracy of Representations. Each of the representations and warranties of the Company and the Members contained in this Agreement and the Member Related Agreements that are qualified as to materiality shall be true and correct in all respects, and each of the representations and warranties of the Company and each of the Members contained in this Agreement and the Member Related Agreements that are not so qualified shall be true and correct in all material respects, in each case as of the date of this Agreement and as of the Closing Date with the same force and effect as though made as of the Closing Date (except to the extent that any such representation and warranty expressly speaks as of a specific date, in which case the accuracy of such representation and warranty shall be determined as of such date).

Section 6.2 Performance of Covenants. Each of the covenants and obligations set forth in this Agreement that the Company and each of the Members is required to comply with or perform at or prior to the Closing shall have been complied with or performed in all material respects.

Section 6.3 Company Compliance Certificate. The Company shall have delivered, or caused to be delivered, to the Purchaser a certificate executed by the Managing Members of the Company as to compliance with the conditions set forth in Sections 6.1, 6.2 and 6.9 (the “Company Compliance Certificate”).

Section 6.4 Consents. All consents, approvals, orders or authorizations of, or registrations, declarations or filings with, any Person required in connection with the execution, delivery or performance of this Agreement or any of the Member Related Agreements shall have been obtained by the Company, or made by or on behalf of the Company, at the Company’s sole cost and expense, and shall be in full force and effect, in each case in form and substance reasonably satisfactory to the Purchaser.

Section 6.5 Managing Members’ Certificate. The Company shall have delivered a certificate, dated as of the Closing Date, signed by the Managing Members of the Company, (a) attaching copies of the Organizational Documents, and any amendments thereto, of the Company, (b) certifying that attached thereto are true, correct and complete copies of actions by written consent or resolutions duly adopted by the Members of the Company which adopt this Agreement and any Member Related Agreement and authorize and approve the execution, delivery and performance of this Agreement and each Member Related Agreement and the consummation of the transactions contemplated by this Agreement and the Member Related Agreements, (c) certifying the good standing (or equivalent status in the relevant jurisdiction) of the Company in its jurisdiction of incorporation or organization and in each other jurisdiction where it is qualified to do
business (or equivalent status in the relevant jurisdiction) and that there are no proceedings for the dissolution or liquidation of the Company, and (d) certifying the incumbency, signature and authority of the officers of the Company authorized to execute, deliver and perform this Agreement and all other documents, instruments or agreements related thereto executed or to be executed by the Company.

Section 6.6 Ancillary Agreements and Deliveries. The Company and the Members shall have delivered, or caused to be delivered, to the Purchaser the following agreements and documents, each of which shall be in full force and effect as of the Closing and shall not have been amended or modified as of the Closing:

(a) assignments of the Membership Interests, duly executed and in form and substance reasonably satisfactory to the Purchaser;

(b) the organizational record books and minute books of the Company;

(c) written resignations of the managing members and officers of the Company, effective as of the Closing Date;

(d) a certificate in such form as may be reasonably requested by counsel to the Purchaser that complies with Treasury Regulation Section 1.1445-2(c)(3);

(e) evidence, in form and substance reasonably satisfactory to the Purchaser, that each consent, approval, order or authorization of, or registration, declaration or filing with any Person required in connection with the execution, delivery or performance of this Agreement has been obtained or made and is in full force and effect;

(f) an accredited investor questionnaire, in form reasonably satisfactory to the Purchaser, executed by each Member; and

(g) all other documents required to be entered into by the Company and the Members pursuant to this Agreement or reasonably requested by the Purchaser to convey the Membership Interests to the Purchaser or to otherwise consummate the transactions contemplated by this Agreement or any Member Related Agreement.

Section 6.7 Release of Liens. The Members shall have delivered, or caused to be delivered, to the Purchaser evidence reasonably satisfactory to the Purchaser that all Liens (other than Permitted Liens) affecting any of the assets of the Company, if any, have been released.

Section 6.8 Restrictive Agreements. The Company shall have delivered to the Purchaser the restrictive agreements, each in substantially the form of EXHIBIT B attached to this Agreement (collectively, the “Restrictive Agreements”), executed by the Purchaser and each of the individuals listed on SCHEDULE 6.8, and each of the Restrictive Agreements shall be in full force and effect as of the Closing, shall not have been amended or modified and shall not provide for or require the payment of any consideration to any such individual. In consideration of each of the individuals listed on SCHEDULE 6.8 entering into the Restrictive Agreements, and in accordance with Section 1.4, the Purchaser shall issue to each such individual: (a) such number of Non-Escrow Shares as is equal to the quotient obtained by dividing $20,000 by the Per Share Price, rounded down to the nearest whole share, to Prakash Sampath, and (b) such number of Non-Escrow Shares as is equal to the quotient obtained by $10,000 by the Per Share Price, rounded down to the nearest whole share, to Steven Katz (collectively, the “Restrictive Agreement Shares”). For the avoidance of doubt, and notwithstanding anything herein to the contrary, the Restrictive Agreement Shares shall be subject to the Repurchase in the same manner as the other Non-Escrow Shares.

Section 6.9 No Material Adverse Effect. There shall not have occurred a Company Material Adverse Effect, and no event shall have occurred or circumstance exist that, in combination with any other events or circumstances, could reasonably be expected to have a Company Material Adverse Effect.

Section 6.10 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated by this Agreement shall have been issued by any
Governmental Body, and there shall not be any Law enacted or deemed applicable to the transactions contemplated by this Agreement that makes the transactions contemplated by this Agreement illegal or unduly burdensome to the Purchaser or would subject the Purchaser or the Company to sanctions if this transactions contemplated by this Agreement are consummated.

Section 6.11 No Litigation. There shall not be pending or threatened any Legal Proceeding by or before any Governmental Body or any other Person against the Purchaser, a Member or the Company (a) seeking to restrain or prohibit the consummation of the transactions contemplated by this Agreement or any agreement entered into in connection with this Agreement, (b) seeking to restrain or prohibit the Purchaser’s direct or indirect ownership or operation of all or a significant portion of the business and assets of the Company, or to compel the Purchaser or any of its Subsidiaries or Affiliates to dispose of or hold separate any significant portion of the business or assets of the Company, (c) seeking to restrain or prohibit or make materially more costly the consummation of the transactions contemplated by this Agreement, or seeking to obtain from the Purchaser or the Company any damages in excess of $25,000, (d) seeking to impose limitations on the ability of the Purchaser to acquire or hold, or exercise full rights of ownership of the Membership Interests, or (e) which otherwise could reasonably be expected to have a Company Material Adverse Effect.

Section 6.12 Due Diligence Review. The Purchaser shall have completed the due diligence review of the business, results of operations, condition (financial and otherwise), prospects, assets and liabilities of the Company and its business and the results of such due diligence shall be satisfactory to the Purchaser in its sole and absolute discretion.

Section 6.13 Related Party Transactions. The Company and the Members shall have delivered, or caused to be delivered, to the Purchaser evidence reasonably satisfactory to the Purchaser, that: (a) all amounts owed to the Company by any Member or any Related Party have been paid as of the Closing Date, and (b) all debts of the Company owed to any Member or to any Related Party have been cancelled as of the Closing Date.

Section 6.14 Discharge of Indebtedness. The Company and the Members shall have delivered, or caused to be delivered, to the Purchaser evidence reasonably satisfactory to the Purchaser that all of the Company’s Indebtedness has been satisfied and discharged as of the Closing.

ARTICLE VII
CONDITIONS PRECEDENT TO OBLIGATIONS OF THE COMPANY AND THE MEMBERS

The obligations of the Company and the Members to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or written waiver by the Members’ Representative), at or prior to the Closing, of the following conditions:

Section 7.1 Accuracy of Representations. Each of the representations and warranties of the Purchaser contained in this Agreement that are qualified as to materiality shall be true and correct in all respects, and each of the representations and warranties of the Company contained in this Agreement that are not so qualified shall be true and correct in all material respects, in each case as of the date of this Agreement and as of the Closing Date with the same force and effect as though made as of the Closing Date (except to the extent that any such representation and warranty expressly speaks as of a specific date, in which case the accuracy of such representation and warranty shall be determined as of such date).

Section 7.2 Performance of Covenants. Each of the covenants and obligations set forth in this Agreement that the Purchaser is required to comply with or perform at or prior to the Closing shall have been complied with or performed in all material respects.

Section 7.3 Purchaser Compliance Certificate. The Purchaser shall have delivered, or caused to be delivered, to the Members’ Representative a certificate executed by the Chief Executive Officer or Chief Financial Officer of the Purchaser as to compliance with the conditions set forth in Sections 7.1 and 7.2.
Section 7.4 Ancillary Agreements and Deliveries. The Purchaser shall have delivered, or caused to be delivered, to the Members’ Representative the following deliverables, agreements and documents:

(a) the Closing Consideration, delivered in accordance with Section 1.2;

(b) evidence, reasonably satisfactory to the Members, that the board of directors of the Purchaser has authorized and approved the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement; and

(c) all other documents required to be entered into or delivered by the Purchaser at or prior to the Closing pursuant to this Agreement, each of which shall be in full force and effect as of the Closing and shall not have been amended or modified as of the Closing.

Section 7.5 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated by this Agreement shall have been issued by any Governmental Body, and there shall not be any Law enacted or deemed applicable to the transactions contemplated by this Agreement that makes the transactions contemplated by this Agreement illegal or unduly burdensome to the Purchaser or would subject the Purchaser or the Company to sanctions if this transactions contemplated by this Agreement are consummated.

ARTICLE VIII
CLOSING

Section 8.1 Closing. Unless otherwise mutually agreed in writing between the Purchaser and the Members’ Representative, the Closing shall take place electronically at 9:00 A.M. (Pacific Time) as of the date hereof (the “Closing Date”).

Section 8.2 Member and Company Closing Deliveries. At the Closing, the Members and the Company, as applicable, shall deliver, or cause to be delivered, to the Purchaser, the deliverables, agreements and documents required pursuant to Section 6.6, each of which shall be in full force and effect.

Section 8.3 Purchaser Closing Deliveries. At the Closing, the Purchaser shall deliver, or cause to be delivered, to the Members’ Representative the deliverables, agreements and documents required by Section 7.4, each of which shall be in full force and effect.

ARTICLE IX
INDEMNIFICATION

Section 9.1 Indemnification Obligations of the Members.

(a) The Members, severally but not jointly, in the proportions set out opposite the Members’ names on EXHIBIT D hereto (collectively, the “Member Indemnifying Parties”), shall indemnify the Purchaser and its Affiliates (including the Company after the Closing), stockholders, officers, directors, managers, employees, agents, partners, Representatives, successors and assigns (collectively, the “Purchaser Indemnified Parties”) and save and hold each of them harmless against and pay on behalf of or reimburse such Purchaser Indemnified Parties as and when incurred for any loss, liability, demand, claim, action, cause of action, cost, damage, deficiency, Tax, penalty, fine or expense, whether or not arising out of third-party claims (including interest, penalties, reasonable attorneys’ fees and expenses and all amounts paid in investigation, defense or settlement of any of the foregoing) (collectively, “Losses”), which any such Purchaser Indemnified Party may suffer, sustain or become subject to, as a result of, in connection with, arising out of, relating or incidental to or by virtue of:

(i) any inaccuracy in or breach of any representation or warranty of the Company or the Members set forth in this Agreement or any of the Schedules or Exhibits attached to this Agreement, the Company Compliance Certificate or any other Member Related Agreement;
(ii) any non-fulfillment or breach of any covenant, agreement or undertaking made by the Company or the Members in this Agreement or any of the Schedules or Exhibits attached to this Agreement, or in any Member Related Agreement;

(iii) the Net Debt Adjustment Amount;

(iv) any fraud or intentional misrepresentation of the Company with respect to any representation, warranty or covenant of the Company contained in this Agreement, the Company Compliance Certificate or any other Member Related Agreement;

(v) any liability or obligation of the Company for (i) any Taxes that are the responsibility of the Members pursuant to Section 5.1(c), (ii) any Taxes incurred in any Tax period beginning after the Closing Date but arising from the settlement or other resolution with any Governmental Body of an asserted Tax liability which relates to any Tax period or portion thereof ending on or before the Closing Date, or (iii) the unpaid Taxes of any Person under Treasury Regulations Section 1.1502-6 (or any similar provision of other federal, provincial, state, local or foreign Law), as a transferee or successor, by Contract or otherwise, in each case whether or not disclosed to the Purchaser in any Exhibits or Schedules to this Agreement or otherwise;

(vi) the operations, actions or omissions of the Company prior to the Closing, other than the obligations of the Company under any Material Contracts or Governmental Authorizations held by the Company solely to the extent such obligations were not required to be performed on or prior to the Closing Date and accrue and relate to the operation of the business of the Company subsequent to the Closing Date; and

(vii) any Legal Proceedings directly or indirectly relating to any breach, alleged breach, liability or other matter of the type referred to in clauses (i) through (vii) above (including any Legal Proceedings commenced by any Purchaser Indemnified Party for the purpose of enforcing any of its rights under this Section 9.1).

(b) In the event that the Company suffers, incurs or otherwise becomes subject to any Losses as a result of or in connection with any inaccuracy in or breach or alleged breach of any representation, warranty, covenant or obligation of the Company or the Members or other matter referred to in Section 9.1(a), then (without limiting any of the rights of the Purchaser as a Purchaser Indemnified Party) the Purchaser shall also be deemed, by virtue of their ownership of the Membership Interests, to have suffered, incurred or otherwise become subject to Losses as a result of and in connection with such inaccuracy, breach, alleged breach or other matter.

(c) The current or former members of the Company 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 the Company in connection with any indemnification obligation or any liability to which such current or former members of the Company may become subject under or in connection with this Agreement or any other agreement or document delivered to the Purchaser in connection with this Agreement.

Section 9.2 Indemnification Procedure.

(a) Promptly following receipt by an Indemnified Party of notice by a third-party (including any Governmental Body) of any complaint, dispute or claim or the commencement of any audit, investigation, action or proceeding with respect to which such Indemnified Party may be entitled to indemnification pursuant to this Agreement (a “Third-Party Claim”), or upon realization of a Loss by an Indemnified Party for which the Indemnified Party is entitled to indemnification under this Article IX, such Indemnified Party shall provide written notice thereof to the Indemnifying Party; provided, however, that the failure to so notify the Indemnifying Party shall relieve the Indemnifying Party from liability under this Article IX with respect to such Third-Party Claim only if, and only to the extent that, such failure to so notify the Indemnifying Party materially prejudices the rights and defenses otherwise available to the Indemnifying Party with respect to such Third-Party Claim. The Indemnifying Party shall have the right, upon written notice from the Indemnifying Party delivered to the Indemnified Party within 10 days thereafter assuming full responsibility for any Losses resulting from such Third-Party Claim, to assume the defense of such Third-Party Claim, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of the fees and disbursements of
such counsel; provided, however, that the Indemnifying Party shall not have the right to assume the defense of any Third-Party Claim that (i) affects any Intellectual Property Rights that the Company owns or has a right to use in the conduct of its business as currently conducted, (ii) is asserted directly by or on behalf of any Person that is a supplier or a customer of the Company, the Indemnified Party or their Affiliates, (iii) seeks an injunction or other equitable relief against the Indemnified Party or its Affiliates, (iv) involves a finding of any violation of Law or other wrongdoing by the Indemnified Party, the Company or their Affiliates, (v) relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation, or (vi) does not seek only monetary damages and, in the case of this clause (vi), the Indemnified Party reasonably believes an adverse determination with respect to the Third-Party Claim would be detrimental to or materially injure the reputation or future business prospects of the Indemnified Party. In the event, however, that the Indemnifying Party declines or fails to assume the defense of such Third-Party Claim on the terms of this Section 9.2(a) or to employ counsel reasonably satisfactory to the Indemnified Party, in either case within such 10 day period, or thereafter defaults in continuing to defend the Indemnified Party, then any Losses shall include the reasonable fees and disbursements of counsel for the Indemnified Party as incurred. In addition, Losses shall include, as incurred, the reasonable fees and disbursements of counsel for the Indemnified Party: (A) that are incurred prior to the date the Indemnifying Party effectively assumes control of such defense, (B) if the Indemnified Party employs separate counsel due to the Indemnified Party being advised by counsel that a reasonable likelihood exists of a conflict of interest between the Indemnified Party and the Indemnifying Party, (C) if the Indemnified Party employs separate counsel because there are one or more legal or equitable defenses available to the Indemnified Party that are different from or in addition to those available to the Indemnifying Party, or (D) if the Indemnified Party employs separate counsel because such audit, investigation, action or proceeding involves, or could have a material effect on, any matter beyond the scope of the indemnification or defense obligations of the Indemnifying Party.

(b) In any Third-Party Claim for which indemnification is being sought under this Article IX, the Indemnified Party or the Indemnifying Party, whichever is not assuming the defense of such Third-Party Claim, shall have the right to participate in such matter and to retain its own counsel at such party’s own expense. The Indemnifying Party or the Indemnified Party (as the case may be) shall at all times use reasonable efforts to keep the Indemnifying Party or Indemnified Party (as the case may be) reasonably apprised of the status of the defense of any matter, the defense of which it is maintaining, and to cooperate in good faith with the other party with respect to the defense of any such matter.

(c) No Indemnified Party may settle or compromise any Third-Party Claim or consent to the entry of any judgment with respect to which indemnification is being sought under this Article IX without the prior written consent of the Indemnifying Party (which may not be unreasonably withheld, conditioned or delayed), unless (i) the Indemnifying Party fails to assume and maintain diligently the defense of such Third-Party Claim pursuant to Section 9.2(a) or fails to reimburse the Indemnified Party within 30 days for expenses incurred by the Indemnified Party in defending itself against any Third-Party Claim in the circumstance where the Indemnifying Party fails to assume the defense of the Indemnified Party or as required under the last sentence of Section 9.2(a) or, having assumed the defense, thereafter defaults in pursuing such defense, or (ii) such settlement, compromise or consent includes an unconditional release of the Indemnifying Party and its officers, directors, employees and Affiliates from all liability arising out of, or related to, such Third-Party Claim without further monetary liability to the Indemnifying Party. An Indemnifying Party may not, without the prior written consent of the Indemnified Party, settle or compromise any Third-Party Claim or consent to the entry of any judgment with respect to which indemnification is being sought under this Article IX unless such settlement, compromise or consent (A) includes an unconditional release of the Indemnified Party and its officers, directors, employees and Affiliates from all liability arising out of, or related to, such Third-Party Claim, (B) does not contain any admission or statement suggesting any wrongdoing or liability on behalf of the Indemnified Party, and (C) does not contain any equitable order, judgment or term that in any manner affects, restrains or interferes with the business of the Indemnified Party or any of the Indemnified Party’s Affiliates.

(d) In the event an Indemnified Party claims a right to payment pursuant to this Agreement with respect to any Loss or other matter not involving a Third-Party Claim (a “Direct Claim”), such Indemnified Party shall send written notice of such claim to the Indemnifying Party (a “Notice of Claim”). Such Notice of Claim shall specify the basis for such Direct Claim. The failure by any Indemnified Party to so notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability that it may have to such Indemnified Party with respect to any Direct Claim made pursuant to this Section 9.2(d), it being understood that Notices of Claim in respect of a breach of a representation or warranty must be delivered prior to the expiration of the survival period for such representation or warranty under
Section 9.4. In the event the Indemnifying Party does not notify the Indemnified Party within 10 days following its receipt of such Notice of Claim that the Indemnifying Party disputes the Indemnifying Parties’ liability to the Indemnified Party under this Article IX or the amount thereof, the Direct Claim specified by the Indemnified Party in such Notice of Claim shall be conclusively deemed a liability of the Indemnifying Party under this Article IX, and the Indemnifying Party shall pay the amount of such liability to the Indemnified Party on demand or, in the case of any notice in which the amount of the Direct Claim (or any portion of the Direct Claim) is estimated, on such later date when the amount of such Direct Claim (or such portion of such Direct Claim) becomes finally determined. In the event the Indemnifying Party has timely disputed its liability with respect to such Direct Claim as provided in this Section 9.2(d), as promptly as reasonably practicable, such Indemnified Party and the Indemnifying Party shall establish the merits and amount of such Direct Claim (by mutual agreement, litigation or otherwise) and, within five Business Days following the final determination of the merits and amount of such Direct Claim, the Indemnifying Party shall pay to the Indemnified Party in immediately available funds an amount equal to such Direct Claim as determined pursuant to this Section 9.2(d). If a dispute exists as to the amount of any Direct Claim, the prevailing party shall be entitled to all legal and other fees paid in asserting or defending such Direct Claim, as the case may be.

(c) For all purposes of this Section 9.2, notification to, or a decision of, the Member Indemnifying Parties shall be provided to, or made by, the Members’ Representative.

Section 9.3 Offset Against Escrow Amount. In the event any Purchaser Indemnified Party shall suffer any Losses for which such Purchaser Indemnified Party is entitled to indemnification under this Article IX, such Purchaser Indemnified Party shall be entitled to recover such Losses by offsetting such Losses against the Escrow Shares until the Escrow Shares are wholly exhausted and, thereafter, any remaining portion of such Loss shall be satisfied by the Member Indemnifying Party.

Section 9.4 Survival Period. The representations, warranties and covenants made by the Company and the Members in this Agreement shall not be extinguished by the Closing, but shall survive the Closing for, and all claims for indemnification in connection therewith shall be asserted not later than, 12 months following the Closing Date; provided, however, that (a) each of the representations and warranties contained in Section 2.1 (Organization and Good Standing), Section 2.2 (Capitalization), Section 2.3 (Subsidiaries; Successor Entities), Section 2.4 (Authority; No Conflict; Required Filings and Consents), Section 2.20 (Brokerage and Transaction Bonuses), Section 2.21 (Title to and Sufficiency of Assets), Section 2.26 (Related Party Transactions), Section 3.1 (Authority; No Conflict; Required Filings and Consents), Section 3.2 (Ownership; Title to Membership Interests) and Section 3.4 (Brokerage and Transaction Bonuses) (collectively, the “Fundamental Representations”) shall survive the Closing without limitation as to time, and the period during which a claim for indemnification may be asserted in connection therewith shall continue indefinitely; (b) each of the representations and warranties contained in Section 2.12 (Intellectual Property), Section 2.15 (Environmental Matters), Section 2.16 (Employee Matters) and Section 2.17 (Employee Benefit Plans) shall survive the Closing until, and all claims for indemnification in connection therewith shall be asserted not later than 60 days following, the expiration of any statute of limitations applicable to the rights of any Person to bring any claim with respect to such matters; and (c) each of the representations and warranties contained in Section 2.9 (Taxes) shall survive until, and all claims for indemnification in connection therewith shall be asserted not later than the later to occur of: (i) the 180th day following the end of the period, if any, during which an assessment, reassessment or other form of document assessing liability for Taxes in respect of any taxation year to which these representations and warranties extend could be issued to the Company, and (ii) 60 days following the expiration of any statute of limitations applicable to the rights of any Person to bring any claim with respect to such matters. Notwithstanding the foregoing, if, prior to the close of business on the last day a claim for indemnification may be asserted under this Article IX, the Members’ Representative shall have been properly notified of a claim for indemnity under this Article IX and such claim shall not have been finally resolved or disposed of as of such date, such claim shall continue to survive and shall remain a basis for indemnity under this Article IX until such claim is finally resolved or disposed of in accordance with the terms of this Agreement. All representations, warranties and covenants made by the Purchaser shall terminate and expire as of the Closing, and any liability of the Purchaser with respect to such representations and warranties shall thereupon cease. The covenants and agreements of the parties pursuant to this Article IX shall survive without limitation as to time, and the period during which a claim for indemnification may be asserted in connection therewith shall continue indefinitely.
Section 9.5 Indemnification Obligations of the Purchaser. The Purchaser shall indemnify the Members and their successors and assigns (collectively, the “Member Indemnified Parties”) and save and hold each of them harmless against and pay on behalf of or reimburse such Member Indemnified Parties as and when incurred for any Losses which any such Member Indemnified Party may suffer, sustain or become subject to, as a result of, in connection with, arising out of, relating or incidental to or by virtue of any non-fulfillment or breach of the covenants, agreements or undertakings made by the Purchaser or Sorrento in Sections 1.4, 1.6 or 5.8.

Section 9.6 Limitations on Indemnification.

(a) Except as otherwise provided in this Agreement, the aggregate liability of the Members in respect of all Losses recoverable pursuant to Sections 9.1(a)(i) and (ii) shall not exceed (y) Two Million Dollars ($2,000,000) in respect of all Losses resulting from breaches of the non-Fundamental Representations, and (z) the Base Price in respect of all Losses resulting from breaches of the Fundamental Representations.

(b) No party otherwise entitled to indemnification under this Agreement shall be indemnified pursuant to this Agreement to the extent that such party’s Losses are increased or extended by the willful misconduct, violation of applicable Law or bad faith of such party.

(c) In no event shall the limitations on indemnification set forth in this Section 9.6 apply to the rights of the Purchaser to be indemnified as a result of fraud, bad faith, willful misconduct or willful misrepresentation on the part of the Company or any of the Members.

(d) For the purposes of calculating the amount of any Losses incurred in connection with any breach of a representation or warranty or the aggregate amount of any such Losses, any and all references to materiality, Company Material Adverse Effect or other similar qualifications shall be disregarded; provided, however, that for purposes of determining the failure of any representations or warranties to be true and correct, the party seeking indemnification hereunder shall be required to prove the failure of such representations and warranties to be true and correct as set forth herein, giving effect to any and all materiality, Company Material Adverse Effect or other similar qualifications set forth herein.

(e) The parties hereby agree that any indemnification payment made pursuant to this Article IX shall be treated as an adjustment to the Base Price for Tax purposes.

Section 9.7 Investigations. The respective representations and warranties of the parties contained in this Agreement or any certificate or other document delivered by any party at or prior to the Closing and the rights to indemnification set forth in this Article IX shall not be deemed waived or otherwise affected by any investigation made, or Knowledge acquired, by a party.

Section 9.8 Set-Off. The Purchaser shall be entitled to set-off any amount or right it may be entitled to pursuant to this Agreement against any amount, right or obligations owed to any Member under this Agreement or any Member Related Agreement.

Section 9.9 Characterization of Indemnification Payments. The Purchaser and the Members agree to treat any payment made under this Article IX as an adjustment to the Purchaser Stock Consideration.

ARTICLE X
MEMBERS’ REPRESENTATIVE

Section 10.1 Members’ Representative.

(a) The Members, by the approval and adoption of this Agreement, hereby irrevocably appoint the Members’ Representative as agent and attorney in fact for the Company and each Member, and authorize the Members’ Representative (i) to take all action necessary to consummate the transactions contemplated by this Agreement and the Escrow Agreement, or the defense and/or settlement of any claims for which the Members may be required to indemnify
the Purchaser or any other Purchaser Indemnified Party pursuant to Article IX, (ii) to give and receive all notices required
to be given under this Agreement, the Escrow Agreement or the Member Related Agreements, (iii) to authorize delivery
to Purchaser of the Escrow Shares in satisfaction of claims by the Purchaser, including with respect to the Net Debt
Adjustment Amount, (iv) to make decisions on behalf of the Company and the Members and take any and all additional
action as is contemplated to be taken by or on behalf of the Members by the terms of this Agreement or the Escrow
Agreement, including, without limitation regarding (A) indemnification claims, Direct Claims, Third-Party Claims and
Notices of Claims, (B) amendments to this Agreement, the Escrow Agreement or the Member Related Agreements, and
(C) the Estimated Net Debt, the Final Net Debt and the Net Debt Adjustment Amount.

(b) All decisions and actions by the Members’ Representative, including without limitation (i) any agreement
between the Members’ Representative and the Purchaser relating to the defense or settlement of any claims for which the
Members may be required to indemnify the Purchaser pursuant to Article IX, (ii) any agreement between the Members’
Representative and the Purchaser relating to the Estimated Net Debt, the Final Net Debt or the Net Debt Adjustment
Amount, and (iii) any agreement between the Members’ Representative and the Purchaser relating to the Escrow
Agreement or the determination of the Purchaser’s payment obligations under Sections 1.3 or 1.5 or any other matter
relating to Article I, shall be binding upon all of the Members, and no Member shall have the right to object, dissent,
protest or otherwise contest the same.

(c) The Members’ Representative shall not have any liability to any of the parties to this Agreement or to the
Members for any act done or omitted pursuant to this Agreement as the Members’ Representative while acting in good
faith and in the exercise of reasonable judgment, and any act done or omitted pursuant to the advice of counsel shall be
conclusive evidence of such good faith. The Members shall severally indemnify the Members’ Representative and hold
the Members’ Representative harmless against any loss, liability or expense incurred without gross negligence or bad faith
on the part of the Members’ Representative and arising out of or in connection with the acceptance or administration of
the Members’ Representative’s duties under this Agreement.

(d) The Members’ Representative shall have full power and authority on behalf of each Member to take any
and all actions on behalf of, execute any and all instruments on behalf of, and execute or waive any and all rights of, the
Members under this Agreement, the Escrow Agreement and the Member Related Agreements.

(e) By his, her or its approval of this Agreement and the transactions contemplated by this Agreement, each
Member agrees, in addition to the foregoing, that:

(i) the Purchaser shall be entitled to rely conclusively on the instructions and decisions of the Members’
Representative as to (A) the settlement of any claims for indemnification by the Purchaser pursuant to Article IX, (B)
actions taken in respect of indemnification claims, Direct Claims, Third-Party Claims and Notices of Claims, and (C) any
other actions required or permitted to be taken by the Members’ Representative under this Agreement, the Escrow
Agreement and any Member Related Agreement, and no Member shall have any cause of action against the Purchaser for
any action taken by the Purchaser in reliance upon the instructions or decisions of the Members’ Representative;

(ii) all actions, decisions and instructions of the Members’ Representative shall be conclusive and binding
upon the Company and all of the Members and no Member shall have any cause of action against the Members’
Representative for any action taken, decision made or instruction given by the Members’ Representative under this
Agreement or the Escrow Agreement except for fraud or willful misconduct by the Members’ Representative in
connection with the matters described in this Article X;

(iii) the provisions of this Article X are independent and severable, are irrevocable and coupled with an
interest and shall be enforceable notwithstanding any rights or remedies that any Member may have in connection with
the transactions contemplated by this Agreement, the Escrow Agreement and the Member Related Agreements; and

(f) the provisions of this Article X shall be binding upon the executors, heirs, legal Representatives, personal
Representatives, successor trustees and successors of each Member, and any reference in this Agreement or the Escrow
Agreement to a Member or the Members shall mean and include the successors to the rights of the Members under this
Agreement, whether pursuant to testamentary disposition, the laws of descent and distribution or otherwise.
ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.1 Further Assurances. Each party to this Agreement shall execute and cause to be delivered to each other party to this Agreement such instruments and other documents, and shall take such other actions, as such other parties 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.

Section 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; provided, however, that the Members shall be responsible for all Transaction Expenses.

Section 11.3 Waiver; Amendment. Any agreement on the part of a party to this Agreement to any extension or waiver of any provision of this Agreement shall be valid only if set forth in an instrument in writing signed on behalf of such party. A waiver by a party to this Agreement of the performance of any covenant, agreement, obligation, condition, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by any party to this Agreement of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time. Following the Closing, this Agreement may not be amended, modified, altered or supplemented except by written agreement between the Purchaser and the Members’ Representative; provided, however, that the provisions of Section 1.6 and Article XI cannot be amended without the consent of Sorrento.

Section 11.4 Entire Agreement. This Agreement and the other agreements referred to in this Agreement constitute the entire agreement among the parties to this Agreement and supersede all other prior agreements and understandings, both written and oral, among or between any of the parties with respect to the subject matter of this Agreement and thereof; provided, however, that the Confidentiality Agreement dated as of April 9, 2015 by and between the Company and Sorrento, the terms of which the Purchaser has previously ratified and approved, shall not be superseded by this Agreement and shall remain in effect in accordance with its terms.

Section 11.5 Execution of Agreement; Counterparts; Electronic Signatures.

(a) This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, and shall become effective when counterparts have been signed by each of the parties to this Agreement and delivered to the other parties to this Agreement; it being understood that all parties to this Agreement need not sign the same counterparts.

(b) This Agreement and any amendments to this Agreement may be executed in one or more counterparts, each of which shall be enforceable against the parties to this Agreement that execute such counterparts, and all of which together shall constitute one and the same instrument. Facsimile and “.pdf” copies of signed signature pages shall be deemed binding originals and no party to this Agreement shall raise the use of facsimile machine or electronic transmission in “.pdf” as a defense to the formation of a contract.

Section 11.6 Governing Law; Venue.

(a) This Agreement shall be governed by and construed in accordance with the internal laws (and not the law of conflicts) of the State of California.

(b) Any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the “ICC”) in accordance with such rules. The place of arbitration shall be San Diego, California. The arbitration shall be conducted in the English language.
(c) The party to this Agreement that initiates the arbitration process (the “Claimant”) shall appoint an arbitrator in its request for arbitration (the “Request”). The other party to this Agreement (or the other parties to this Agreement, acting jointly, if there are more than one) that is a party to the arbitration (the “Respondent”) shall appoint an arbitrator within 30 days of receipt of the Request and shall notify the Claimant of such appointment in writing. If within 30 days of receipt of the Request by the Respondent, either the Claimant or the Respondent has not appointed an arbitrator, then that arbitrator shall be appointed by the ICC. The first two arbitrators appointed in accordance with this Section 11.6(c) shall appoint a third arbitrator within 30 days after the Respondent has notified the Claimant of the appointment of the Respondent’s arbitrator or, in the event of a failure by a party to appoint an arbitrator, within 30 days after the ICC has notified the parties and any arbitrator already appointed of the appointment of an arbitrator on behalf of the party failing to appoint an arbitrator. When the third arbitrator has accepted the appointment, the two arbitrators making the appointment shall promptly notify the parties of the appointment. If the first two arbitrators appointed fail to appoint a third arbitrator or to so notify the parties within the time period prescribed above, then the ICC shall appoint the third arbitrator and shall promptly notify the parties of the appointment. The third arbitrator shall act as chairperson of the arbitration.

(d) The arbitral tribunal shall render an award within six months from the date of the appointment of the arbitral tribunal, unless the parties to this Agreement otherwise agree in writing or the arbitral tribunal determines that an extension is necessary. The arbitral award shall be in writing, state the reasons for the award, and be final and binding upon, and non-appealable by, the parties to this Agreement. The award may include an award of costs, including, without limitation, reasonable attorneys’ fees and disbursements. In addition to monetary damages, the arbitral tribunal shall be empowered to award equitable relief, including, but not limited to, an injunction and specific performance of any obligation under this Agreement. Notwithstanding the foregoing, the parties to this Agreement agree that any of them may seek equitable relief, including, but not limited to, an injunction and specific performance of any obligation under this Agreement from any court of competent jurisdiction, but that the final resolution of any disputes will be settled solely by the arbitral tribunal.

(e) The arbitral tribunal shall not be empowered to award damages in excess of compensatory damages, and each party to this Agreement hereby irrevocably waives any right to recover special, punitive, exemplary, consequential or similar damages with respect to any dispute, except insofar as a claim is for indemnification for an award of such damages awarded against a party in an action brought against it by an independent third party. The arbitral tribunal shall be authorized in its discretion to grant pre-award and post-award interest at commercial rates. Judgment upon the award may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant party or its assets.

(f) The arbitral tribunal, in its discretion, may consolidate two or more arbitrations or claims between any of the parties to this Agreement arising under this Agreement or any other agreement among the parties to this Agreement into one arbitration, or terminate any such consolidation and/or establish other arbitration proceedings for different claims that may arise in any one arbitration. Notwithstanding the foregoing, the arbitral tribunal shall consolidate arbitrations and/or claims, if it determines that it would be more efficient to consolidate such arbitrations and/or claims than to continue them separately and (i) there are matters of fact or law that are common to the arbitrations and/or claims to be consolidated, (ii) there are related payment and performance obligations considered in the arbitrations and/or claims to be consolidated, or (iii) there is a danger of inconsistent awards.

(g) The arbitral tribunal shall render any monetary award and interest related to such award in US Dollars.

(h) The parties to this Agreement agree that the arbitration shall be kept confidential and that the existence of the proceeding and any element of it (including but not limited to any pleadings, briefs or other documents submitted or exchanged, any testimony or other oral submissions, and any awards) shall not be disclosed beyond the tribunal, the ICC, the parties, their counsel and any person necessary to the conduct of the proceeding, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise, or as required by the rules of any other quotation system or exchange on which the disclosing party’s securities are listed or applicable Laws.

(i) The costs of arbitration shall be borne by the losing party unless otherwise determined by the arbitration award.
(j) Each party to this Agreement agrees not to assert (by way of motion, as a defense or otherwise), in any such dispute that any claim arising out of, relating to, or in connection with the interpretation or performance of this Agreement is not subject to the jurisdiction of the arbitrators or that this Agreement may not be enforced by the arbitrators.

Section 11.7 Waiver of Jury Trial. Each of the parties of this Agreement hereby irrevocably waives, to the fullest extent permitted by law, all rights to a trial by jury in any action, proceedings or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or any of the transactions contemplated hereby.

Section 11.8 Attorneys' Fees. If any Legal Proceeding relating to this Agreement or the enforcement of any provision of this Agreement is brought against any party to this Agreement, 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).

Section 11.9 Assignment and Successors. No party to this Agreement may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other parties to this Agreement. Subject to the preceding sentence, this Agreement shall apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the parties to this Agreement.

Section 11.10 Parties in Interest. Except for the provisions of Article IX, none of the provisions of this Agreement is intended to provide any rights or remedies to any Person other than the parties to this Agreement and their respective successors and assigns (if any). Each of the Indemnified Parties is an express third party beneficiary of Article IX.

Section 11.11 Notices. All notices, requests, claims, demands, consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party to this Agreement when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid), or (b) sent e-mail with confirmation of transmission by the transmitting equipment confirmed with a copy delivered as provided in clause (a), in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the Person (by name or title) designated below (or to such other address, facsimile number, e-mail address or Person as a party may designate by notice to the other parties to this Agreement):

If to the Company (before the Closing):

CARgenix Holdings LLC
199 Grotto Avenue
Providence, RI 02906
Attention: Jaymin Patel
Email: jayminbpatel1967@gmail.com

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

Hinckley Allen
100 Westminster Street, Suite 1500
Providence, RI 02903
Attention: Todd M. Gleason
Email: tgleason@hinckleyallen.com
If to the Members’ Representative (on its own behalf and for the benefit of the Company (prior to the Closing) and the Members):

Jaymin Patel  
199 Grotto Avenue  
Providence, RI 02906  
Email: jayminbpatel1967@gmail.com

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

Hinckley Allen  
100 Westminster Street, Suite 1500  
Providence, RI 02903  
Attention: Todd M. Gleason  
Email: tgleason@hinckleyallen.com

If to the Purchaser

TNK Therapeutics, Inc.  
c/o Sorrento Therapeutics, Inc.  
9380 Judicial Drive  
San Diego, CA 92121  
Attention: Henry Ji  
Email: hj@sorrentotherapeutics.com

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

Paul Hastings LLP  
1117 S. California Avenue  
Palo Alto, CA 94304  
Attention: Jeffrey T. Hartlin, Esq.  
Email: jeffhartlin@paulhastings.com

If to Sorrento:

Sorrento Therapeutics, Inc.  
9380 Judicial Drive  
San Diego, CA 92121  
Attention: George Ng  
Email: gng@sorrentotherapeutics.com

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

Paul Hastings LLP  
1117 S. California Avenue  
Palo Alto, CA 94304  
Attention: Jeffrey T. Hartlin, Esq.  
Email: jeffhartlin@paulhastings.com

Section 11.12 Construction; Usage:

(a) Interpretation. In this Agreement, unless a clear contrary intention appears:

(i) the singular number includes the plural number and vice versa;
(ii) reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(iii) reference to any gender includes each other gender;

(iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(v) reference to any Law means such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Law means that provision of such Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(vi) “hereunder,” “hereof,” “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision of this Agreement;

(vii) “including” means including without limiting the generality of any description preceding such term;

(viii) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto; and

(ix) reference to a “Section” or “Article” in this Agreement shall mean a Section or Article, respectively, of this Agreement unless otherwise provided.

(b) Legal Representation of the Parties. This Agreement was negotiated by the parties to this Agreement with the benefit of legal representation and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party to this Agreement shall not apply to any construction or interpretation of this Agreement.

(c) Headings. The headings contained in this Agreement are for the 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.

(d) Dollar Amounts. All references to “$” contained in this Agreement shall refer to United States Dollars unless otherwise stated.

Section 11.13 Enforcement of Agreement. The parties to this Agreement acknowledge and agree that the Purchaser and Sorrento may be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by the Company, the Members’ Representative or the Members may not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which the Purchaser or Sorrento may be entitled, at law or in equity, each shall be entitled to enforce any provision of this Agreement by a decree of specific performance and temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking. The rights and remedies of the parties to this Agreement shall be cumulative (and not alternative).

Section 11.14 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

Section 11.15 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.
Section 11.16 Disclosure Schedule. Nothing in the Disclosure Schedule shall be adequate to disclose an exception to a representation or warranty made in this Agreement except to the extent the Section thereof identifies the exception and describes the facts. Without limiting the generality of the foregoing, the mere listing (or inclusion of a copy) of a document or other item shall not be adequate to disclose an exception to a representation or warranty made in this Agreement unless the representation or warranty has to do with the existence of the document or other item itself. No exceptions to any representations or warranties disclosed on one Section of the Disclosure Schedule shall constitute an exception to any other representations or warranties made in this Agreement except to the extent the disclosure is clear in its disclosure or cross-referenced in such other applicable Section.

Section 11.17 Schedules and Exhibits. The Schedules and Exhibits (including the Disclosure Schedule) are hereby incorporated into this Agreement and are hereby made a part of this Agreement as if set out in full in this Agreement.

*       *       *

*       *       *
IN WITNESS WHEREOF, the parties hereto have caused this Membership Interest Purchase Agreement to be duly executed, as of the date first above written.

THE PURCHASER:

TNK THERAPEUTICS, INC.

By: __________________________
   Name: _______________________
   Title: _______________________

THE COMPANY:

CARGENIX HOLDINGS LLC

By: __________________________
   Name: _______________________
   Title: _______________________

SORRENTO:

SORRENTO THERAPEUTICS, INC.

By: __________________________
   Name: _______________________
   Title: _______________________

MEMBERS’ REPRESENTATIVE:

JAYMIN PATEL
IN WITNESS WHEREOF, the parties hereto have caused this Membership Interest Purchase Agreement to be duly executed, as of the date first above written.

MEMBERS:

JAYMIN PATEL

PRAKASH SAMPATH

KEVIN O’NEILL

STEVEN KATZ
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EXHIBIT A

DEFINITIONS

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

“Acquisition Transaction” means any transaction or series of transactions involving:

(a) any merger, consolidation, share exchange, business combination, issuance of securities, direct or indirect acquisition of securities, recapitalization, tender offer, exchange offer or other similar transaction involving the Company;

(b) any direct or indirect sale, lease, exchange, transfer, license, acquisition or disposition of a material portion of the business or assets of the Company; or

(c) any liquidation or dissolution of the Company.

“Affiliate” means, with respect to any specified Person, any other Person who or which, directly or indirectly, controls, is controlled by, or is under common control with such specified Person, including, without limitation, any general partner, limited partner, member, officer, director or manager of such Person and any venture capital or private equity fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person. For purposes of this definition, the terms “controls,” “controlled by,” or “under common control with” means the possession, direct or indirect, of power to direct or cause the direction of management or policies (whether through ownership of voting securities, by contract or otherwise).

“Agreement” means this Membership Interest Purchase Agreement, as amended or restated from time to time.

“Base Price” means six million United States Dollars ($6,000,000).

“Business Day” means a weekday on which banks are open for general banking business in San Diego, California.

“Cash” means the cash and cash equivalents of the Company unrestricted and readily available at no cost, less any amount advanced by the Purchaser or its Affiliates to the Company in connection with the transactions contemplated under the Agreement.

“Closing” means the consummation of the purchase and sale of the Membership Interests, as set forth in Article VIII of the Agreement.

“Closing Consideration” means one hundred United States Dollars ($100).


“Company Contract” means any Contract, including any amendment or supplement thereto: (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 Licensed Intellectual Property” means all Intellectual Property Rights that are licensed to the Company by any other third-party and are material to the Company.

“Company Material Adverse Effect” means any state of facts, change, event, effect, occurrence or circumstance that, individually or in the aggregate (considered together with all other state of facts, change, event, effect, occurrence or circumstance) has, has had or could reasonably be expected to have or give rise to a material adverse effect on (a) the
business, condition (financial or otherwise), results of operations, prospects, capitalization, assets, liabilities, operations or financial performance of the Company, or (b) the Purchaser’s ability to vote, receive dividends with respect to or otherwise exercise ownership rights with respect to the equity interests of the Company; provided, however, that a Company Material Adverse Effect shall not include changes or effects resulting from general economic conditions or financial markets in general or the industry and market in which the Company operates; provided that such changes or effects do not adversely affect the Company in a disproportionate manner.

“Company Owned Intellectual Property” means all Intellectual Property Rights that are owned or purported to be owned by the Company, in whole or in part, and are material to the Company.

“Company Registrations” means Patent Rights, registered trademarks and service marks, registered copyrights and designs, domain name registrations and applications (including intent to use applications) for each of the foregoing that are registered or filed or recorded with any Person in the name of or licensed by the Company, alone or jointly with others.

“Confidential Information” means any data or information concerning the Company (including trade secrets), without regard to form, regarding (for example and including) (a) business process models, (b) proprietary software, (c) research, development, products, services, marketing, selling, business plans, budgets, unpublished financial statements, licenses, prices, costs, contracts, suppliers, customers, and customer lists, (d) the identity, skills and compensation of employees, contractors, and consultants, (e) specialized training, or (f) discoveries, developments, trade secrets, processes, formulas, data, lists, and all other works of authorship, mask works, ideas, concepts, know-how, designs, and techniques, whether or not any of the foregoing is or are patentable, copyrightable, or registrable under any intellectual property Laws or industrial property Laws in the United States or elsewhere. Notwithstanding the foregoing, no data or information constitutes “Confidential Information” if such data or information is publicly known and in the public domain through means that do not involve a breach by the Company or a Member of any covenant or obligation set forth in the Agreement.

“Contract” means any written, oral or other agreement, contract, subcontract, lease, understanding, instrument, note, warranty, license, sublicense, insurance policy, benefit plan or legally binding commitment or undertaking of any nature, whether express or implied.

“Customer” means a customer of the Company that paid the Company more than $25,000 in the aggregate during the 12-month period ended June 30, 2015 or a customer that is expected to pay the Company more than $25,000 in the aggregate during the 12-month period ending December 31, 2015.

“Disclosure Schedule” means the disclosure schedule (dated as of the date of the Agreement) delivered to the Purchaser on behalf of the Company and the Members on the date of the Agreement.

“Entity” means 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” means any national, provincial, territorial, federal, state, local or foreign Law 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, regulation, permit or certificate of approval 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.

“Escrow Shares” means, as of a particular time, whichever of the Initial Escrow Shares or the Sorrento Escrow Shares that are then held by the Escrow Agent pursuant to the terms of the Escrow Agreement.
“Estimated Purchase Price” means, if as of the time of calculation: (a) the Final Net Debt has not been determined in accordance with Section 1.3, the Base Price minus the Estimated Net Debt; and (b) the Final Net Debt has been determined in accordance with Section 1.3, the Base Price minus the Final Net Debt.

“Exploit” means develop, design, test, modify, make, use, sell, have made, used and sold, import, reproduce, market, distribute, commercialize, support, maintain, correct and create derivative works of.


“Government Bid” means any quotation, bid or proposal submitted to any Governmental Body or any proposed prime contractor or higher-tier subcontractor of any Governmental Body.

“Government Contract” means any prime contract, subcontract, letter contract, purchase order or delivery order executed or submitted to or on behalf of any Governmental Body or any prime contractor or higher-tier subcontractor, or under which any Governmental Body or any such prime contractor or subcontractor otherwise has or may acquire any right or interest.

“Governmental Authorization” means any (a) approval, permit, license, certificate, certificate of approval, franchise, permission, clearance, registration, qualification or other authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Law, or (b) right under any Contract with any Governmental Body.

“Governmental Body” means any domestic or foreign multinational, federal, state, provincial, municipal or local government (or any political subdivision thereof) or any domestic or foreign governmental, regulatory or administrative authority or any department, commission, board, agency, court, tribunal, judicial body or instrumentality thereof, or any other body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature (including any arbitral body).

“Indebtedness” means, without duplication, the aggregate of the following: (a) all obligations for borrowed money (including the current portion thereof and all sums due on early termination and repayment or redemption calculated to the Closing Date), whether or not contingent, or issued or incurred in substitution or exchange for any such liability for borrowed money, or extensions of credit (including under credit cards, bank overdrafts and advances), (b) all obligations evidenced by bonds, debentures, notes or other similar instruments (and including all sums due on early termination and repayment or redemption calculated to the Closing Date), (c) all obligations to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business consistent with past practice, (d) all obligations as lessee under leases that have been or should be, in accordance with United States generally accepted accounting principles as in effect from time to time, recorded as capital leases in respect of which the Company is liable as a lessee; (e) all obligations of others secured by a Lien on any asset of the Company (including accounts and contract rights), whether or not such obligations are assumed, (f) all obligations, contingent or otherwise, directly or indirectly guaranteeing any obligations of any other Person, all obligations to reimburse the issuer in respect of letters of credit or under performance or surety bonds, or other similar obligations; all obligations under which the Company has agreed (contingently or otherwise) to purchase or otherwise acquire the liability of any other Person or in respect of which the Company has otherwise assured a creditor against loss, (g) all obligations in respect of bankers’ acceptances, note purchases or similar facilities and under reverse repurchase agreements, (h) all obligations in respect of futures contracts, other financial contracts and other similar obligations (determined on a net basis as if such contract or obligation was being terminated early on such date), (i) the amount of any termination payments in connection with the payment in full of any obligations, (j) accrued employment obligations, including without limitation, accrued salary, accrued vacation and accrued bonuses, (k) deferred revenue, (l) all obligations created or arising under any conditional sale or other title retention agreement with respect to property acquired by the Company or any of its Subsidiaries (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (m) all obligations to purchase, redeem, retire or otherwise acquire for value any ownership interests or capital stock of the Company or any rights to acquire any ownership interests or capital stock of the Company, valued, in the case of redeemable ownership interests or capital stock, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, and (n) any obligations under any interest rate, foreign exchange, currency,
commodity, credit or equity swap, cap, collar, floor, option, forward or other hedging agreement or derivative contract, net of any obligations to the Company thereunder. For purposes of the Agreement, “Indebtedness” includes (i) any and all accrued interest, fees, change of control payments, prepayment premiums, make whole premiums or penalties and fees or expenses actually incurred (including attorneys’ fees) associated with the repayment of any Indebtedness, and (ii) any and all amounts of the nature described in clauses (a)-(n) above owed by the Company to any of its Affiliates, including any of the Members.

“Indemnified Parties” means the Purchaser Indemnified Parties or the Member Indemnified Parties, as applicable.

“Indemnifying Parties” means the Member Indemnifying Parties or the Purchaser, as the case may be.

“Initial Escrow Shares” means the number of shares of Purchaser Common Stock or Sorrento Common Stock, as applicable, equal to 20% of the Purchaser Stock Consideration, rounded down to the nearest whole share.

“Intellectual Property Rights” means all (a) foreign and domestic patents, patent applications, patent disclosures and inventions, (b) Internet domain names, trademarks, service marks, trade dress, trade names, logos and corporate or company names (both foreign and domestic) and registrations and applications for registration thereof together with all of the goodwill associated therewith, (c) copyrights (registered or unregistered) and copyrightable works (both foreign and domestic) and registrations and applications for registration thereof, (d) mask works and registrations and applications for registration thereof, (e) computer software, data, data bases and documentation thereof, including rights to third party software used in the business, (f) trade secrets and other Confidential Information (including ideas, formulas, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, financial and marketing plans and customer and supplier lists and information), (g) other intellectual property rights, and (h) copies and tangible embodiments thereof (in whatever form or medium).

“IPO” means the Purchaser’s first firm commitment underwritten public offering of common stock of the Purchaser registered under the Securities Act, pursuant to which such shares are approved for listing on a national securities exchange.

“Knowledge” An individual shall be deemed to have “Knowledge” of a particular fact or other matter if:

(a) such individual is actually aware of such fact or other matter after due inquiry and investigation of the matter; or

(b) such individual would have had knowledge of such fact following a reasonable investigation, if under the circumstances a reasonable person would have determined such investigation was required or appropriate in the normal course of fulfillment of such individual’s duties.

The Company shall be deemed to have “Knowledge” of a particular fact or other matter if any officer, director, management employee or other Representative of the Company, as applicable, has Knowledge of such fact or other matter.

“Law” means any federal, national, state, provincial, territorial, local, municipal, foreign or international, multinational 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.

“Legal Proceeding” means any ongoing or threatened action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, order, 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.
“Lien” means any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, claim, infringement, interference, option, right of first refusal, preemptive right, community property interest or restriction of any nature affecting property, real or personal, tangible or intangible, including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset, any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset, any lease in the nature thereof and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statute of any jurisdiction).

“Materials of Environmental Concern” means any chemicals, pollutants, contaminants, wastes, toxic substances, petroleum, petroleum products, petroleum by-products, asbestos-containing material, lead-containing paint, pipes or plumbing, polychlorinated biphenyls, radioactive materials or radon, infectious, biological or medical waste, including biohazards, radioactive materials and blood-borne pathogens and any other substances that are now or hereafter: (a) listed, classified, regulated or fallen within the definition of a “hazardous substance,” “hazardous waste” or “hazardous material” pursuant to any Environmental Law, (b) a danger to health, or (c) the subject of regulatory action by any Governmental Body pursuant to any Environmental Law.

“Member Related Agreement” means any certificate, agreement, document or other instrument, other than the Agreement, to be executed and delivered by the Company or a Member in connection with the transactions contemplated by the Agreement, including without limitation the certificates, agreements, documents and other instruments set forth in Section 6.6.

“Net Debt” means an amount equal to Cash minus Indebtedness.

“Non-Escrow Shares” means the number of shares of Purchaser Common Stock or Sorrento Common Stock, as applicable, equal to (a) the Purchaser Stock Consideration less (b) the Initial Escrow Shares.

“Non-Escrow Sorrento Shares” means such number of shares of Sorrento Common Stock as is equal to (a) the Repurchase Sorrento Shares less (b) the Sorrento Escrow Shares.

“Organizational Documents” means, with respect to any Entity, the constitution, certificate of incorporation, articles of incorporation, by-laws, articles of organization, articles of association, partnership agreement, operating agreement, limited liability company agreement, trust deed, formation agreement, joint venture agreement or other similar organizational documents of such Entity (in each case, as amended through the date of the Agreement).

“Patent Rights” means all patents, patent applications, utility models, design registrations and certificates of invention and other governmental grants for the protection of inventions or industrial designs (including all related continuations, continuations-in-part, divisionals, reissues and reexaminations).

“Per Share Price” means (a) with respect to the issuance of Purchaser Common Stock, the lowest price per share paid by investors in the Qualified Financing, and (b) with respect to the issuance of Sorrento Common Stock, the Sorrento Closing Price.

“Permitted Lien” means any (a) Lien for Taxes not yet due and payable (excluding Liens arising under the Code), (b) Liens of carriers, warehousemen, mechanics, materialmen and repairmen incurred in the ordinary course of business consistent with past practice and not yet delinquent, and (c) in the case of real property, zoning, building, occupancy or other restrictions, variances, covenants, rights of way, encumbrances, easements and other minor irregularities in title, none of which, individually or in the aggregate, (i) interfere in any material respect with the present use of or occupancy of the affected parcel by the Company, (ii) have more than an immaterial effect on the value thereof or its use, or (iii) would impair the ability of such parcel to be sold for its present use.

“Person” means any individual, Entity, trust, Governmental Body or other organization.

“Personal Information” means any “personal information” (as defined in the Privacy Laws) about an identifiable individual in the possession, custody or control of the Company.
“**Privacy Laws**” means any national, provincial, territorial, state, local or foreign Law now in force or that may in the future come into force governing individual privacy and/or access to Personal Information, or the collection, use, disclosure, access and management of Personal Information, including without limitation, the Health Insurance Portability and Accountability Act of 1996, as amended, the Health Information Technology for Economic and Clinical Health Act, state data breach notification Laws, state social security number protection Laws, the Federal Trade Commission Act, the Financial Services Modernization Act of 1999, the Fair Credit Reporting Act, the Fair and Accurate Credit Transactions Act and state consumer protection Laws.

“**Purchaser Common Stock**” means the shares of the Class A common stock, par value $0.0001 per share, of the Purchaser.

“**Purchaser Related Agreement**” means any certificate, agreement, document or other instrument, other than the Agreement, to be executed and delivered by the Purchaser in connection with the transactions contemplated by the Agreement.

“**Purchaser Stock Consideration**” means the number of shares of Purchaser Common Stock or Sorrento Common Stock, as applicable, equal to the quotient obtained by dividing (a) the Estimated Purchase Price by (b) the applicable Per Share Price, rounded down to the nearest whole share.

“**Qualified Financing**” means the Purchaser’s first issuance of shares of Purchaser Common Stock or shares of a previously unissued series of preferred stock, par value $0.0001 per share, of the Purchaser, completed after the date of the Agreement and prior to March 15, 2016, for the principal purpose of capital-raising resulting in gross proceeds (individually or in the aggregate) to the Purchaser of at least $50,000,000.

“**Receivables**” means the accounts receivable, notes receivable and other receivables of the Company as of the close of business on the Closing Date.

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

“**Representatives**” means, with respect to a Person, the officers, directors, employees, agents, attorneys, accountants, advisors and representatives of such Person.

“**Repurchase Sorrento Shares**” means such number of shares of Sorrento Common Stock as is equal to the lesser of (a) the quotient obtained by dividing six million United States Dollars ($6,000,000) by the Sorrento Closing Price, rounded down to the nearest whole share, and (b) five hundred thousand (500,000) shares (subject to adjustment for stock splits recapitalizations and similar transactions occurring on or after the date of the Agreement).

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

“**Sorrento Closing Price**” means the closing price per share of the Sorrento Common Stock, as reported on the Nasdaq Capital Market as of the Business Day immediately prior to the Closing Date.

“**Sorrento Common Stock**” means the common stock, par value $0.0001 per share, of Sorrento.

“**Sorrento Escrow Shares**” means the number of shares of Sorrento Common Stock equal to the product of: (a) the Repurchase Sorrento Shares multiplied by (b) the quotient obtained by dividing (i) the Escrow Shares remaining in escrow as of the date of the Repurchase Closing (but valued at the Per Share Price) by (ii) the Purchaser Stock Consideration, rounded down to the nearest whole share.
“Subsidiary” means, with respect to any party, any corporation, partnership, trust, limited liability company or other non-corporate business enterprise in which such party (or another Subsidiary of such party) holds stock or other ownership interests representing (a) more than 50% of the voting power of all outstanding stock or ownership interests of such Entity, or (b) the right to receive more than 50% of the net assets of such Entity available for distribution to the holders of outstanding stock or ownership interests upon a liquidation or dissolution of such Entity.

“Supplier” means any supplier of goods or services to which the Company paid more than $50,000 in the aggregate during the 12-month period ended June 30, 2015 or expects to pay more than $50,000 in the aggregate during the 12-month period ending December 31, 2015.

“Taxes” means any and all taxes, charges, fees, levies or other similar assessments or liabilities in the nature of a tax, including income, gross receipts, ad valorem, premium, value-added, net worth, capital stock, capital gains, documentary, recapture, alternative or add-on minimum, disability, estimated, registration, recording, excise, real property, personal property, sales, use, license, lease, service, service use, transfer, withholding, employment, unemployment, insurance, employment insurance, social security, business license, business organization, environmental, worker’s compensation, pension, payroll, profits, severance, stamp, occupation, windfall profits, customs, franchise and other taxes of any kind whatsoever imposed by the United States, or any state, provincial, local or foreign government, or any agency or political subdivision thereof; and any interest, penalties or additions to tax imposed with respect to such items or any contest or dispute thereof.

“Tax Returns” means any and all reports, returns, or declarations relating to Taxes filed or required to be filed with any Governmental Body, including any schedule or attachment thereto, including any amendment thereof.

“Transaction Expenses” means the sum of all fees, costs and expenses (including legal fees and accounting fees and including the amount of all special bonuses and other amounts that may become payable to any officers of the Company or other Persons in connection with the consummation of the transactions contemplated by the Agreement) that are incurred by the Company for the benefit of the Company or a Member in connection with the transactions contemplated by the Agreement, including, without limitation, the costs of obtaining any consents required to be obtained pursuant to the Agreement.

“Transfer” means any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by request, devise, or descent, or other transfer or disposition of any kind, including, but not limited to, transfers to receivers, levying creditors, trustees, or receivers in bankruptcy proceedings or general assignees for the benefit of creditors, whether voluntary or by operation of law, directly or indirectly, of any of the shares of Purchaser Common Stock acquired pursuant to the Agreement and any securities issued in respect of or exchange therefor.

“Treasury Regulations” means the temporary and final income Tax regulations promulgated under the Code.

“UK Bribery Act” means the United Kingdom Bribery Act 2010.
STOCK PURCHASE AGREEMENT

by and among

TNK THERAPEUTICS, INC.,

BDL PRODUCTS, INC.

THE STOCKHOLDERS OF BDL PRODUCTS, INC.,

RICHARD JUNGHANS, M.D., PH.D., AS THE STOCKHOLDERS’ REPRESENTATIVE

And, solely with respect to Sections 1.6 and 1.7 and Article XII,

SORRENTO THERAPEUTICS, INC.

Dated as of August 7, 2015
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STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT is made and entered into as of August 7, 2015, by and among TNK Therapeutics, Inc., a Delaware corporation (the “Purchaser”), BDL Products, Inc., a Delaware corporation (the “Company”), the stockholders of the Company set forth on the signature pages to this Agreement (collectively, the “Stockholders” and, individually, a “Stockholder”), Richard P. Junghans, M.D., Ph.D., an individual resident of 1 Lyndboro Place, Boston, Massachusetts 02116, as representative of the Stockholders pursuant to Article XI (the “Stockholders’ Representative”), and, solely with respect to Sections 1.6 and 1.7 and Article XII, Sorrento Therapeutics Inc., a Delaware corporation (“Sorrento”).

RECITALS

WHEREAS, the Stockholders own all of the issued and outstanding shares of capital stock of the Company (the “Shares”); and

WHEREAS, upon the terms and conditions set forth in this Agreement, the Stockholders propose to sell to the Purchaser and the Purchaser proposes to purchase from the Stockholders, all of the Shares in exchange for the consideration set forth in this Agreement.

NOW, THEREFORE, in consideration of the respective covenants, agreements and representations and warranties set forth in this Agreement, the parties to this Agreement, intending to be legally bound, agree as follows:

ARTICLE I
DESCRIPTION OF TRANSACTION

Section 1.1 Agreement to Purchase and Sell. Subject to the terms and conditions in this Agreement, at the Closing, the Stockholders shall sell, assign, transfer and deliver to the Purchaser, and the Purchaser shall purchase and acquire from the Stockholders, all right, title and interest in and to the Shares, free and clear of all Liens.

Section 1.2 Payment of Closing Consideration.

(a) At the Closing, the Purchaser shall deliver the Closing Consideration, by wire transfer of immediately available funds, to the Stockholders’ Representative for distribution to the Stockholders based on each Stockholder’s pro rata ownership of the Shares.

(b) At the Closing, the Stockholders shall transfer, grant, convey, sell and assign to the Purchaser all of the issued and outstanding Shares, including all outstanding options, warrants, rights or other securities convertible into shares of capital stock of the Company. At the Closing and thereafter, each Stockholder shall enter into such instruments of transfer, including stock powers and stock transfer agreements, as may be requested by the Purchaser to evidence such transfer and shall deliver to the Purchaser all physical original certificates evidencing all such securities or rights with stock transfer powers appropriately completed and signed.

Section 1.3 Net Debt Adjustment.

(a) No later than 10 Business Days prior to the Closing Date, the Company shall deliver to the Purchaser a calculation of the estimated Net Debt of the Company at and as of immediately prior to the Closing, which sets forth a good faith estimate of the Net Debt as of such time (the “Estimated Net Debt”). The Estimated Net Debt calculation shall be prepared by the Company in accordance with GAAP consistently applied. The Purchaser and its Representatives, including the Purchaser’s independent accountants, shall have access to all work papers of the Company and its Representatives, including its independent accountants, relating to the Estimated Net Debt. If the Purchaser disputes the Estimated Net Debt (or any portion thereof) prior to the Closing, then the Purchaser and the Company shall negotiate in good faith to resolve any such dispute at or prior to the Closing. For avoidance of doubt, if the Estimated Net Debt is a positive number, then no Net Debt-related adjustment shall be made to the Purchaser Stock Consideration.
(b) As promptly as practicable, but no later than 90 days after the Closing Date, the Purchaser shall cause to be prepared and delivered to the Stockholders’ Representative a calculation of the Net Debt of the Company at and as of immediately prior to the Closing, which shall set forth the Purchaser’s good faith calculation of the Net Debt as of such time (the “Final Net Debt”). The Final Net Debt calculation shall be prepared by the Purchaser or its Representatives in accordance with GAAP consistently applied.

(c) If the Stockholders’ Representative disagrees with the Purchaser’s calculation of the Final Net Debt delivered pursuant to Section 1.3(b), then the Stockholders’ Representative may, within 45 days after delivery of the Final Net Debt calculation, deliver a written statement (the “Statement of Objection”) to the Purchaser disagreeing with such calculation that: (i) specifies the Stockholders’ Representative’s calculation of the Final Net Debt, (ii) indicates each item or amount in the calculation of the Net Debt disputed by the Stockholders’ Representative, and (iii) sets forth in detail the Stockholders’ Representative’s grounds for disputing each individual item or amount in the Final Net Debt calculation. The Stockholders’ Representative may only deliver one Statement of Objection to the Purchaser, and the Stockholders’ Representative shall not raise any disagreements with the Final Net Debt calculation other than the disagreements set forth in the Statement of Objection, nor shall the Stockholders’ Representative assert any claims that the value of any item or amount is greater or less than the value claimed in the Statement of Objection. Failure by the Stockholders’ Representative to deliver a Statement of Objection within such 45 day period shall be deemed to constitute acceptance by the Stockholders’ Representative of the Purchaser’s calculation of the Final Net Debt, and shall be final and binding upon, and non-appealable by, the Purchaser, the Stockholders’ Representative and, for the avoidance of doubt, the Stockholders.

(d) If a Statement of Objection shall be delivered to the Purchaser pursuant to Section 1.3(c), the Purchaser and the Stockholders’ Representative shall, during the 15 days following such delivery, use commercially reasonable, good faith efforts to reach agreement on the disputed items or amounts in order to determine, as may be required, the amount of the Final Net Debt. If the Purchaser and the Stockholders’ Representative are able to reach such agreement during such 15 day period, the Final Net Debt, with such changes as may have been previously agreed in writing by the Purchaser and the Stockholders’ Representative, shall be final and binding upon, and non-appealable by, the Purchaser, the Stockholders’ Representative and, for the avoidance of doubt, the Stockholders.

(e) If the Purchaser and the Stockholders’ Representative are unable to reach such agreement during such 15 day period, they shall promptly jointly retain a firm of independent accountants of internationally recognized standing reasonably satisfactory to the Stockholders’ Representative and the Purchaser (who shall not have any material relationship with the Stockholders’ Representative or the Purchaser) (the “Accounting Referee”) and cause the Accounting Referee promptly to review this Agreement and such disputed amounts. The Accounting Referee shall be instructed to resolve such disputes within 60 days of retention of the Accounting Referee. The Accounting Referee shall address only those matters in dispute and may not allow a value greater than the greatest value for such item claimed by either party or smaller than the smallest value for such item claimed by either party. The Accounting Referee shall deliver to the Purchaser and the Stockholders’ Representative, as promptly as practicable, a report setting forth such calculation. Such report shall be final and binding upon, and non-appealable by, the Purchaser, the Stockholders’ Representative and, for the avoidance of doubt, the Stockholders. The cost of such review and report shall be borne by the Purchaser, on the one hand, and the Stockholders (payable by the Stockholders’ Representative on their behalf), on the other, in inverse proportion as the Purchaser and the Stockholders’ Representative (on behalf of the Stockholders), respectively, may prevail on the matters resolved by the Accounting Referee, which proportionate allocation shall also be determined by the Accounting Referee and be included in the Accounting Referee report.

(f) The Purchaser and the Stockholders’ Representative agree that they will, and agree to cause their respective independent accountants to, cooperate and assist in the preparation of the calculation of the Final Net Debt, including making available, to the extent necessary, books, records, work papers and personnel.

(g) If the Final Net Debt is less (that is, more negative) than the Estimated Net Debt, the Purchaser shall be entitled to recover, pursuant to the Escrow Agreement, such number of Escrow Shares as is equal to the quotient obtained by dividing: (i) the amount by which the Final Net Debt is less (that is, more negative) than the Estimated Net Debt (such amount, the “Net Debt Adjustment Amount”), by (ii) the Per Share Price, rounded up to the nearest whole share, within five Business Days from when the Final Net Debt has become final, binding and non-appealable in accordance with Sections 1.3(c), (d) or (e); provided, however, that the Purchaser shall in no event be entitled to recover any Escrow
Shares pursuant to this Section 1.3(g) if the Final Net Debt is a positive number; and provided, further, that if, as of the date that the Final Net Debt has become final, binding and non-appealable in accordance with Sections 1.3(c), (d) or (e), the Purchaser has not yet delivered the Initial Escrow Shares in accordance with Section 1.4(b), then the Initial Escrow Shares to be delivered to the Escrow Agent in accordance with Section 1.4(b) shall be reduced by such number of shares of Purchaser Common Stock as is equal to the quotient obtained by dividing (i) the Net Debt Adjustment Amount, by (ii) the Per Share Price, rounded up to the nearest whole share.

Section 1.4 Issuance of Non-Escrow Shares.

(a) In the event a Qualified Financing occurs, then on the date that is 10 Business Days after the closing of the Qualified Financing, the Purchaser shall:

(i) deliver to the Stockholders’ Representative (for distribution to the Stockholders) the stock certificates representing the Non-Escrow Shares in the name of each Stockholder, in each case for such number of shares of Purchaser Common Stock as is equal to the product of the total number of Non-Escrow Shares multiplied by the quotient obtained by dividing (A) the total number of Shares owned by such Stockholder as of immediately prior to the Closing divided by (B) the total number of Shares outstanding as of immediately prior to the Closing; and

(ii) deliver to the Escrow Agent under the Escrow Agreement a stock certificate in the name of the Escrow Agent representing the Initial Escrow Shares;

provided that the certificates representing Purchaser Common Stock to be delivered to a Stockholder shall, in each case, represent only whole shares of Purchaser Common Stock. In lieu of any fractional shares to which such Stockholder would otherwise be entitled, after combining any fractional interests of such Stockholder into as many whole shares as is possible, such Stockholder shall be paid in cash an amount equal to the dollar amount (rounded to the nearest whole cent) determined by multiplying the Per Share Price by the fraction of a share of Purchaser Common Stock that would otherwise be deliverable to such Stockholder under Section 1.4(a). Notwithstanding the foregoing, the Purchaser may deliver to the Escrow Agent one certificate representing the total number of shares of Purchaser Common Stock to be held in escrow pursuant to this Section 1.4 in lieu of issuing separate certificates representing such Stockholder’s pro rata portion of the Initial Escrow Shares (such pro rata portion to be determined based on the amount of the Purchaser Stock Consideration payable with respect to such Stockholder’s ownership of Shares, relative to the aggregate Purchaser Stock Consideration payable with respect to all Shares).

(b) In the event a Qualified Financing does not occur, then on or before April 15, 2016, the Purchaser shall, or shall cause Sorrento to:

(i) deliver to the Stockholders’ Representative (for distribution to the Stockholders) the stock certificates representing the Non-Escrow Shares in the name of each Stockholder, in each case for such number of shares of Sorrento Common Stock as is equal to the product of the total number of Non-Escrow Shares multiplied by the quotient obtained by dividing (A) the total number of Shares owned by such Stockholder as of immediately prior to the Closing divided by (B) the total number of Shares outstanding as of immediately prior to the Closing; and

(ii) deliver to the Escrow Agent under the Escrow Agreement a stock certificate in the name of the Escrow Agent representing the Initial Escrow Shares;
provided that the certificates representing Sorrento Common Stock to be delivered to a Stockholder shall, in each case, represent only whole shares of Sorrento Common Stock. In lieu of any fractional shares to which such Stockholder would otherwise be entitled, after combining any fractional interests of such Stockholder into as many whole shares as is possible, such Stockholder shall be paid in cash an amount equal to the dollar amount (rounded to the nearest whole cent) determined by multiplying the Per Share Price by the fraction of a share of Sorrento Common Stock that would otherwise be deliverable to such Stockholder under Section 1.4(a). Notwithstanding the foregoing, the Purchaser may deliver to the Escrow Agent one certificate representing the total number of shares of Sorrento Common Stock to be held in escrow pursuant to this Section 1.4 in lieu of issuing separate certificates representing such Stockholder’s pro rata portion of the Initial Escrow Shares (such pro rata portion to be determined based on the amount of the Purchaser Stock Consideration payable with respect to such Stockholder’s ownership of Shares, relative to the aggregate Purchaser Stock Consideration payable with respect to all Shares).

Section 1.5 Escrow. Upon the issuance of the Non-Escrow Shares in accordance with Section 1.4, the Purchaser shall withhold the Initial Escrow Shares and deliver such shares of Purchaser Common Stock to Wilmington Trust N.A., as escrow agent (the “Escrow Agent”), to be held by the Escrow Agent as collateral to secure the rights of the Purchaser pursuant to Section 1.3(a) and of the Indemnified Parties under Article X. The Escrow Shares shall be held pursuant to the provisions of an escrow agreement substantially in the form of Exhibit C hereto (the “Escrow Agreement”). The Escrow Shares will be held by the Escrow Agent until the date that is 12 months after the Closing Date (the “Escrow Period”); provided, however, that in the event the Purchaser has made a claim under Article X prior to the end of the Escrow Period, then, in accordance with and subject to the terms and conditions of the Escrow Agreement, the Escrow Period shall continue (and the Escrow Agent will continue to hold such number of Escrow Shares in escrow as is equal to the quotient obtained by dividing: (a) any claimed amounts by (b) the Per Share Price, rounded up to the nearest whole share) until such claim is fully and finally resolved. By virtue of the execution of this Agreement by a Stockholder, without any further act of any Stockholder, such Stockholder shall be deemed to have consented to and approved (i) the use of the Escrow Shares as collateral to secure the rights of the Purchaser pursuant to Section 1.3(a) in the manner set forth herein and in the Escrow Agreement, (ii) the use of the Escrow Shares as collateral to secure the rights of the Indemnified Parties under Article X in the manner set forth herein and in the Escrow Agreement, and (iii) the appointment of the Stockholders’ Representative as the representative under the Escrow Agreement of the Stockholders under this Agreement and as the attorney-in-fact and agent for and on behalf of such Stockholder.

Section 1.6 Purchase of Purchaser Stock Consideration by Sorrento.

(a) In the event that a Qualified Financing has occurred and the closing of the IPO has not occurred on or before March 31, 2016, as promptly as possible, and in no event later than April 15, 2016 (the “Repurchase Closing”), Sorrento shall purchase the Purchaser Stock Consideration from the Stockholders (the “Repurchase”). The aggregate consideration payable to the Stockholders in connection with the Repurchase shall be the Repurchase Shares.

(b) At the Repurchase Closing, Sorrento shall:

(i) deliver to the Stockholders’ Representative (for distribution to the Stockholders) the stock certificates representing the Non-Escrow Sorrento Shares in the name of each Stockholder, in each case for such number of shares of Sorrento Common Stock as is equal to the product of the total number of Non-Escrow Sorrento Shares multiplied by the quotient obtained by dividing (A) the total number of Shares owned by such Stockholder as of immediately prior to the Closing divided by (B) the total number of Shares outstanding as of the Closing; and

(ii) if the Escrow Period has not expired, deliver to the Escrow Agent, under the Escrow Agreement a stock certificate in the name of the Escrow Agent representing the Sorrento Escrow Shares;

provided that the certificates representing Sorrento Repurchase Shares to be delivered to a Stockholder shall, in each case, represent only whole shares of Sorrento Common Stock. In lieu of any fractional shares to which such Stockholder would otherwise be entitled, after combining any fractional interests of such Stockholder into as many whole shares as is possible, such Stockholder shall be paid in cash an amount equal to the dollar amount (rounded to the nearest whole cent) determined by multiplying the Sorrento Closing Price by the fraction of a share of Sorrento Common Stock that would otherwise be deliverable to such Stockholder under Section 1.6(b)(i). Notwithstanding the foregoing, Sorrento may deliver
to the Escrow Agent one certificate representing the total number of shares of Sorrento Common Stock to be held in escrow pursuant to this Section 1.6 in lieu of issuing separate certificates representing such Stockholder’s pro rata portion of the Sorrento Escrow Shares (such pro rata portion to be determined based on the amount of the Purchaser Stock Consideration payable with respect to such Stockholder’s ownership of Shares, relative to the aggregate Repurchase Sorrento Shares payable with respect to all Shares).

(c) At the Repurchase Closing, the Stockholders shall transfer, grant, convey, sell and assign to Sorrento all of the Purchaser Stock Consideration. At the Repurchase Closing and thereafter, each Stockholder shall enter into such instruments of transfer, including stock powers and stock transfer agreements, as may be requested by Sorrento to evidence such transfer and shall deliver to Sorrento all physical original certificates evidencing all such securities or rights with stock transfer powers appropriately completed and signed.

(d) Upon the Repurchase, the Stockholders’ Representative shall cause the Escrow Agent to release the Initial Escrow Shares to Sorrento.

(c) If any certificate representing any portion of the Purchaser Stock Consideration shall have been lost, stolen, mutilated or destroyed, at or prior to the Repurchase Closing, the holder thereof must deliver an indemnity, in form satisfactory to Sorrento, and, if requested by Sorrento, delivery of a bond in such sum as Sorrento may reasonably direct.

Section 1.7 Definitions. Capitalized terms used in this Agreement but not otherwise defined in this Agreement shall have the meanings set forth in EXHIBIT A attached to this Agreement.

ARTICLE II
REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE STOCKHOLDERS

Except as set forth on the Disclosure Schedule, the Company and the Stockholders hereby, jointly and severally, represent and warrant to the Purchaser as of the date of this Agreement and as of the Closing Date, as set forth below.

Section 2.1 Organization and Good Standing.

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, has all requisite and necessary power and authority to own, lease, use and operate its properties and assets, to carry on and conduct its business as now being conducted and as proposed to be conducted by the Company as of the Closing Date and by the Purchaser after the Closing Date and to perform its obligations under all Material Contracts, and is duly qualified or registered to do business and is in good standing as a foreign corporation (or equivalent status in the relevant jurisdiction) in each jurisdiction set forth on Section 2.1(a) of the Disclosure Schedule, which jurisdictions constitute as of the date of this Agreement the only jurisdictions in which the character of the properties it owns, operates or leases or the nature of its activities makes such qualification necessary or advisable. The Company has full corporate power and authority to do and perform all acts and things to be done by it under this Agreement.

(b) The Company has not conducted any business under or otherwise used, for any purpose or in any jurisdiction, any fictitious name, assumed name, trade name or other name.

(c) Section 2.1(c) of the Disclosure Schedule sets forth (i) the names of the members of the board of directors of the Company, and (ii) the names and titles of the officers of the Company.

(d) The Company has provided to the Purchaser true, correct and complete copies of: (i) the Organizational Documents of the Company, as in effect on the date of this Agreement, and such copies reflect all amendments made thereto at any time prior to the date of this Agreement, (ii) the stock records of the Company, (iii) the minutes and other 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 (subsections (i), (ii) and (iii), collectively, the “Company Constituent Documents”). There have been no formal meetings or other proceedings of the stockholders of the Company, the board of directors of the Company
or any committee of the board of directors of the Company that are not fully reflected in the Company Constituent Documents. There has not been any violation of the Company Constituent Documents, and the Company has not taken any action that is inconsistent with the Company Constituent Documents. The Company is not in default under or in violation of any provision of its Organizational Documents. The books and records of the Company are up to date, true, correct and complete in all material respects. All the records of the Company have been maintained in accordance with applicable Laws and prudent business practices and are in the actual possession and direct control of the Company.

Section 2.2 Capitalization.

(a) The authorized capital stock of the Company consists solely of 1,000 Company Common Shares, of which 600 shares have been issued and are outstanding as of the date of this Agreement. All of the outstanding Company Common Shares have been duly authorized and validly issued, and are fully paid and non-assessable. All of the outstanding Company Common Shares have been issued and granted in compliance with (i) all applicable securities laws and other applicable Laws, and (ii) all requirements set forth in the Company Constituent Documents and applicable Contracts. None of the issued Company Common Shares were issued in violation of any preemptive rights or other rights to subscribe for or purchase securities of the Company. Section 2.2(a) of the Disclosure Schedule accurately sets forth with respect to each Company Common Share outstanding as of the date of this Agreement: (A) the name of the holder of such Company Common Share; and (B) the date on which such Company Common was issued.

(b) There is no: (A) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire any capital stock or other securities of the Company, (B) outstanding security, instrument or obligation that is or may become convertible into or exchangeable for any capital stock or other securities of the Company, (C) Contract under which the Company is or may become obligated to sell or otherwise issue any of its capital stock or any other securities of the Company, or (D) 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 capital stock or other securities of the Company (subsections (A) through (D), collectively, “Company Rights”). The Company does not have any outstanding stock appreciation rights, phantom stock, performance based stock or equity rights or similar stock or equity rights or obligations. The Company has not issued any debt securities which grant the holder thereof any right to vote on, or veto, any actions by the Company.

(c) The Company has no issued or outstanding Company Common Shares that constitute restricted shares or that are otherwise subject to a repurchase or redemption right or right of first refusal in favor of the Company.

(d) The Company is not a party to or bound by any, and to the Knowledge of the Company, there are no, agreements or understandings with respect to the voting (including pooling agreements, voting trusts and proxies) or sale or transfer (including agreements imposing transfer restrictions) of any capital stock or other equity interests of the Company.

(e) None of the outstanding capital stock of the Company is entitled or subject to any purchase option, call option, right of first refusal, preemptive right, right of participation, subscription right or any similar right (whether pursuant to the Company Constituent Documents or any Contract or any statute to which the Company is subject) and there is no Contract relating to information rights, financial statement requirements, the voting or registration of, or restricting any Person from purchasing, selling, pledging, transferring or otherwise disposing of (or granting any option or similar right with respect to), any of the Company’s capital stock. The Company is not under any obligation, or bound by any Contract pursuant to which it may become obligated (i) to repurchase, redeem or otherwise acquire any outstanding capital stock of the Company, or (ii) make any investment (in the form of a loan or capital contribution) in any other Entity.

(f) The Company has never repurchased, redeemed or otherwise reacquired any of its capital stock or other securities.

(g) The Company is not now, nor has it ever been, required to file any periodic or other reports, or any registration statement, with any applicable securities regulatory authority, including the United States Securities and Exchange Commission, pursuant to any securities legislation, regulations or rules or policies promulgated thereunder,
including the Securities Act and the rules and regulations promulgated thereunder, or the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

Section 2.3 Subsidiaries. The Company has no Subsidiaries and has never had any Subsidiaries. The Company does not own, and has never owned, beneficially or otherwise, any shares or other securities of, or any direct or indirect equity or other financial interest in, any Entity. The Company has neither agreed nor is obligated to make any future investment in or capital contribution to any Entity. The Company has neither guaranteed nor is responsible or liable for any obligation of any Entity. 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 business or affairs of the Company. There are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights or other Contracts or commitments that could require the Company to issue, sell or otherwise cause to become outstanding any of its own capital stock or other equity interests or that otherwise could affect rights or obligations of the holders of the capital stock or other equity interests of the Company.

Section 2.4 Authority, No Conflict; Required Filings and Consents.

(a) The Company has all requisite corporate power and authority to enter into this Agreement and any Stockholder Related Agreement to which it is a party, perform its obligations under this Agreement and any Stockholder Related Agreement to which it is a party and to consummate the transactions contemplated by this Agreement and any Stockholder Related Agreement to which it is a party. The execution and delivery of this Agreement and any Stockholder Related Agreement to which it is a party and the consummation of the transactions contemplated by this Agreement and any Stockholder Related Agreement to which it is a party by the Company have been duly authorized by all necessary corporate action on the part of the Company, and no other corporate action or proceeding on the part of the Company or its board of directors is necessary to authorize the execution, delivery or performance of this Agreement, any Stockholder Related Agreement to which it is a party or the transactions contemplated by this Agreement or any such Stockholder Related Agreement. This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to creditors’ rights generally, and (ii) the availability of injunctive relief and other equitable remedies.

(b) Neither the execution, delivery or performance by the Company or any of the Stockholders of this Agreement or any of the Stockholder Related Agreements, nor the consummation of the transactions contemplated by this Agreement or any of the Stockholder Related Agreements, nor the execution, delivery or performance by the Company or any of the Stockholders of this Agreement or any of the Stockholder Related Agreements, nor the consummation of the transactions contemplated by this Agreement or any of the Stockholder Related Agreements, will directly or indirectly (with or without notice or lapse of time, or both): (i) contravene, conflict with, or result in any violation or breach of, any Company Constituent Document, (ii) contravene, conflict with, or result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of modification, termination, cancellation or acceleration of any obligation or loss of any material benefit) under, require notice to any Person or a consent or waiver under, constitute a change in control under, require the payment of a fee or penalty under or result in the creation or imposition of any Lien upon or with respect to any asset owned or used by the Company under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, Contract or other agreement, instrument or obligation to which the Company is a party or by which it or any of its properties or assets may be bound, (iii) contravene, conflict with or violate, or give any Person the right to challenge any of the transactions contemplated by this Agreement or any of the Stockholder Related Agreements or to exercise any remedy or obtain any relief under, any Law or any order, writ, injunction, judgment or decree to which the Company is subject, or (iv) 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, used or controlled by the Company.
(c) No Governmental Authorization, or registration, declaration, notice or filing with any Governmental Body, is required by or with respect to the Company: (i) in connection with the execution and delivery of this Agreement or any of the Stockholder Related Agreements by the Company or the consummation by the Company of the transactions contemplated by this Agreement or any of the Stockholder Related Agreements, or (ii) necessary for the Company to operate its business immediately after the Closing in the same manner as operated immediately prior to the Closing after giving effect to the consummation of the transactions contemplated by this Agreement and the Stockholder Related Agreements.

Section 2.5 Company Financial Statements; No Undisclosed Liabilities.

(a) The Company has not prepared any balance sheet, income statement, statement of operations, statement of changes in financial position and stockholders’ equity or other financial statements.

(b) Neither the Company nor any predecessor entity of the Company have any obligations or liabilities (whether or not absolute, accrued, contingent, determined, determinable, unliquidated or otherwise, whether known or unknown, whether arising by operation of law or otherwise, whether or not required to be reflected in financial statements in accordance with GAAP and regardless of whether known or unknown, whether or not required to be reflected in financial statements in accordance with GAAP and regardless of when or by whom asserted), and there is no existing condition, situation or set of circumstances that could reasonably be expected to result in such an obligation or liability, except for liabilities incurred in the ordinary course of business since the date of the Company’s incorporation (none of which is a liability for breach of contract, breach of warranty, tort, infringement, violation of law, claim or lawsuit), which in the aggregate are not in excess of $12,500.

(c) Section 2.5(c) of the Disclosure Schedule sets forth a true, correct and complete list of all loan or credit agreements, notes, bonds, mortgages, indentures and other agreements and instruments pursuant to which any Indebtedness is outstanding or may be incurred and the respective principal amounts outstanding thereunder as of the date of this Agreement. All of the outstanding Indebtedness may be prepaid by the Company at any time without the consent or approval of, or prior notice to, any other Person, and without payment of any premium or penalty.

Section 2.6 No Company Material Adverse Effect. Since the date of the Company’s incorporation, the Company has conducted its business only in the ordinary course of business and, since such date, there has not been (a) any event, occurrence, development or state of circumstances or facts that has had, or could reasonably be expected to result in, a Company Material Adverse Effect, (b) any other action or event that would have required the consent of the Purchaser pursuant to Section 5.2(b) had such action or event occurred after the date of this Agreement, or (c) any event, occurrence, development or state of circumstances or facts that has, or could reasonably be expected to have, the effect of preventing, delaying, making illegal or otherwise interfering with the transactions contemplated by this Agreement.

Section 2.7 Absence of Certain Changes or Events. Since the date of the Company’s incorporation, the Company has not:

(a) issued (i) any notes, bonds or other debt securities, (ii) any capital stock or other equity securities or any securities or rights convertible into or exchangeable or exercisable for any capital stock or other equity securities, or (iii) any Company Rights;

(b) amended or waived any of its rights under, or permitted the acceleration of vesting under any restricted stock purchase agreement;

(c) borrowed any amount or incurred or become subject to any liabilities;

(d) discharged or satisfied any Lien or paid any obligation or liability;

(e) declared, accrued, set aside or made any payment or distribution of cash or other property to any of its equityholders or its other Affiliates with respect to such equityholder’s equity securities or otherwise, or purchased, redeemed or otherwise acquired any shares of its capital stock or other equity securities (including any warrants, options or other rights to acquire its capital stock or other equity);
(f) mortgaged or pledged any of its properties or assets or subjected them to any Lien, except for Permitted Liens;

(g) (i) acquired, leased or licensed any right or other asset from any Person, (ii) sold, assigned, transferred, leased or licensed to any Person, or otherwise encumbered, any of its assets, or (iii) canceled any debts or claims;

(h) sold, assigned, transferred, leased, licensed or otherwise encumbered any Intellectual Property Rights, disclosed any Confidential Information to any Person (other than to the Purchaser and its Affiliates), or abandoned or permitted to lapse any Intellectual Property Rights;

(i) (i) granted any severance or termination pay to any Person, (ii) entered into any employment, deferred compensation or other similar agreement (or any amendment to any such existing agreement) with any Person, or (iii) established, adopted or amended (except as required by applicable Laws) any collective bargaining, works council, stock option, restricted stock, bonus, insurance, severance, deferred compensation, pension, retirement, profit sharing, or any other benefit plan, agreement or arrangement covering any Person;

(j) suffered any extraordinary losses or waived any rights of value in excess of $12,500 in the aggregate;

(k) made capital expenditures or commitments therefor that exceed $12,500 individually or $25,000 in the aggregate;

(l) delayed or postponed the payment of any accounts payable or commissions or any other liability or obligation or agreed or negotiated with any party to extend the payment date of any accounts payable or commissions or any other material liability or obligation or accelerated the collection of (or discounted) any accounts or notes receivable;

(m) made any loans or advances to, guaranties for the benefit of, or any investments in, any Person;

(n) suffered any damage, destruction or casualty loss exceeding in the aggregate $12,500, whether or not covered by insurance;

(o) made any change in any method of accounting or accounting policies or made any write-down in the value of its inventory or made any accruals for Tax liability, or reversed any accruals;

(p) (i) written off as uncollectible, or established any extraordinary reserve with respect to, any billed or unbilled account receivable or other Indebtedness outside existing reserves, or (ii) increased any reserves for contingent liabilities;

(q) made or changed any Tax election, changed any annual tax accounting period, changed or adopted any method of tax accounting, filed any amended Tax Returns or claims for Tax refunds, entered into any closing agreement, settled any Tax claim, audit or assessment, or surrendered any right to claim a Tax refund, offset or other reduction;

(r) threatened, commenced or settled any Legal Proceeding;

(s) made any investment in or taken any steps to incorporate or form any Subsidiary or to acquire any equity interest or other interest in any other Entity;

(t) amended any of its Organizational Documents or effected or been a party to any Acquisition Transaction, recapitalization, reclassification of shares, stock split, reverse stock split or similar transaction;

(u) entered into any agreement or arrangement prohibiting or restricting it from freely engaging in any business, from competing with any Person in any line of business that is material to the Company or otherwise restricting the conduct of its business anywhere in the world;

(v) entered into, amended or terminated any material Contract;
(w) received notice, whether written or oral, from any party to a Company Contract of such party’s intention not to renew, not to extend, to cancel or otherwise terminate or materially modify its business relationship with the Company;

(x) entered into any transaction with its Affiliates;

(y) entered into any other material transaction (other than the entry into this Agreement and the Stockholder Related Agreements and the agreements and transactions contemplated by this Agreement and the Stockholder Related Agreements), or materially changed any business practice;

(z) taken any action which, if taken after the date of this Agreement and prior to the Closing Date, would constitute a breach of Section 5.2(b); or

(aa) agreed, whether orally or in writing, to do any of the foregoing.

Section 2.8 Taxes.

(a) Since the date of the Company’s incorporation, the Company has not filed, and has not been required to file, any Tax Returns.

(b) Section 2.8(b) of the Disclosure Schedule sets forth a true, correct and complete list of all jurisdictions (whether foreign or domestic) in which the Company is required to file Tax Returns. No claim has ever been made by a Governmental Body in a jurisdiction where the Company does not file Tax Returns that it is or may be subject to taxation or to a requirement to file Tax Returns in that jurisdiction.

(c) All Taxes, estimated Taxes, deposits and other payments due and owing by or on behalf of the Company (whether or not shown on any Tax Return) have been or will be timely paid in full through the date of this Agreement.

(d) The amounts so paid, together with all amounts accrued as liabilities for Taxes (including Taxes accrued as currently payable but excluding any accrual to reflect timing differences between book and Tax income) on the books of the Company, shall be adequate based on the tax rates and applicable Laws in effect to satisfy all liabilities for Taxes of the Company in any jurisdiction through the Closing Date, including Taxes accruable upon income earned through the Closing Date.

(e) The Company has withheld all amounts of Taxes required to be withheld from its agents, contractors, creditors, Stockholders, members and third parties and remitted such amounts to the proper Governmental Body and filed all federal, state, local and foreign Tax Returns and reports with respect to income Tax withholding, social security, unemployment, and other similar Taxes, all in compliance with the withholding provisions of the Code, or any prior provision of the Code and other applicable Laws.

(f) The Company has collected all material sales, value-added and use Taxes required to be collected, and have remitted, or will remit on a timely basis, such amounts to the appropriate Governmental Body (or have been furnished properly completed exemption certificates and have maintained all such records and supporting documents in the manner required by all applicable sales and use Tax statutes and regulations).

(g) No claims have been asserted and no proposals or deficiencies for any Taxes of the Company are being asserted, proposed or, to the Knowledge of the Company, threatened, and no Legal Proceeding, audit, examination or investigation of any Tax Return of the Company is currently underway, pending or, to the Knowledge of the Company, threatened. There have been no examinations or audits of any Tax Return of the Company. The Company has provided to the Purchaser true, correct and complete copies of all audit reports, correspondence with Tax authorities and similar documents (to which the Company has access) relating to the Tax Returns of the Company.

(h) All Tax deficiencies asserted as a result of any examination by a Governmental Body of a Tax Return of the Company have been paid in full, accrued on the books of the Company, as applicable, or finally settled, and no
indication of a Tax increase or other issue has been raised in any such examination that, by application of the same or similar principles, could reasonably be expected to result in a proposed Tax deficiency for any other period not so examined.

(i) There are no outstanding waivers or agreements between any Governmental Body and the Company for the extension of time for the assessment of any Taxes or deficiency thereof, nor are there any requests for rulings, outstanding subpoenas or requests for information, notices of proposed reassessment of any property owned or leased by the Company or any other matter pending between the Company and any Governmental Body.

(j) There are no Liens for Taxes with respect to the Company or the assets or properties of the Company, nor is there any Lien that is pending or, to the Knowledge of the Company, threatened.

(k) The Company has not been a member of an “affiliated group” of companies (within the meaning of Section 1504 of the Code) filing a consolidated federal income tax return (other than a group, the common parent of which was the Company).

(l) The Company has no liability for the Taxes of any Person (other than for itself) under Treasury Regulation Section 1.1502-6 (or any similar provision of national, provincial, territorial, state, local or foreign Law), as a transferee or successor, by Contract or otherwise.

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

(n) The Company has not made any payments, is not obligated to make any payments, and is not a party to any Contract that would obligate it to make any payments that will not be deductible under Section 280G of the Code (or any similar provision of national, provincial, territorial, state, local or foreign Law).

(o) The Company has not constituted either a “distributing corporation” or a “controlled corporation” in a distribution of stock qualifying for tax free treatment under Section 355 of the Code (i) since the Company’s incorporation, or (ii) in a distribution which would otherwise constitute part of a “plan” or “series of related transactions” (within the meaning of Section 355(e) of the Code) in connection with the transactions contemplated by this Agreement.

(p) The Company has no net operating losses or other tax attributes presently subject to limitation under Sections 382, 383, 384 of the Code or the federal consolidated return regulations (or any corresponding or similar provision of state, local or foreign income Tax law).

(q) The Company will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any Tax period after the date of this Agreement as a result of any (i) 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, (ii) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of national, provincial, territorial, state, local or foreign income Tax Law) executed on or prior to the date of this Agreement, (iii) installment sale or open transaction disposition made on or prior to the date of this Agreement,(iv) prepaid amount received on or prior to the date of this Agreement, (v) reserve claimed in respect of a taxation year ending prior to the date of this Agreement, or (vi) change in method of accounting for a Tax period ending on or prior to the Closing Date.

(r) The Company has not, directly or indirectly, transferred property to or acquired property from a Person with whom it was not dealing at arm’s length for consideration other than consideration equal to the fair market value of the property at the time of the disposition or acquisition thereof and has complied with all material transfer pricing disclosure, reporting and other similar requirements under Section 482 of the Code (or any corresponding provision of any state, local or foreign Tax Law).

(s) The Company has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.
(t) The Company (i) does not have a permanent establishment, office or other fixed place of business, and (ii) has never filed or had any obligation to file, and currently does not have any obligation to file, any Tax Return based on income or otherwise, in each case in any jurisdiction other than the United States.

(u) The Company is, and has at all times been, in compliance with the provisions of Sections 6011, 6111 and 6112 of the Code relating to tax shelter disclosure, registration and list maintenance and with the Treasury Regulations thereunder.

(v) The Company has not at any time engaged in or entered into a “listed transaction” within the meaning of Treasury Regulation Sections 1.6011-4(b)(2), 301.6111-2(b)(2) or 301.6112-1(b)(2)(A), and no IRS Form 8886 has been filed with respect to the Company, nor has the Company entered into any tax shelter or listed transaction with the sole or dominant purpose of the avoidance or reduction of a Tax liability with respect to which there is a significant risk of challenge of such transaction by a Governmental Body.

Section 2.9 Real Property. The Company does not own, and has never owned, any real property, and the Company is not obligated to and has no option to acquire an ownership interest in any real property. Since the date of the Company’s incorporation, the Company has not been, and is not currently, the lessee or sublessee of any parcels of real property.

Section 2.10 Personal Property.

(a) All items of equipment and other tangible personal property and assets owned by or leased to the Company: (i) are reasonably adequate for the uses to which they are being put, (ii) are structurally sound, free of defects and deficiencies and in good operating condition, maintenance and repair, subject to ordinary wear and tear, (iii) comply in all material respects with, and are being operated and otherwise used in compliance with, all applicable Laws, (iv) were acquired and are usable in the ordinary course of business consistent with past practice, and (v) are adequate for the conduct of the business of the Company in the manner in which such business is being conducted and as proposed to be conducted by the Company as of the Closing Date and by the Purchaser after the Closing Date.

(b) No Person other than the Company owns any equipment or other tangible personal property or asset that is necessary to the operation of the Company’s business. Section 2.10(b) of the Disclosure Schedule sets forth all assets that are material to the business of the Company and that are being leased or licensed to the Company for which the annual rental payment for each such asset exceeds $12,500.

(c) Section 2.10(c) of the Disclosure Schedule sets forth a true, correct and complete list and general description of each item of tangible personal property of the Company having a book value of greater than $12,500.

Section 2.11 Intellectual Property.

(a) Section 2.11(a) of the Disclosure Schedule sets forth all Company Registrations, in each case enumerating specifically the applicable filing or registration number, title, jurisdiction in which filing was made or from which registration was issued, date of filing or issuance, and names of all current applicant(s) and registered owner(s), as applicable. All assignments of Company Registrations to the Company have been properly executed and recorded. All issued Company Registrations are valid and enforceable, all pending patent applications included in the Company Registrations if issued would be valid and enforceable, and all issuance, renewal, maintenance and other payments and fees that are or have become due with respect thereto have been timely paid by or on behalf of the Company.

(b) There are no inventorship challenges, opposition or nullity proceedings or interferences declared or commenced or, to the Knowledge of the Company, threatened, and there is no fact that is reasonably likely to result in an inventorship challenge, opposition or nullity proceeding or interference, with respect to any Patent Rights included in the Company Registrations. The Company has complied with its duty of candor and disclosure to the United States Patent and Trademark Office and any relevant foreign patent office with respect to all patent and trademark applications filed by or on behalf of the Company and has made no misrepresentation in such applications.
(c) The Company exclusively owns all right, title and interest in and to the Company Owned Intellectual Property, free and clear of any Liens. The Company owns or possesses sufficient legal rights to all Intellectual Property Rights used in or necessary to the conduct of the Company’s business as now conducted and as contemplated to be conducted by the Company as of the Closing and by the Purchaser after the Closing, free and clear of any Liens.

(d) The Company has taken all reasonable measures to maintain and protect the proprietary nature of each item of Company Intellectual Property, and to maintain in confidence all trade secrets and Confidential Information comprising a part thereof. The Company has complied with all applicable contractual and legal requirements pertaining to data collection, use, privacy, protection and security. No complaint relating to an improper use or disclosure of, or a breach in the security of, any such information has been made or, to the Knowledge of the Company, threatened against the Company. There has been no: (i) unauthorized disclosure of any third-party proprietary or Confidential Information in the possession, custody or control of the Company, or (ii) breach of the Company’s security procedures wherein Confidential Information has been disclosed to a third Person.

(e) No product, product candidate or service marketed or sold (or proposed to be marketed or sold) by the Company or the conduct of the business of the Company, as it is currently conducted and as it is contemplated to be conducted by the Company as of the Closing and by the Purchaser after the Closing, infringes, violates or constitutes a misappropriation, or will infringe, violate or constitute a misappropriation, of any Intellectual Property Rights of any third-party. The Company has not received any complaint, claim or notice (i) alleging any such infringement, violation or misappropriation, or that, by conducting its business, the Company would infringe, violate or misappropriate any Intellectual Property Rights of any other Person, or (ii) advising that such Person is challenging or threatening to challenge the ownership, use, legality, validity or enforceability of any Company Intellectual Property.

(f) To the Knowledge of the Company, no Person has infringed, violated or misappropriated, or is infringing, violating or misappropriating, any of the Company Intellectual Property and there are no facts or circumstances that could reasonably be expected to result in any of the foregoing or of any current or anticipated claims against a third Person relating to the foregoing.

(g) Section 2.11(g) of the Disclosure Schedule sets forth each license, covenant or other agreement pursuant to which the Company has assigned, transferred, licensed, distributed or otherwise granted any right to any Person, or covenanted not to assert any right, with respect to any past, existing or future Company Intellectual Property. The Company has not agreed to indemnify any Person against any infringement, violation or misappropriation of any Intellectual Property Rights with respect to any third-party Intellectual Property Rights. The Company is not a member of or party to any patent pool, industry standards body, trade association or other organization pursuant to the rules of which it is obligated to license any existing or future Intellectual Property Rights to any Person.

(h) Section 2.11(h) of the Disclosure Schedule sets forth (i) each item of Company Licensed Intellectual Property and the license or agreement pursuant to which the Company Exploits it (excluding currently-available, off the shelf software programs that are licensed by the Company pursuant to “shrink wrap” licenses, the total fees associated with which are less than $2,500), and (ii) each agreement, assignment or other instrument pursuant to which the Company has obtained any joint or sole ownership interest in or to each item of Company Owned Intellectual Property.

(i) The Company is not subject to any proceeding or outstanding decree, order, judgment, agreement or stipulation (i) restricting in any manner the use, transfer or licensing by the Company of any of the Company Intellectual Property, or (ii) that may affect the validity, use or enforceability of the Company Intellectual Property or any product, product candidate or service of the Company related thereto.

(j) Each independent contractor of or consultant to the Company has executed a valid and binding written agreement, substantially in the form or forms provided to the Purchaser (each, an “Assignment Agreement”), expressly assigning to the Company all right, title and interest in any inventions and works of authorship, whether or not patentable, invented, created, developed, conceived and/or reduced to practice during the term of such independent contractor’s or consultant’s work for the Company, and all Intellectual Property Rights therein, and has waived all moral rights therein to the extent legally permissible. All Company Owned Intellectual Property was developed by agents, consultants, contractors, or other Persons who have executed appropriate Assignment Agreements. To the extent that any Company
Intellectual Property has been developed or created by a third party for the Company, the Company has a written agreement with such third party with respect thereto and the Company thereby either (i) have obtained ownership of and are the exclusive owner of, or (ii) have obtained a license (sufficient for the conduct of its business as now conducted and as contemplated to be conducted by the Company as of the Closing and by the Purchaser after the Closing) to, all of such third party’s Intellectual Property in such work, material or invention by operation of law or by valid assignment.

(k) The execution and delivery of this Agreement by the Company and the Stockholders, the consummation by the Company and the Stockholders of the transactions contemplated by this Agreement and the Stockholder Related Agreements and the Company continuing to operate its business immediately after the Closing in the same manner as operated immediately prior to the Closing after giving effect to the consummation of the transactions contemplated by this Agreement and the Stockholder Related Agreements will not result in the breach of, or create on behalf of any third-party the right to terminate or modify, (i) any license, sublicense or other agreement relating to any Company Intellectual Property, or (ii) any license, sublicense and other agreement to which the Company is a party and pursuant to which the Company is authorized to use any third-party Intellectual Property Rights that are useful to the business of the Company, as it is currently conducted and as it is contemplated to be conducted by the Company as of the Closing and by the Purchaser after the Closing.

(l) The Company has obtained and possesses valid licenses to use all of the software programs present on the computers and other software-enabled electronic devices it owns or leases or that it has otherwise provided to Persons for their use in connection with the Company’s business, free and clear of all Liens. All software and systems owned or used by the Company and material to the conduct of the Company’s business (i) are free from any material defect, bug, virus or programming, design or documentation error or corruptant or other software routines or hardware components that permit unauthorized access or the unauthorized disablement or erasure of such, (ii) function, operate and run in a reasonably efficient manner, (iii) are reasonably sufficient for the current and currently contemplated needs of the business of the Company, (iv) have not had any material failures, breakdowns or outages of any of the foregoing software or systems since the date of the Company’s incorporation, (v) conform in all material respects to the specifications and purposes thereof, and (vi) do not contain, embody, use, copy, comprise or require the work of any third party.

(m) The Company holds all of the Intellectual Property Rights or other rights to own, transfer, license and otherwise exploit any derivative products from any of the research materials that are the subject of or related to the IP-Related Agreements, free and clear of any Lien.

Section 2.12 Agreements.

(a) The Company is not a party to or bound by any written or oral:

(i) pension, profit sharing, stock option, employee stock purchase, bonus or other plan or arrangement providing for deferred or other compensation to employees, former employees or consultants, or any other employee benefit plan or arrangement, or any collective bargaining agreement or any other Contract with any labor union, or severance agreements, programs, policies or arrangements;

(ii) contract for the employment of any Person on a full-time, part-time, consulting or other basis or relating to loans to officers, directors, managers or Affiliates;

(iii) Contract providing for indemnification of any officer, director, employee or agent;

(iv) Contract under which the Company has advanced or loaned any other Person amounts in the aggregate exceeding $12,500;

(v) agreement or indenture relating to borrowed money or other Indebtedness or the mortgaging, pledging or otherwise placing or creating of a Lien on any asset or group of assets of the Company;

(vi) guaranty, pledge, performance or completion bond, surety or similar agreement or arrangement;
(vii) Contract creating or relating to any partnership or joint venture or any sharing of revenues, profits, losses, costs or liabilities;

(viii) lease or agreement under which the Company is lessee of or holds or operates any property, real or personal, owned by any other party, except for any lease of real or personal property under which the aggregate annual rental payments do not exceed $12,500;

(ix) lease or agreement under which the Company is lessor of or permits any third party to hold or operate any property, real or personal, owned or controlled by the Company;

(x) Contract or group of related Contracts with the same party or group of affiliated parties, the performance of which involves consideration in the aggregate in excess of $25,000;

(xi) assignment, license, indemnification or agreement with respect to any intangible property (including any Intellectual Property Rights);

(xii) Contract relating to the acquisition, transfer, use, development, sharing or license of any technology or any Intellectual Property Rights, except for licenses to use shrink-wrap or off-the-shelf software with a cost to the Company of less than $5,000 per user or per copy, as applicable;

(xiii) warranty agreement with respect to its services rendered or its products sold or leased;

(xiv) Contract relating to the purchase or sale of any product, product candidate or other asset by or to, or the performance of any services by or for, any Related Party;

(xv) sales, distribution, supply or franchise agreement or other agreement involving an agency relationship;

(xvi) advertising, vendor rebate or product purchase or sale discount agreement;

(xvii) Contract for capital expenditures or the acquisition or construction of fixed assets requiring the payment by the Company of an amount in excess of $12,500;

(xviii) Contract constituting or relating to a Government Contract or Government Bid;

(xix) Contract providing for an “earn out”, “performance guarantee” or other similar contingent payments by or to the Company;

(xx) Contract granting any Person an option or a right of first refusal, first-offer or similar preferential right to purchase or acquire any assets of the Company;

(xxii) Contract for the granting or receiving of a license, sublicense or franchise or under which any Person is obligated to pay or has the right to receive a royalty, license fee, franchise fee or similar payment, except for Contracts relating to the use of shrink-wrap or off-the-shelf software with a cost to the Company of less than $5,000 per user or per copy, as applicable;

(xxii) outstanding power of attorney empowering any Person to act on behalf of the Company;

(xxiii) tax-sharing Contract;

(xxiv) Contract that was entered into outside the ordinary course of business or was inconsistent with the Company’s past practices;
(xxv) agreement with a term of more than 60 days which is not terminable by the Company upon less than 30 days’ notice without penalty and involves a consideration in excess of $25,000 annually;

(xxvi) Contract regarding voting, transfer, issuance or other arrangements related to the Company’s capital stock or warrants, options or other rights to acquire the Company’s capital stock;

(xxvii) Contract that (A) limits the ability of the Company, or any officers or directors, employees, stockholders, members or other equityholders, agents or Representatives of the Company (in their capacities as such) to compete in any line of business or with any Person or in any geographic area or during any period of time, (B) would by its terms purport to be binding upon or impose any obligation upon the Purchaser or any of its Affiliates, (C) contains any so called “most favored nation” provisions or any similar provision requiring the Company to offer a third party terms or concessions (including levels of service or content offerings) at least as favorable as offered to one or more other parties, or (D) provides for “exclusivity,” preferred treatment or any similar requirement or under which the Company is restricted, or which after the Closing would restrict the Purchaser or any of its Affiliates, with respect to distribution, licensing, marketing, co-marketing or development; or

(xxviii) other agreement which is material to its operations and business prospects or involves a consideration in excess of $12,500 annually.

(b) All of the Contracts, leases, agreements and instruments set forth or required to be set forth on Section 2.12(a) of the Disclosure Schedule (the “Material Contracts”) are in full force and effect and are valid, binding and enforceable in accordance with their respective terms and will be in full force and effect, valid, binding and enforceable on identical terms without penalty in accordance with their terms upon consummation of the transactions contemplated by this Agreement. (i) The Company has performed all material obligations required to be performed by it and is not in default under or in breach of nor in receipt of any claim of default or breach under any Material Contract; (ii) no event has occurred which (with or without the passage of time or the giving of notice or both) would, or could reasonably be expected to, (A) result in a default, breach or event of noncompliance by the Company under any Material Contract, (B) give any Person the right to declare a default or exercise any remedy under any Material Contract, (C) give any Person the right to accelerate the maturity or performance of any Material Contract, or (D) give any Person the right to cancel, terminate or modify any Material Contract; (iii) the Company has no present expectation or intention of not fully performing all such obligations; and (iv) there is no breach or anticipated breach by the other parties to any Material Contract. The consummation of the transactions contemplated by this Agreement and the Stockholder Related Agreements shall not (either alone or upon the occurrence of additional acts or events) result in any payment or payments becoming due from the Company or the Purchaser or any of its Affiliates to any Person or give any Person the right to terminate or alter the provisions of any Material Contract.

(c) The Company has not received any notice or other communication regarding any actual or possible violation or breach of, or default under, any Material Contract.

(d) The Company has not waived any of its rights under any Material Contract.

(e) The Company is not a party to any Contract, agreement or commitment the performance of which could reasonably be expected to have a Company Material Adverse Effect.

(f) There is no term, obligation, understanding or agreement that would modify any term of a written Material Contract or any right or obligation of a party thereunder which is not reflected on the face of such Material Contract.

(g) No Person is renegotiating, or has a right pursuant to the terms of any Material Contract to renegotiate, any amount paid or payable to the Company under any Material Contract or any other material term or provision of any Material Contract. The Company is not a party to any Contract that obligates the Company to provide products or services below the Company’s cost of such product or service.
(h) Section 2.12(h) of the Disclosure Schedule identifies and provides a brief description of each proposed Contract or agreement as to which any bid, offer, award, written proposal, term sheet or similar document has been submitted or received by the Company.

(i) The Company has provided to the Purchaser a true, correct and complete copy of each of the written Material Contracts and a written summary description of each of the oral Material Contracts, together with all amendments, waivers or other changes thereto.

Section 2.13 Litigation.

(a) There are no Legal Proceedings pending or, to the Knowledge of the Company, threatened (i) against or affecting the Company or any of the assets owned, used or controlled by the Company or any Person whose liability the Company has or may have retained or assumed, either contractually or by operation of law (or pending or, to the Knowledge of the Company, threatened against or affecting any of the Stockholders or the officers, directors, managers or employees of the Company with respect to its business or proposed business activities), or pending or threatened by the Company against any Person, at law or in equity, or before or by any Governmental Body (including any Legal Proceedings with respect to the transactions contemplated by this Agreement), or (ii) that relate to the ownership of any capital stock of the Company, or any option or other right to the capital stock of the Company, or any right to receive consideration as a result of this Agreement.

(b) The Company is not subject to any Legal Proceedings under collective bargaining agreements or otherwise or any governmental investigations or inquiries.

(c) There is no reasonable basis for any of the foregoing. The Company is fully insured with respect to each of the matters set forth on Section 2.13 of the Disclosure Schedule. The Company is not subject to any judgment, order or decree of any court or other Governmental Body, and the Company has not received any notice from legal counsel to the effect that it is exposed, from a legal standpoint, to any material liabilities. There are no actions, suits, proceedings (including any arbitration proceedings), orders, investigations or claims pending or, to the Knowledge of the Company, threatened against or affecting any Stockholder in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with the transactions contemplated by this Agreement. The Company has provided to the Purchaser true, correct and complete copies of all pleadings, correspondence and other written materials to which the Company has access and that relate to any Legal Proceeding set forth on Section 2.13 of the Disclosure Schedule.

Section 2.14 Employee Matters.

(a) Since the date of the Company’s incorporation, the Company has not had, and does not currently have, any employees, including any temporary or leased employees.

(b) Section 2.14(b) of the Disclosure Schedule sets forth a true, correct and complete list of all consultants and independent contractors used by the Company as of the date of this Agreement, specifying the name of the consultant or independent contractor, type of services provided, fees paid to such consultant or independent contractor since the date of the Company’s incorporation, work location and address, and accurately reflects their wages, salaries or hourly rates of pay and any other compensation payable to them, their dates of service, their positions or titles and a true, correct and complete description of the Company’s obligations to each such consultant and independent contractor. Each consultant or independent contractor set forth on Section 2.14(b) of the Disclosure Schedule has the requisite Governmental Authorizations required to provide the services such consultant or independent contractor provides the Company, as applicable. The Company has provided to the Purchaser a true, correct and complete copy of each written agreement with each consultant and independent contractor set forth on Section 2.14(b) of the Disclosure Schedule. Each of the consultant and independent contractor relationships with the Persons set forth on Section 2.14(b) of the Disclosure Schedule is terminable at will without notice and without pay. The Company has never made use of consultants, independent contractors or other non-employee service providers who performed services of the type customarily performed by employees.
(c) The Company has not made any written or verbal commitments to any officer, employee, former employee, consultant or independent contractor of the Company with respect to compensation, promotion, retention, termination, severance or similar matter in connection with the transactions contemplated by this Agreement or otherwise.

(d) Each Person classified as an independent contractor or other non-employee service provider of the Company has, at all times, properly been classified and treated as an independent contractor or other non-employee service provider for all purposes including, but not limited to, Tax purposes. The Company is, and has at all times been, in compliance with all applicable Laws and contracts relating to its independent contractors and other non-employee service providers. There are no claims pending or threatened against the Company, by any independent contractor, other non-employee service provider or third party, in respect of any accident or injury.

(e) All amounts due in relation to independent contractors or other non-employee service providers of the Company have been paid.

(f) The Company is not a federal or state contractor.

(g) Since the date of the Company’s incorporation, the Company has not had, and does not currently have, any bonus, pension, stock option, stock purchase, benefit, welfare, profit-sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation and other similar fringe or employee benefit plans, funds, programs or arrangements, whether written or oral, in each of the foregoing cases which cover, are maintained for the benefit of, or relate to any or all current or former employees of the Company and any other Entity related to the Company under Sections 414(b), (c), (m) and (o) of the Code (an “Employee Plan”). The Company has not announced or entered into any plan or binding commitment to create, adopt or cause to exist any Employee Plan.

Section 2.15 Compliance With Laws; Governmental Authorizations.

(a) The Company is, and has at all times been, in compliance with all applicable Laws, except where non-compliance could not reasonably be expected to result in a Company Material Adverse Effect. The Company has not received any notice or other communication from any Governmental Body or any other Person regarding (i) any actual, alleged, possible or potential material violation of, or failure to materially comply with, any Law, or (ii) any actual, alleged, possible or potential obligation on the part of the Company to undertake, or to bear all or any portion of the cost of, any cleanup or any remedial, corrective or response action of any nature under any applicable Law. The Company has provided to the Purchaser a true, correct and complete copy of each report, study, survey or other document to which the Company has access that addresses or otherwise relates to the compliance of the Company with, or the applicability to the Company of, any Laws. To the Knowledge of the Company, no Governmental Body has proposed or is considering any Law that, if adopted or otherwise put into effect, (A) may have an adverse effect on the business, condition, assets, liabilities, operations, financial performance, net income or prospects of the Company or on the ability of the Company to comply with or perform any covenant or obligation under any of the Stockholder Related Agreements; or (B) may have the effect of preventing, delaying, making illegal or otherwise interfering with the transactions contemplated by this Agreement.

(b) Section 2.15(b) of the Disclosure Schedule sets forth each Governmental Authorization held by the Company, and the Company has provided to the Purchaser true, correct and complete copies of all such Governmental Authorizations. The Governmental Authorizations held by the Company are valid and in full force and effect, and collectively constitute all Governmental Authorizations necessary (i) to enable the Company to conduct its business in the manner in which it is now conducted and as contemplated to be conducted by the Company as of the Closing and by the Purchaser after the Closing, and (ii) to permit the Company to own and use its assets in the manner in which they are currently owned and used. The Company is, and at all times since its incorporation has been, in compliance with the terms and requirements of the respective Governmental Authorizations held by the Company. The Company has not received any notice or other communication from any Governmental Body regarding (A) any actual or possible violation of or failure to comply with any term or requirement of any Governmental Authorization, or (B) any actual or possible revocation, withdrawal, suspension, cancellation, termination or modification of any Governmental Authorization. All of Governmental Authorizations set forth or required to be set forth on Section 2.15(b) of the Disclosure Schedule will be available for use by the Company immediately after the Closing. In respect of approvals, licenses or permits requisite for
the conduct of any part of the business of the Company which are subject to periodic renewal, the Company has no reason to believe that such renewals will not be timely granted by the relevant Governmental Body.

(c) (i) The Company is, and has at all times been, in full compliance with all of the terms and requirements of each Governmental Authorization set forth or required to be set forth on Section 2.15(b) of the Disclosure Schedule; (ii) 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 or both) (A) constitute or result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Governmental Authorization set forth or required to be set forth on Section 2.15(b) of the Disclosure Schedule, or (B) result directly or indirectly in the revocation, withdrawal, suspension, cancellation, termination or modification of any Governmental Authorization set forth or required to be set forth on Section 2.15(b) of the Disclosure Schedule; (iii) the Company has never received any notice or other communication from any Governmental Body or any other Person regarding (x) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Governmental Authorization; or (y) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination or modification of any Governmental Authorization; and (iv) all applications required to have been filed for the renewal of the Governmental Authorizations required to be set forth on Section 2.15(b) of the Disclosure Schedule have been duly filed on a timely basis with the appropriate Governmental Bodies, and each other notice or filing required to have been given or made with respect to such Governmental Authorizations has been duly given or made on a timely basis with the appropriate Governmental Body.

Section 2.16 Brokerage and Transaction Bonuses. There are no claims for brokerage commissions, finders’ fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement binding upon the Company. There are no special bonuses or other similar compensation payable to any Person in connection with the transactions contemplated by this Agreement and the Stockholder Related Agreements. The Stockholders shall pay, and hold the Company, the Purchaser and its Affiliates harmless against, any liability, loss or expense (including reasonable attorneys’ fees and out of pocket expenses) arising in connection with any such claim, brokerage commission, finders’ fee or special bonus or other similar compensation.

Section 2.17 Title to and Sufficiency of Assets. The Company owns, and has good, valid, transferable and marketable title to, or a valid leasehold interest in, (a) all properties and assets used by it or acquired after the date thereof, free and clear of all Liens (except for Permitted Liens), and (b) all of the rights of the Company under the Material Contracts. Section 2.17 of the Disclosure Schedule set forth a true, correct and complete list of all such properties, assets and rights. All such properties, assets and rights are suitable for the purposes for which intended and are in good operating condition and repair consistent with normal industry standards, except for ordinary wear and tear. The Company owns, has a valid leasehold interest in or has the valid and enforceable right to use all assets, tangible or intangible, necessary for the conduct of its business as presently conducted and as contemplated to be conducted by the Company as of the Closing and by the Purchaser after the Closing.

Section 2.18 Inventory. The Company does not have, and has not since the date of its incorporation had, any inventory.

Section 2.19 Bank Accounts. Section 2.19 of the Disclosure Schedule sets forth true, correct and complete information with respect to each account maintained by or for the benefit of the Company at any bank or other financial institution, including the name of the bank or financial institution, the account number, the balance as of the date of this Agreement (and whether any cash comprising such balances is “restricted cash”) and the names of all individuals authorized to draw on or make withdrawals from such accounts (and no changes to such information shall have occurred as of the Closing Date).

Section 2.20 Product and Service Warranties. All products licensed or delivered and services rendered by the Company have been in conformity with all applicable contractual commitments and all express and implied warranties, and the Company has no liability (and there is no reasonable basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand against it giving rise to any such liability) for curing or providing additional services or other damages in connection therewith in excess of any warranty reserve specifically to be included on the books of the Company as of the Closing. No products licensed or delivered or services rendered by the
Company are subject to any guaranty, warranty or other indemnity beyond the applicable standard terms and conditions of such license, delivery or service (including as a result of any course of conduct between the Company and any Person or as a result of any statements in the Company’s product, service or promotional literature). Section 2.20 of the Disclosure Schedule sets forth true, correct and complete copies of such standard terms and conditions of license, delivery or service for the Company (containing applicable guaranty, warranty and indemnity provisions). The Company has not received any notice of any claims for (and, to the Knowledge of the Company, there are no threatened claims for), and the Company has not had, any extraordinary warranty obligations or additional services relating to any of its products or services.

Section 2.21 Related Party Transactions. No Related Party has, or has at any time had, any direct or indirect interest in any asset used in or otherwise relating to the business of the Company. No Related Party is, or has been, indebted to the Company. No 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. No Related Party is competing, or has at any time competed, directly or indirectly, with the Company. No Related Party has any claim or right against the Company. Section 2.22 Personal Information and Privacy.

(a) The Company has been and is now in compliance with the requirements of all Privacy Laws applicable to it which govern the collection, use and disclosure of Personal Information.

(b) Section 2.22(b) of the Disclosure Schedule sets forth and describes each distinct electronic or other database containing (in whole or in part) Personal Information maintained by or for the Company at any time (each, a “Company Database”), the types of Personal Information in each such database, the means by which the Personal Information was collected, and the security policies that have been adopted and maintained with respect to each such database.

(c) Section 2.22(c) of the Disclosure Schedule sets forth each privacy policy of the Company and any other industry privacy code or privacy procedures to which the Company subscribes or is bound which governs its collection, use and disclosure of Personal Information (each, a “Privacy Policy”) and identifies, with respect to each Privacy Policy, (i) the period of time during which such privacy policy was or has been in effect, (ii) whether the terms of a later Privacy Policy apply to the data or information collected under such Privacy Policy, and (iii) if applicable, the mechanism (such as opt-in, opt-out, or notice only) used to apply a later Privacy Policy to data or information previously collected under such Privacy Policy.

(d) There is no complaint to or audit, proceeding, investigation or claim against, or threatened against, the Company by any Governmental Body, or by any Person in respect of the collection, use or disclosure of Personal Information by any Person in connection with the business of the Company.

(e) No breach or violation of any such Privacy Policy has occurred or, to the Knowledge of the Company, is threatened.

(f) There has been no unauthorized or illegal uses of or access to any of the data or information in any of the Company Databases.

(g) The Company has complied at all times and in all respects with all of the Privacy Policies and all applicable Laws pertaining to privacy, User Data or Personal Information.

(h) None of (i) the execution, delivery, or performance of this Agreement or the Stockholder Related Agreements (or any of the other ancillary agreements), (ii) the consummation of any of the transactions contemplated by this Agreement or the Stockholder Related Agreements (or any of the other ancillary agreements), or (iii) the Purchaser’s possession or use of the User Data or any data or information in any of the Company Databases, will result in any breach or violation of any Privacy Policy or any Laws pertaining to privacy, User Data or Personal Information.
Section 2.23 Manufacturing. All of the manufacturing facilities and operations of the Company are in compliance in all material respects with applicable standards and regulations of the International Organization for Standardization (“ISO”) and the FDA, including current good manufacturing practices. No event has occurred that allows, or with or without notice or lapse of time or both, would allow, revocation or termination of any ISO or FDA certification or registration of the Company’s manufacturing facilities. The Company has not received any unresolved FDA Form 483, notice of adverse filing, warning letter, untitled letter or other correspondence or notice from the FDA or any other Governmental Body, alleging or asserting noncompliance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.).

Section 2.24 Regulatory Filings. The Company has made all required registrations and filings with and submissions to all applicable Governmental Bodies relating to the operation of the business of the Company, including without limitation. There is no false or misleading information or significant omission in any product application or other submission to the FDA or any other comparable Governmental Body. All such registrations, filings and submissions were in compliance in all material respects with all Laws and other requirements when filed. No material deficiencies have been asserted by any such applicable Governmental Bodies with respect to such registrations, filings or submissions and no facts or circumstances exist which would indicate that a material deficiency may be asserted by any such authority with respect to any such registration, filing or submission. The Company has delivered to the Purchaser copies of (a) all material reports of inspection observations, (b) all material establishment inspection reports, (c) all material warning letters, and (d) any other material documents received the Company from the FDA or any other Governmental Body relating to the business of the Company that assert ongoing material lack of compliance with any laws (including regulations promulgated by the FDA and any other Governmental Body) by the Company.

Section 2.25 Product Candidates.

(a) Each of the Company’s products and product candidates is being, and at all times has been, developed, tested, manufactured, processed, labeled, stored, transported and distributed, as applicable, in compliance in all material respects with all applicable Laws, including those requirements relating to current good manufacturing practices, good laboratory practices and good clinical practices.

(b) The pre-clinical and clinical trials (including any post-marketing studies) conducted by or on behalf of the Company were, and if still pending, are, being conducted in all material respects in accordance with all clinical protocols, informed consents and applicable Laws. The Company has not been notified by the FDA or any other Governmental Body of any restriction on the pre-clinical or clinical trials conducted or currently being conducted by or on behalf of the Company. The descriptions of, protocols for, and data and other results of, the pre-clinical and clinical trials conducted or currently being conducted by or on behalf of the Company that have been provided to the Purchaser are true, correct and complete.

(c) The Company has fulfilled and performed its obligations under each FDA Registration in all material respects, and no material event has occurred or condition or state of facts exists which would constitute a breach or default or would cause revocation, suspension, limitation or termination of any such FDA Registration or would result in any other impairment of the rights of the holder of any such FDA Registration. No loss or expiration of any FDA Registration is pending or, to the Knowledge of the Company, threatened, other than expiration of any FDA Registration in accordance with the terms thereof, and there is no circumstance that would reasonably be expected to cause such FDA Registration to not be renewable upon expiration to the extent permitted by law, as needed. To the Knowledge of the Company, any third-party that is a supplier, manufacturer, or contractor for the Company is in compliance with all FDA Registrations or any comparable Governmental Body.

(d) Section 2.25(d) of the Disclosure Schedule sets forth a true, correct and complete list of all of the Company’s products and product candidates, noting, where applicable, (i) the phase as of the date of this Agreement of clinical trial or development each product or product candidate is in, and (ii) those products or product candidates where FDA and/or other regulatory approval, including foreign approvals, has been applied for and/or received, and listing the application made and/or the approval or decision thereon obtained. The Company will, within 30 days of the date of this Agreement, provide to the Purchaser true, correct and complete copies of, without limitation, (A) any investigational new drug applications or new drug applications submitted to the FDA or any other Governmental Body by or on behalf of the
Company, including any supplements thereto, (B) all final study results and/or reports relating to products or product candidates, (C) all correspondence to or from the FDA or other Governmental Bodies, including meeting minutes and records of material contacts, (D) all documents in the Company’s possession related to inspections by the FDA or other Governmental Bodies, and (E) all information relating to adverse drug experiences obtained or otherwise received by the Company from any source with respect to the products or product candidates.

Section 2.26 Full Disclosure. Neither this Agreement nor the Disclosure Schedule (a) contains any representation, warranty or information that is false or misleading with respect to any fact, or (b) omits to state any fact necessary in order to make the representations, warranties and information contained in this Agreement and the Disclosure Schedule, in the light of the circumstances under which such representations, warranties and information were or will be made or provided, not false or misleading.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF EACH STOCKHOLDER

Except as set forth on the Disclosure Schedule, each Stockholder hereby, severally and not jointly, represents and warrants to the Purchaser, as of the date of this Agreement and as of the Closing Date, as set forth below; provided, however, that the representations and warranties contained in Section 3.14 are hereby made to the Purchaser solely by Dr. Junghans.

Section 3.1 Authority, No Conflict; Required Filings and Consents.

(a) The Stockholder has full power and authority to do and perform all acts and things to be done by it under this Agreement. The Stockholder has all requisite power and authority to enter into this Agreement and any Stockholder Related Agreement to which it is a party, perform its obligations under this Agreement and any Stockholder Related Agreement to which it is a party and to consummate the transactions contemplated by this Agreement and any Stockholder Related Agreement to which it is a party. This Agreement has been duly executed and delivered by the Stockholder and constitutes the legal, valid and binding obligation of the Stockholder, enforceable against the Stockholder in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to creditors’ rights generally, and (ii) the availability of injunctive relief and other equitable remedies.

(b) Neither the execution, delivery or performance by the Stockholder of this Agreement or any of the Stockholder Related Agreements, nor the consummation of the transactions contemplated by this Agreement or any of the Stockholder Related Agreements, will directly or indirectly (with or without notice or lapse of time, or both): (i) contravene, conflict with, or result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of modification, termination, cancellation or acceleration of any obligation or loss of any material benefit) under, require notice to any Person or a consent or waiver under, constitute a change in control under, require the payment of a fee or penalty under or result in the creation or imposition of any Lien upon or with respect to any asset owned or used by the Stockholder under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, Contract or other agreement, instrument or obligation to which the Stockholder is a party or by which it or any of its properties or assets may be bound; (ii) contravene, conflict with or violate, or give any Person the right to challenge any of the transactions contemplated by this Agreement or any of the Stockholder Related Agreements or to exercise any remedy or obtain any relief under, any Law or any order, writ, injunction, judgment or decree to which the Stockholder is subject; or (iii) 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 Stockholder or that otherwise relates to the business of the Stockholder or to any of the assets owned, used or controlled by the Stockholder.

Section 3.2 Ownership; Title to Shares.

(a) The Stockholder is the record and beneficial owner of the Shares shown as owned by the Stockholder on Section 3.2 of the Disclosure Schedule. The Stockholder has, and immediately prior to the Closing, will have, good and valid title to the Shares to be sold by the Stockholder pursuant to this Agreement, free and clear of all Liens.
(b) Upon: (i) receipt by the Stockholder of the Stockholder’s portion of the Purchaser Stock Consideration in accordance with Section 1.4, and (ii) transfer of the Shares owned by the Stockholder to the Purchaser in accordance with the terms of this Agreement, the Purchaser will receive good and valid title to such Shares, free and clear of all Liens.

(c) There are no options, warrants, equity securities, calls, rights, commitments or agreements of any character to which the Stockholder is a party or by which the Stockholder is bound obligating the Stockholder to exchange, transfer, deliver or sell, or cause to be exchanged, transferred, delivered or sold, the Shares or other equity interests of the Company owned by the Stockholder or any security or rights convertible into or exchangeable or exercisable for any such Shares or other equity interests. The Stockholder is not a party to or bound by any agreements or understandings with respect to the voting (including pooling agreements, voting trusts and proxies) or sale or transfer (including agreements imposing transfer restrictions) of any of the Shares or other equity interests of the Company owned by the Stockholder.

Section 3.3 Litigation. There are no Legal Proceedings pending or, to the Knowledge of the Stockholder, threatened that relate to the ownership of any capital stock of the Company, or any option or other right to the capital stock of the Company, or any right to receive consideration as a result of this Agreement, and there is no reasonable basis for any of the foregoing. There are no actions, suits, proceedings (including any arbitration proceedings), orders, investigations or claims pending or, to the Knowledge of the Stockholder, threatened against or affecting the Stockholder in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with the transactions contemplated by this Agreement.

Section 3.4 Brokerage and Transaction Bonuses. There are no claims for brokerage commissions, finders’ fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement binding upon the Stockholder. The Stockholder shall pay, and hold the Company, the Purchaser and its Affiliates harmless against, any liability, loss or expense (including reasonable attorneys’ fees and out of pocket expenses) arising in connection with any such claim, brokerage commission, finders’ fee or special bonus or other similar compensation.

Section 3.5 Restricted Securities. The Stockholder understands that the shares of Purchaser Common Stock and the Sorrento Common Stock have not been, and will not be, registered under the Securities Act, by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Stockholder’s representations as expressed herein. The Stockholder understands that the shares of Purchaser Common Stock and Sorrento Common Stock are “restricted securities” under applicable U.S. federal and state securities laws and that, pursuant to these laws, the Stockholder must hold the shares of Purchaser Common Stock and Sorrento Common Stock indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. The Stockholder acknowledges that the Purchaser and Sorrento have no obligation to register or qualify the Purchaser Common Stock or the Sorrento Common Stock for resale. The Stockholder further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Purchaser Common Stock and the Sorrento Common Stock, and on requirements relating to the Purchaser and Sorrento which are outside of the Stockholder’s control, and which the Purchaser and Sorrento are under no obligation and may not be able to satisfy.

Section 3.6 No Public Market. The Stockholder understands that no public market now exists for the Purchaser Common Stock, and that the Company has made no assurances that a public market will ever exist for the Purchaser Common Stock.

Section 3.7 Accredited Investor. The Stockholder is an “accredited investor” as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.
Section 3.8 Investment Experience. The Stockholder represents that he, she or it is a sophisticated investor experienced in evaluating and investing in private placement transactions of securities of companies in similar stage of development as the Purchaser and Sorrento and acknowledges that the Stockholder can bear the economic risk of its investment for an indefinite period of time, and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the investment in the Purchaser Common Stock and the Sorrento Common Stock.

Section 3.9 Foreign Investors. If the Stockholder is not a United States person (as defined by Section 7701(a)(30) of the Code), the Stockholder hereby represents that he, she or it has satisfied himself, herself or itself as to the full observance of the laws of his, her or its jurisdiction in connection with any invitation to subscribe for the Purchaser Common Stock or the Sorrento Common Stock or any use of this Agreement, including (a) the legal requirements within its jurisdiction for the purchase of the Purchaser Common Stock and the Sorrento Common Stock, (b) any foreign exchange restrictions applicable to such purchase, (c) any governmental or other consents that may need to be obtained, and (d) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale or transfer of the Purchaser Common Stock and the Sorrento Common Stock. The Stockholder’s beneficial ownership of the Purchaser Common Stock or the Sorrento Common Stock will not violate any applicable securities or other laws of the Stockholder’s jurisdiction.

Section 3.10 No General Solicitation. Neither the Stockholder, nor any of his, her or its officers, managers, employees, agents, members or partners has either directly or indirectly, including through a broker or finder (a) engaged in any general solicitation, or (b) published any advertisement in connection with the offer and sale of the Purchaser Common Stock or the Sorrento Common Stock.

Section 3.11 Residence. The Stockholder resides in the state or province identified in the address of the Stockholder set forth on Section 3.11 of the Disclosure Schedule. The state or province in which the Stockholder resides is not a community property state.

Section 3.12 Legends. The Stockholder understands that the Purchaser Common Stock and the Sorrento Common Stock acquired hereunder and any securities issued in respect of or exchange therefor may bear any one or more of the following legends: (a) any legend required by the securities laws of any state to the extent such laws are applicable to the Purchaser Common Stock or the Sorrento Common Stock represented by the certificate so legended, (b) customary legends to the effect that the Purchaser Common Stock and the Sorrento Common Stock have not been registered under the Securities Act and that the transfer thereof may be accordingly restricted, and (c) the legend set forth in Section 5.14.

Section 3.13 Investment Purpose; Disclosure of Information.

(a) The Stockholder has requested, received, reviewed and considered all the information the Stockholder deems necessary, appropriate or relevant as a prudent and knowledgeable investor in evaluating the investment in Purchaser Common Stock and the Sorrento Common Stock. The Stockholder further represents that the Stockholder has had an opportunity to ask questions of and receive answers from the Purchaser regarding the terms and conditions of the offering of the shares of Purchaser Common Stock and the Sorrento Common Stock and the business, prospects and financial condition of the Purchaser and Sorrento necessary to verify the accuracy of any information furnished to the Stockholder or to which the Stockholder had access.

(b) The Stockholder is acquiring the shares of Purchaser Common Stock or Sorrento Common Stock pursuant to this Agreement in the ordinary course of the Stockholder’s business and for the Stockholder’s own account for investment purposes only and with no present intention of distributing any Purchaser Common Stock or Sorrento Common Stock, and no arrangement or understanding exists with any other persons regarding the distribution of Purchaser Common Stock or Sorrento Common Stock.

Section 3.14 Assignment.

(a) The Stockholder has assigned to the Company all of the Stockholder’s rights, title and interest in and to any rights to “Research Products” (as defined in the 1993 IM MTA and the 1998 MTA), “Materials” (as defined in the 1993
Repligen MTA) and “Inventions” (as defined in the Assignment of Rights Agreement) and all related Intellectual Property Rights or other rights to own, transfer, license and otherwise exploit any derivative products from any of the research materials that the Stockholder may have rights to under the following agreements:

(i) Material Transfer Agreement between New England Deaconess Hospital and Immunomedics, Inc. of September 17, 1993 (the “1993 IM MTA”);

(ii) Materials Transfer Agreement between Beth Israel Deaconess Medical Center and Northwest Biotherapeutics, L.L.C. of April 9, 1998 (the “1998 MTA”);

(iii) Materials Transfer Agreement among New England Deaconess Hospital, The Scripps Research Institute and Repligen Corporation of April, 1993 (the “1993 Repligen MTA”); and

(iv) Assignment of Rights and Reimbursement of Legal Expenses Agreement of April 14, 2015 between Beth Israel Deaconess Medical Center, Inc. and Richard Junghans, M.D., Ph.D. (the “Assignment of Rights Agreement” and, together with the 1993 IM MTA, the 1998 MTA and the 1993 Repligen MTA, the “IP-Related Agreements”).

To the extent required by any of the IP-Related Agreements, and as directed by the Purchaser, the Stockholder shall seek the issuance of waivers or declination of licensing and other rights by (A) Immunomedics, Inc. under the 1993 IM MTA; (B) Northwest Biotherapeutics, L.L.C. under the 1998 MTA; (C) Repligen/TSRI under the 1993 Repligen MTA; and (D) Beth Israel Deaconess Medical Center, Inc. under the Assignment of Rights Agreement; provided that the consummation of the transactions set forth herein, including without limitation the issuance of the Purchaser Stock Consideration shall not be conditioned upon obtaining any such waiver or declination.

(b) All of the Stockholder’s right, title and interest in and to Intellectual Property Rights or other rights to own, transfer, license and otherwise exploit any derivative products from any of the research materials that are the subject of or related to the IP-Related Agreements have been assigned to the Company, free and clear of any Lien.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Company and each of the Stockholders, as of the date of this Agreement and as of the Closing Date, as set forth below.

Section 4.1 Organization and Good Standing. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, has all requisite and necessary power and authority to own, lease, use and operate its properties and assets and to carry on and conduct its business as now being conducted and as proposed to be conducted as of the Closing Date and is in good standing as a foreign corporation (or equivalent status in the relevant jurisdiction) in each jurisdiction in which the character of the properties it owns, operates or leases or the nature of its activities makes such qualification necessary or advisable. The Purchaser has full corporate power and authority to do and perform all acts and things to be done by it under this Agreement.

Section 4.2 Authority, No Conflict; Required Filings and Consents.

(a) The Purchaser has all requisite corporate power and authority to enter into this Agreement and any Purchaser Related Agreement to which it is a party, perform its obligations under this Agreement and any Purchaser Related Agreement to which it is a party and to consummate the transactions contemplated by this Agreement and any Purchaser Related Agreement to which it is a party. The execution and delivery of this Agreement and any Purchaser Related Agreement to which it is a party and the consummation of the transactions contemplated by this Agreement and any Purchaser Related Agreement to which it is a party by the Purchaser have been duly authorized by all necessary corporate action on the part of the Purchaser, and no other corporate action or proceeding on the part of the Purchaser or its board of directors is necessary to authorize the execution, delivery or performance of this Agreement, any Purchaser Related Agreement to which it is a party or the transactions contemplated by this Agreement or any Purchaser Related Agreement to which it is a party. This Agreement has been duly executed and delivered by the Purchaser and constitutes
the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to creditors’ rights generally, and (ii) the availability of injunctive relief and other equitable remedies.

(b) Neither the execution, delivery or performance by the Purchaser of this Agreement or any of the Purchaser Related Agreements, nor the consummation of the transactions contemplated by this Agreement or any of the Purchaser Related Agreements, will directly or indirectly (with or without notice or lapse of time, or both): (i) contravene, conflict with, or result in any violation or breach of, any of the Purchaser’s Organizational Documents, (ii) contravene, conflict with, or result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of modification, termination, cancellation or acceleration of any obligation or loss of any material benefit) under, require notice to any Person or a consent or waiver under, constitute a change in control under, require the payment of a fee or penalty under or result in the creation or imposition of any Lien upon or with respect to any asset owned or used by the Purchaser under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, Contract or other agreement, instrument or obligation to which the Purchaser is a party or by which it or any of its properties or assets may be bound, (iii) contravene, conflict with or violate, or give any Person the right to challenge any of the transactions contemplated by this Agreement or any of the Purchaser Related Agreements or to exercise any remedy or obtain any relief under, any Law or any order, writ, injunction, judgment or decree to which the Purchaser is subject, or (iv) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Authorization that is held by the Purchaser or that otherwise relates to the business of the Purchaser or to any of the assets owned, used or controlled by the Purchaser.

(c) No Governmental Authorization, or registration, declaration, notice or filing with, any Governmental Body is required by or with respect to the Purchaser: (i) in connection with the execution and delivery of this Agreement or any of the Purchaser Related Agreements by the Purchaser or the consummation by the Purchaser of the transactions contemplated by this Agreement or any of the Purchaser Related Agreements, or (ii) necessary for the Purchaser to operate its business immediately after the Closing in the same manner as operated immediately prior to the Closing after giving effect to the consummation of the transactions contemplated by this Agreement and the Purchaser Related Agreements.

ARTICLE V
CERTAIN COVENANTS AND AGREEMENTS

Section 5.1 Access and Investigation. During the period from the date of this Agreement to the Closing Date (the “Pre-Closing Period”), the Company shall (and the Stockholders hereby covenant with and undertake to the Purchaser that they shall, and shall cause their Affiliates and Representatives to cause the Company to): (a) provide the Purchaser and the Purchaser’s Representatives with reasonable access to the Company’s Representatives, personnel, properties and assets and to all existing books, records, Tax Returns, work papers and other documents and information relating to the Company, and (b) provide the Purchaser and the Purchaser’s Representatives with copies of such books, records, Tax Returns, work papers and other documents and information regarding the Company as the Purchaser may reasonably request.

Section 5.2 Operation of the Company’s Business.

(a) During the Pre-Closing Period, the Company shall (and the Stockholders shall cause the Company to): (i) ensure that the Company conducts its business and operations (A) in the ordinary course of business consistent with past practice, and (B) in compliance with all applicable Laws and the requirements of all Material Contracts and Governmental Authorizations held by the Company; (ii) use best efforts to ensure that the Company preserves intact its current business organization, keep available the services of its current officers, directors and consultants and maintain its relations and goodwill with all suppliers, customers, landlords, creditors, licensors, licensees, consultants and other Persons having business relationships with the Company; (iii) maintain the books, records and consolidated financial statements of the Company in accordance with GAAP and consistent with past practice; (iv) provide all notices, assurances and support required by any Company Contract in order that no condition under such Company Contract occurs which could
result in, or could increase the likelihood of any transfer or disclosure by the Company of any Intellectual Property Rights; and (v) keep in full force and effect (with the same scope and limits of coverage) all insurance policies in effect as of the date of this Agreement covering all material assets of the Company.

(b) During the Pre-Closing Period, the Company shall not, and the Stockholders shall cause the Company not to (without the prior written consent of the Purchaser):

(i) (A) declare, accrue, set aside or pay any dividends on, or make any other distributions (whether in cash, stock, shares or property) in respect of, any of its capital stock or other equity or voting interests, (B) authorize for issuance or issue and deliver any additional shares of its capital stock or securities convertible into or exchangeable for shares of its capital stock, or grant any right, option or other commitment for the issuance of its capital stock or of such securities, (C) split, combine or reclassify any of its shares of capital stock or other equity or voting interests, or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or other equity or voting interests, (D) purchase, redeem or otherwise acquire any of its capital stock or any other securities of the Company or any Company Rights (including any restricted stock except pursuant to forfeiture conditions of such restricted stock), or (E) take any action that would result in any change of any term (including any conversion price thereof) of any debt security of the Company;

(ii) amend or permit the adoption of any amendment to the Organizational Documents of the Company, or effect, become a party to or authorize any Acquisition Transaction, recapitalization, reclassification of shares, stock split, reverse stock split or similar transaction;

(iii) recognize any labor union or adopt or enter into any collective bargaining agreement or other labor union Contract;

(iv) adopt a plan of complete or partial liquidation or dissolution or resolutions providing for or authorizing such a liquidation or a dissolution;

(v) form any Subsidiary or acquire any equity interest or other interest in any other Entity;

(vi) make any capital expenditure outside the ordinary course of business or make any single capital expenditure in excess of $5,000; provided, however, that the maximum amount of all capital expenditures made on behalf of the Company, taken as a whole, during the Pre-Closing Period shall not exceed $10,000 in the aggregate;

(vii) enter into or become bound by, or permit any of the assets owned or used by it to become bound by, any Material Contract or any Contract, lease, agreement or instrument that would be required to be set forth on Section 2.12(a) of the Disclosure Schedule if it were entered into on or prior to the date of this Agreement, or amend or terminate, or waive or exercise any material right or remedy under, any Material Contract or any Contract, lease, agreement or instrument that would be required to be set forth on Section 2.12(a) of the Disclosure Schedule if it were entered into on or prior to the date of this Agreement;

(viii) acquire, lease or license any right or other asset from any other Person or sell or otherwise dispose of, or lease, license or encumber, any right or other asset to any other Person (except in each case for assets acquired, leased, licensed, encumbered or disposed of by the Company in the ordinary course of business consistent with past practice and not having a value, or not requiring payments to be made or received, in excess of $5,000 individually, or $10,000 in the aggregate), or waive or relinquish any claim or right;

(ix) delay any regularly-scheduled maintenance of the Company’s assets, or otherwise take any action with respect to such assets outside of the ordinary course of business or inconsistent with the Company’s past practice;

(x) repurchase, repay or prepay any Indebtedness, or incur any Indebtedness in excess of $5,000, or guarantee any Indebtedness of another Person, guarantee any debt securities of another Person, enter into any “keep well” or other agreement to maintain any financial statement condition of another Person or enter into any arrangement having the economic effect of any of the foregoing;
(xi) grant, create, incur or suffer to exist any Lien on the assets of the Company that did not exist on the date of this Agreement or write down the value of any asset or investment on the books or records of the Company, except for depreciation and amortization in the ordinary course of business consistent with the Company’s past practice;

(xii) make any loans, advances or capital contributions to, or investments in, any other Person;

(xiii) increase in any manner the compensation or benefits of, or pay any bonus to, any employee, officer, director or independent contractor of the Company;

(xiv) except as required to comply with applicable Laws (A) pay to any employee, officer, director or independent contractor of the Company any benefit not provided for under any Contract in effect on the date of this Agreement, (B) adopt any Employee Plan, (C) take any action to fund or in any other way secure the payment of compensation or benefits under any Contract or Employee Plan, or (D) take any action to accelerate the vesting or payment of any compensation or benefit under any Contract or Employee Plan;

(xv) hire any employee, or engage any independent contractor whose relationship may not be terminated by the Company on 30 days’ notice or less;

(xvi) except as required by GAAP or applicable Laws, make or change any Tax election, change its fiscal year, revalue any of its material assets or adopt or make any changes in financial or Tax accounting methods, principles or practices;

(xvii) enter into any closing agreement or Tax ruling, settle or compromise any Tax claim or assessment, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment, or file any Tax Return (including any amended Tax Return) unless such Tax Return has been provided to the Purchaser for review within a reasonable period prior to the due date for filing and the Purchaser has consented to such filing;

(xviii) commence, settle or compromise any Legal Proceedings related to or in connection with the Company’s business;

(xix) (A) dispose of or permit to lapse any ownership and/or right to the use of, or fail to protect, defend and maintain the ownership, validity and registration of, the Company Intellectual Property, or (B) dispose of or disclose to any Person, any Confidential Information;

(xx) take or omit to take any action that could, or is reasonably likely to, (A) result in any of its representations and warranties set forth in this Agreement or any Stockholder Related Agreement to which it is a party being or becoming untrue in any material respect at any time at or prior to the Closing, (B) result in any of the conditions to the consummation of the transactions contemplated by this Agreement not being satisfied, (C) cause the Company to be unable to conduct its business after the Closing in accordance with its past practice and as contemplated to be conducted as of the Closing after giving effect to the transactions contemplated by this Agreement, or (D) constitute or result in a breach of any of the provisions of this Agreement; or

(xxii) authorize, agree, commit or enter into any Contract to take any of the actions described in clauses (i) through (xx) of this Section 5.2(b).

Section 5.3 Notification. During the Pre-Closing Period, the Company and the Stockholders shall promptly notify the Purchaser in writing of:

(a) the discovery by the Company or any Stockholder 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 an inaccuracy in or breach of any representation or warranty made by the Company or any Stockholder in this Agreement;

(b) any event, condition, fact or circumstance that occurs, arises or exists after the date of this Agreement and that would cause or constitute an inaccuracy in or breach of any representation or warranty made by the Company or any
Stockholder in this Agreement if (i) 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 (ii) such event, condition, fact or circumstance had occurred, arisen or existed on or prior to the date of this Agreement;

(c) any breach of any covenant or obligation of the Company or any Stockholder under this Agreement, any Stockholder Related Agreement or any agreements contemplated by this Agreement or the Stockholder Related Agreements;

(d) any event, condition, fact or circumstance that has made, could reasonably be expected to make, or is likely to make, the timely satisfaction of any condition set forth in this Agreement impossible or unlikely or that has had or could reasonably be expected to have a Company Material Adverse Effect; and

(e) (i) any notice or other communication from any Person alleging that the consent or approval of such Person is or may be required in connection with the transactions contemplated by this Agreement, and (ii) any Legal Proceeding or claim threatened, commenced or asserted against or with respect to the Company or the transactions contemplated by this Agreement.

No notification given to the Purchaser pursuant to this Section 5.3 shall limit or otherwise affect any of the representations, warranties, covenants or obligations of the Company or the Stockholders, or any of the rights of the Purchaser, contained in this Agreement.

Section 5.4 No Negotiation.

(a) Until the earlier of the Closing or the termination of this Agreement pursuant to Article IX, neither the Company nor any of the Stockholders shall directly or indirectly, and shall not authorize or permit the Company or any Representative of the Company to, directly or indirectly (i) solicit, initiate, encourage, induce or facilitate the making, submission or announcement of any inquiries or the making of any proposal or offer contemplating or otherwise relating to an Acquisition Transaction (an “Acquisition Proposal”) or take any action that could reasonably be expected to lead to an Acquisition Proposal, (ii) furnish any information regarding the Company to any Person in connection with or in response to an Acquisition Proposal or an inquiry or indication of interest that could reasonably be expected to lead to an Acquisition Proposal, (iii) engage in discussions or negotiations with any Person with respect to a potential Acquisition Transaction or an Acquisition Proposal, (iv) approve, endorse or recommend any Acquisition Proposal or Acquisition Transaction, or (v) enter into any letter of intent or similar document or any Contract contemplating or otherwise relating to any Acquisition Proposal or Acquisition Transaction. Without limiting the generality of the foregoing, the Company and the Stockholders acknowledge and agree that any violation of or the taking of any action inconsistent with any of the restrictions set forth in the preceding sentence by any Representative of the Company, whether or not such Representative is purporting to act on behalf of the Company, shall be deemed to constitute a breach of this Section 5.4 by the Company.

(b) The Company and the Stockholders shall promptly (and in no event later than 24 hours after receipt of any Acquisition Proposal, any inquiry or indication of interest that could lead to an Acquisition Proposal or any request for nonpublic information) advise the Purchaser orally and in writing of any Acquisition Proposal, any inquiry or indication of interest that could reasonably be expected to lead to an Acquisition Proposal or any request for nonpublic information relating to the Company (including the identity of the Person making or submitting such Acquisition Proposal, inquiry, indication of interest or request, and the terms thereof) that is made or submitted by any Person during the Pre-Closing Period. The Company and the Stockholders shall keep the Purchaser fully informed with respect to the status of any such Acquisition Proposal, inquiry, indication of interest or request and any modification or proposed modification thereto.

(c) The Company and the Stockholders shall, and shall cause each of their Representatives to, immediately cease and cause to be terminated any existing discussions with any Person (other than the Purchaser) that relate to any Acquisition Proposal. The Company shall promptly request each Person that has executed, within 12 months prior to the date of this Agreement, a confidentiality, standstill or similar agreement in connection with its consideration of a possible Acquisition Transaction to return or certify the destruction of all Confidential Information previously furnished to such Person by or on behalf of the Company.
Section 5.5 Related Party Transactions. The Company shall, prior to the Closing, cause to be paid to the Company all amounts owed to the Company by any Stockholder or any Related Party. At and as of the Closing Date, any debts of the Company owed to any of the Stockholders or to any Related Party shall be canceled.

Section 5.6 Public Announcements. During the Pre-Closing Period, the Company and the Stockholders shall not (and the Company shall not permit any of its Representatives to) issue any press release or make any public statement regarding this Agreement or any of the transactions contemplated by this Agreement without the Purchaser’s prior written consent; provided, however, that nothing in this Agreement shall be deemed to prohibit the Company from making any public disclosure that the Company deems necessary or appropriate under applicable Law; provided, further, without the prior written consent of the Purchaser, neither the Company nor any Stockholder shall at any time disclose to any Person the fact that this Agreement has been entered into or any of the terms of this Agreement other than to such parties’ advisors who the Company or any Stockholder, as applicable, reasonably determines needs to know such information for the purpose of advising the Company or such Stockholder, it being understood that such advisor will be informed of the confidential nature of this Agreement and the terms of this Agreement and will be directed to treat such information as confidential in accordance with the terms of this Agreement.

Section 5.7 Reasonable Efforts; Further Assurances; Cooperation. Subject to the other provisions of this Agreement, each party shall use its reasonable, good faith efforts to perform its obligations under this Agreement and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable under applicable Law to cause the transactions contemplated by this Agreement to be effected as soon as practicable, but in any event on or prior to the Expiration Date, in accordance with the terms of this Agreement, and shall cooperate fully with each other party and its Representatives in connection with any step required to be taken as a part of its obligations under this Agreement, including the following:

(a) Each party shall promptly make its filings and submissions and shall take all actions necessary, proper or advisable under applicable Laws to obtain any required approval of any Governmental Body with jurisdiction over the transactions contemplated by this Agreement (except that the Purchaser shall have no obligation to take or consent to the taking of any action required by any such Governmental Body that could adversely affect the business or assets of the Purchaser or the transactions contemplated by this Agreement or the Purchaser Related Agreements). The Company shall provide to the Purchaser all information required for any application or other filing to be made by the Company pursuant to any applicable Law in connection with the transactions contemplated by this Agreement;

(b) Each party shall promptly notify the other parties of (and provide written copies of) any communications from or with any Governmental Body in connection with the transactions contemplated by this Agreement;

(c) In the event any claim, action, suit, investigation or other proceeding by any Governmental Body or other Person is commenced that questions the validity or legality of the transactions contemplated by this Agreement or seeks damages in connection therewith, the parties shall (i) cooperate and use all reasonable efforts to defend against such claim, action, suit, investigation or other proceeding, (ii) in the event an injunction or other order is issued in any such action, suit or other proceeding, use all reasonable efforts to have such injunction or other order lifted, and (iii) cooperate reasonably regarding any other impediment to the consummation of the transactions contemplated by this Agreement; and

(d) The Company shall, at the Company’s sole cost and expense, give all notices to third parties and use its best efforts (in consultation with the Purchaser) to obtain all third-party consents, as directed by the Purchaser or Sorrento, (i) necessary, proper or advisable to consummate the transactions contemplated by this Agreement, (ii) required to be given or obtained, or (iii) required to prevent a Company Material Adverse Effect, whether prior to, on or following the Closing Date.

Section 5.8 Tax Matters.

(a) Tax Periods Ending on or Before the Closing Date. The Purchaser shall prepare or cause to be prepared and timely file or cause to be timely filed all Tax Returns for the Company for all Tax periods ending on or prior to the Closing Date that are due after the Closing Date (each, a “Pre-Closing Tax Period”).
(b) Tax Periods Beginning Before and Ending After the Closing Date. The Purchaser shall prepare or cause to be prepared and timely file or cause to be timely filed any Tax Returns of the Company for Tax periods that begin before the Closing Date and end after the Closing Date (each, a “Straddle Tax Period”).

(c) Payment of Taxes. The Stockholders shall be responsible for, and shall indemnify the Purchaser from and against, any Tax with respect to the Company that is attributable to a Pre-Closing Tax Period or to that portion of a Straddle Tax Period that ends on the Closing Date. Within five days prior to the due date for the payment of any such Tax, the Stockholders shall pay to the Purchaser an amount equal to such excess. For purposes of this Section 5.8, in the case of any Taxes that are imposed on a periodic basis and are payable for a Straddle Tax Period, the portion of such Tax that relates to the portion of such Taxable period ending on the Closing Date shall (i) in the case of any Taxes other than Taxes based upon or related to income or receipts, be deemed to be the amount of such Tax for the entire Tax period multiplied by a fraction the numerator of which is the number of days in the Tax period ending on the Closing Date and the denominator of which is the number of days in the entire Tax period, and (ii) in the case of any Tax based upon or related to income or receipts be deemed equal to the amount that would be payable if the relevant Tax period ended on the Closing Date.

(d) Cooperation on Tax Matters. The Purchaser, the Company and the Stockholders shall cooperate as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns pursuant to this Section 5.8 and any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party’s request) the provision of records and information that are reasonably relevant to any such audit, litigation or other proceeding and making employees or agents available on a mutually convenient basis to provide additional information and explanation of any material provided under this Section 5.8(d).

(e) Transfer Taxes. Any Taxes or recording fees payable as a result of the purchase and sale of the Shares or any other action contemplated by this Agreement (other than any federal, state, local or foreign Taxes measured by or based upon income or gains imposed upon the Purchaser) shall be paid by the Stockholders. The parties shall cooperate in the preparation, execution and filing of all returns, questionnaires, applications and other documents regarding Taxes and all transfer, recording, registration and other fees that become payable in connection with the transactions contemplated by this Agreement that are required or permitted to be filed at or prior to the Closing.

Section 5.9 Accounts and Notes Receivable. From and after the Closing, if any Stockholder receives or collects any Receivables, the Stockholder shall remit any such amounts to the Purchaser or the Company within five days of each day on which the Stockholder receives such sum.

Section 5.10 Cooperation with Financial Reporting. The Stockholders shall cooperate to the extent reasonably requested by the Purchaser after the Closing, in connection with the preparation and auditing of financials for the Company. The Stockholders shall provide all of the financial records and supporting documentation of the Company within 10 days following the Closing and shall make employees or agents available on a mutually convenient basis to provide additional information and explanation of any information provided under this Section 5.10.

Section 5.11 Release. In consideration for the Closing Consideration, as of and following the Closing Date, each Stockholder knowingly, voluntarily and unconditionally releases, forever discharges, and covenants not to sue the Company from or for any and all claims, causes of action, demands, suits, debts, obligations, liabilities, damages, losses, costs and expenses (including attorneys’ fees) of every kind or nature whatsoever, known or unknown, actual or potential, suspected or unsuspected, fixed or contingent, that such Stockholder has or may have, now or in the future, arising out of, relating to, or resulting from any act or omission, error, negligence, breach of contract, tort, violation of law, matter or cause whatsoever from the beginning of time to the Closing Date, including without limitation any claim related to Company Rights held by such Stockholder that are terminated as of the Closing; provided, however, that the foregoing release shall not apply to any claims arising out of this Agreement.
Section 5.12 Termination of Certain Agreements. Prior to the Closing, the Company shall terminate, or cause to be terminated, the agreements and arrangements set forth on SCHEDULE 5.12 (the “Excluded Contracts”), such that the Company shall not have any liability following the Closing related to such Excluded Contracts. Each such termination shall include a release of the Company, as applicable, from any and all liabilities and obligations arising out of, or related to, such Excluded Contract.

Section 5.13 Casualty. In the event of any loss, damage, or destruction to the assets or properties of the Company resulting in losses of $25,000 or greater, after the date of this Agreement and prior to the Closing, whether by fire, theft, vandalism, terrorism, flood, earthquake, force majeure or other cause or casualty (a “Casualty”), the Company shall promptly notify the Purchaser of the occurrence thereof. Upon receipt of such notice, the Purchaser shall have the right to terminate this Agreement in accordance with the provisions of Section 9.1(a)(iv). In the event of such Casualty, if the Purchaser chooses not to terminate the Agreement, at the option of the Stockholders’ Representative, the Stockholders shall have the right to (a) cause the Company to repair and restore the loss, damage or destruction before the Closing, in which event (i) the Stockholders shall cause the Company to restore such assets or properties to substantially the condition in which they existed immediately prior to the Casualty, (ii) the Stockholders shall be entitled, but not obligated, to postpone the Closing for up to 30 Business Days upon written notice of such postponement to the Purchaser, which notice shall specify a new date for the Closing, and (iii) if such repair and restoration work is not completed at the Closing, the Purchaser shall have the right to terminate this Agreement or proceed to the Closing, in which event the Estimated Purchase Price shall be reduced by the amount of the estimated cost of repair and restoration for such assets or properties, or (b) without repairing the Casualty, and without recourse or warranty, cause the Company to pay the Purchaser the amount of the deductible (or the self-insured retention) under the insurance policy of the Company covering such assets or properties, whereupon the Closing shall take place as if no Casualty had occurred and without any reduction in the Estimated Purchase Price. Notwithstanding any other provision of this Agreement to the contrary, any amount withheld from the Purchaser Stock Consideration pursuant to this Section 5.13 shall not also be recoverable pursuant to Article X.

Section 5.14 Restrictions on Transfers of Purchaser Common Stock. Each Stockholder hereby agrees that such Stockholder may not, in addition to any other applicable restrictions on transfer, without the Purchaser’s prior written consent, at any time on or prior to April 30, 2016, Transfer all or any portion of the shares of Purchaser Common Stock issued to such Stockholder pursuant to this Agreement. In furtherance of the foregoing, each Stockholder acknowledges and agrees that, until April 30, 2016, the shares of Purchaser Common Stock acquired under this Agreement and any securities issued in respect of or exchange therefor will bear the following legend:

“THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, AS SET FORTH IN A STOCK PURCHASE AGREEMENT AMONG THE COMPANY AND THE ORIGINAL HOLDERS OF THESE SHARES, A COPY OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE COMPANY.”

ARTICLE VI
CONDITIONS PRECEDENT TO THE OBLIGATIONS OF THE PURCHASER

The obligations of the Purchaser to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or written waiver by the Purchaser), at or prior to the Closing, of each of the following conditions:

Section 6.1 Accuracy of Representations. Each of the representations and warranties of the Company and the Stockholders contained in this Agreement and the Stockholder Related Agreements that are qualified as to materiality shall be true and correct in all respects, and each of the representations and warranties of the Company and each of the Stockholders contained in this Agreement and the Stockholder Related Agreements that are not so qualified shall be true and correct in all material respects, in each case as of the date of this Agreement and as of the Closing Date with the same force and effect as though made as of the Closing Date (except to the extent that any such representation and warranty expressly speaks as of a specific date, in which case the accuracy of such representation and warranty shall be determined as of such date).
Section 6.2 Performance of Covenants. Each of the covenants and obligations set forth in this Agreement that the Company and each of the Stockholders is required to comply with or perform at or prior to the Closing shall have been complied with or performed in all material respects.

Section 6.3 Company Compliance Certificate. The Company shall have delivered, or caused to be delivered, to the Purchaser a certificate executed by the President of the Company as to compliance with the conditions set forth in Sections 6.1, 6.2, 6.9 and 6.16 (the “Company Compliance Certificate”).

Section 6.4 Consents. All consents, approvals, orders or authorizations of, or registrations, declarations or filings with, any Person required in connection with the execution, delivery or performance of this Agreement or any of the Stockholder Related Agreements shall have been obtained by the Company, or made by or on behalf of the Company, at the Company’s sole cost and expense, and shall be in full force and effect, in each case in form and substance reasonably satisfactory to the Purchaser.

Section 6.5 Secretary’s Certificate. The Company shall have delivered a certificate, dated as of the Closing Date, signed by the Secretary of the Company, (a) attaching copies of the Organizational Documents, and any amendments thereto, of the Company, (b) attaching a true, correct and complete copy of the stock ledger of the Company from the date of its incorporation through the Closing Date, (c) certifying that attached thereto are true, correct and complete copies of actions by written consent or resolutions duly adopted by the board of directors of the Company which adopt this Agreement and authorize and approve the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement, (d) certifying that attached thereto are true, correct and complete copies of actions by written consent or resolutions duly adopted by the Stockholders of the Company which adopt this Agreement and any Stockholder Related Agreement and authorize and approve the execution, delivery and performance of this Agreement and each Stockholder Related Agreement and the consummation of the transactions contemplated by this Agreement, (e) certifying the good standing (or equivalent status in the relevant jurisdiction) of the Company in its jurisdiction of incorporation or organization and in each other jurisdiction where it is qualified to do business (or equivalent status in the relevant jurisdiction) and that there are no proceedings for the dissolution or liquidation of the Company, and (f) certifying the incumbency, signature and authority of the officers of the Company authorized to execute, deliver and perform this Agreement and all other documents, instruments or agreements related thereto executed or to be executed by the Company.

Section 6.6 Ancillary Agreements and Deliveries. The Company and the Stockholders shall have delivered, or caused to be delivered, to the Purchaser the following agreements and documents, each of which shall be in full force and effect as of the Closing and shall not have been amended or modified as of the Closing:

(a) certificates representing the Shares, duly endorsed in blank or accompanied by duly executed stock powers or other instruments of assignment requested by and in form and substance reasonably satisfactory to the Purchaser;

(b) the organizational record books, minute books and corporate seal of the Company;

(c) written resignations of the directors and officers of the Company, effective as of the Closing Date;

(d) a certificate in such form as may be reasonably requested by counsel to the Purchaser that complies with Treasury Regulation Section 1.1445-2(c)(3), accompanied by any appropriate notice to the Internal Revenue Service pursuant to Treasury Regulations Section 1.897-2(h);

(e) evidence, in form and substance reasonably satisfactory to the Purchaser, that each consent, approval, order or authorization of, or registration, declaration or filing with any Person required in connection with the execution, delivery or performance of this Agreement has been obtained or made and is in full force and effect;

(f) written evidence, reasonably satisfactory to the Purchaser, that the Company shall have complied with the covenants and agreements set forth in Section 5.5;
(g) duly executed stock powers and stock transfers in respect of all of the Shares together with the relevant share certificate in respect thereof (or, in the case of any lost, stolen, mutilated or destroyed certificates, an indemnity, in form satisfactory to the Purchaser, and, if requested by the Purchaser, delivery of a bond in such sum as the Purchaser may reasonably direct);

(h) an accredited investor questionnaire, in form reasonably satisfactory to the Purchaser, executed by each Stockholder; and

(i) all other documents required to be entered into by the Company and the Stockholders pursuant to this Agreement or reasonably requested by the Purchaser to convey the Shares to the Purchaser or to otherwise consummate the transactions contemplated by this Agreement or any Stockholder Related Agreement.

Section 6.7 Release of Liens. The Stockholders shall have delivered, or caused to be delivered, to the Purchaser evidence reasonably satisfactory to the Purchaser that all Liens (other than Permitted Liens) affecting any of the assets of the Company have been released.

Section 6.8 Certain Covenants and Agreements. The Stockholders shall have delivered, or caused to be delivered, to the Purchaser evidence, reasonably satisfactory to the Purchaser, that the Company shall have complied with the covenants and agreements set forth in Sections 5.5 and 5.12.

Section 6.9 No Material Adverse Effect. There shall not have occurred a Company Material Adverse Effect, and no event shall have occurred or circumstance exist that, in combination with any other events or circumstances, could reasonably be expected to have a Company Material Adverse Effect.

Section 6.10 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated by this Agreement shall have been issued by any Governmental Body, and there shall not be any Law enacted or deemed applicable to the transactions contemplated by this Agreement that makes the transactions contemplated by this Agreement illegal or unduly burdensome to the Purchaser or would subject the Purchaser or the Company to sanctions if these transactions contemplated by this Agreement are consummated.

Section 6.11 No Litigation. There shall not be pending or threatened any Legal Proceeding by or before any Governmental Body or any other Person against the Purchaser, a Stockholder or the Company (a) seeking to restrain or prohibit the consummation of the transactions contemplated by this Agreement or any agreement entered into in connection with this Agreement, (b) seeking to restrain or prohibit the Purchaser’s direct or indirect ownership or operation of all or a significant portion of the business and assets of the Company, or to compel the Purchaser or any of its Subsidiaries or Affiliates to dispose of or hold separate any significant portion of the business or assets of the Company, (c) seeking to restrain or prohibit or make materially more costly the consummation of the transactions contemplated by this Agreement, or seeking to obtain from the Purchaser or the Company any damages in excess of $12,500, (d) seeking to impose limitations on the ability of the Purchaser to acquire or hold, or exercise full rights of ownership of the Shares, or (e) which otherwise could reasonably be expected to have a Company Material Adverse Effect.

Section 6.12 Restrictive Agreement. The Company shall have delivered to the Purchaser a restrictive agreement, in substantially the form of EXHIBIT B attached to this Agreement, executed by Dr. Junghans, and such restrictive agreement shall be in full force and effect as of the Closing, shall not have been amended or modified and shall not provide for or require the payment of any consideration to Dr. Junghans.

Section 6.13 Due Diligence Review. The Purchaser shall have completed the due diligence review of the business, results of operations, condition (financial and otherwise), prospects, assets and liabilities of the Company and its business and the results of such due diligence shall be satisfactory to the Purchaser in its sole and absolute discretion.

Section 6.14 Purchaser Board Approval. The board of directors of the Purchaser shall have authorized and approved the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement.
Section 6.15 Company Rights. All Company Rights shall have been exercised for Company Common Shares or shall have been cancelled with no liability to the Purchaser, the Company or their Affiliates, and the Purchaser shall have received evidence satisfactory to it of such exercise or cancellation.

Section 6.16 Termination of Specified Agreements. The Company shall cause all Excluded Contracts to be terminated effective as of the Closing Date without any further obligation of the Company or the Purchaser.

Section 6.17 No Indebtedness. As of the Closing Date, the outstanding Indebtedness of the Company shall be zero.

Section 6.18 CARgenix Closing. As of the Closing Date, all conditions to closing (the “CARgenix Closing”) the transactions contemplated by that certain Membership Interests Purchase Agreement (the “CARgenix Agreement”), by and among the Purchaser, CARgenix Holdings LLC, a Rhode Island and Providence Plantations limited liability company (“CARgenix”), the holders of membership interests of CARgenix, Jaymin Patel, an individual, as representative of the holders of membership interests of CARgenix, and Sorrento shall have been satisfied or waived, and the CARgenix Closing shall have occurred or will occur simultaneously with the Closing.

ARTICLE VII
CONDITIONS PRECEDENT TO OBLIGATIONS OF THE COMPANY AND THE STOCKHOLDERS

The obligations of the Company and the Stockholders to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or written waiver by the Stockholders’ Representative), at or prior to the Closing, of the following conditions:

Section 7.1 Accuracy of Representations. Each of the representations and warranties of the Purchaser contained in this Agreement that are qualified as to materiality shall be true and correct in all respects, and each of the representations and warranties of the Company contained in this Agreement that are not so qualified shall be true and correct in all material respects, in each case as of the date of this Agreement and as of the Closing Date with the same force and effect as though made as of the Closing Date (except to the extent that any such representation and warranty expressly speaks as of a specific date, in which case the accuracy of such representation and warranty shall be determined as of such date).

Section 7.2 Performance of Covenants. Each of the covenants and obligations set forth in this Agreement that the Purchaser is required to comply with or perform at or prior to the Closing shall have been complied with or performed in all material respects.

Section 7.3 Purchaser Compliance Certificate. The Purchaser shall have delivered, or caused to be delivered, to the Stockholders’ Representative a certificate executed by the Chief Executive Officer or Chief Financial Officer of the Purchaser as to compliance with the conditions set forth in Sections 7.1 and 7.2.

Section 7.4 Ancillary Agreements and Deliveries. The Purchaser shall have delivered, or caused to be delivered, to the Stockholders’ Representative the following deliverables, agreements and documents:

(a) the Closing Consideration, delivered in accordance with Section 1.2; and

(b) all other documents required to be entered into or delivered by the Purchaser at or prior to the Closing pursuant to this Agreement, each of which shall be in full force and effect as of the Closing and shall not have been amended or modified as of the Closing.

Section 7.5 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated by this Agreement shall have been issued by any Governmental Body, and there shall not be any Law enacted or deemed applicable to the transactions contemplated by this Agreement that makes the transactions contemplated by this Agreement illegal or unduly burdensome to the Purchaser or would subject the Purchaser or the Company to sanctions if this transactions contemplated by this Agreement are consummated.
Section 7.6 Consents. All consents approvals, orders or authorizations of, or registrations, declarations or filings with, any Governmental Body shall have been obtained.

ARTICLE VIII
CLOSING

Section 8.1 Closing. Unless otherwise mutually agreed in writing between the Purchaser and the Stockholders’ Representative, the Closing shall take place at the offices of Paul Hastings LLP, 1117 S. California Avenue, Palo Alto, California 94304, at 9:00 A.M. (Pacific Time) on the 2nd Business Day following the day on which the last to be satisfied or waived of the conditions set forth in Articles VI and VII shall be satisfied or waived in accordance with this Agreement (other than those conditions that by their terms are to be satisfied at the Closing, it being understood that the occurrence of the Closing shall remain subject to the satisfaction or waiver of such conditions at the Closing) and that the Company, the Stockholders and their legal counsels may participate remotely. The date on which the Closing actually takes place is referred to in this Agreement as the “Closing Date”.

Section 8.2 Stockholder and Company Closing Deliveries. At the Closing, the Stockholders and the Company, as applicable, shall deliver, or cause to be delivered, to the Purchaser, the deliverables, agreements and documents required pursuant to Section 6.6, each of which shall be in full force and effect.

Section 8.3 Purchaser Closing Deliveries. At the Closing, the Purchaser shall deliver, or cause to be delivered, to the Stockholders’ Representative the deliverables, agreements and documents required by Section 7.4, each of which shall be in full force and effect.

ARTICLE IX
TERMINATION

Section 9.1 Termination Events.
(a) This Agreement may be terminated prior to the Closing:

(i) by mutual written consent of the Purchaser and the Stockholders’ Representative;

(ii) by written notice from the Purchaser to the Stockholders’ Representative, if there has been a breach of any representation, warranty, covenant or agreement by the Company or the Stockholders, or any such representation or warranty shall become untrue after the date of this Agreement, such that the conditions in Sections 6.1 or 6.2 would not be satisfied and such breach is not curable or, if curable, is not cured within the earlier of (A) 10 days after written notice thereof is given by the Purchaser to the Stockholders’ Representative, and (B) the Expiration Date;

(iii) by written notice from the Stockholders’ Representative to the Purchaser, if there has been a breach of any representation, warranty, covenant or agreement by the Purchaser, or any such representation or warranty shall become untrue after the date of this Agreement, such that the conditions in Sections 7.1 or 7.2 would not be satisfied and such breach is not curable or, if curable, is not cured within the earlier of (A) 10 days after written notice thereof is given by the Stockholders’ Representative to the Purchaser, and (B) the Expiration Date;

(iv) by written notice from the Purchaser to the Stockholders’ Representative under the circumstances described in Section 5.13; or

(v) by written notice by the Stockholders’ Representative to the Purchaser or the Purchaser to the Stockholders’ Representative, as the case may be, in the event the Closing has not occurred on or prior to September 30, 2015 (the “Expiration Date”) for any reason other than delay or nonperformance of or breach by the party seeking such termination.

(b) Effect of Termination. In the event of termination of this Agreement pursuant to this Article IX, this Agreement shall forthwith become void and there shall be no liability on the part of any party to this Agreement or its
partners, officers, directors, Stockholders or members, except for obligations under Section 5.6 (Public Announcements), Section 12.2 (Fees and Expenses), Section 12.3 (Waiver; Amendment), Section 12.4 (Entire Agreement), Section 12.5 (Execution of Agreement; Counterparts; Electronic Signatures), Section 12.6 (Governing Law; Venue), Section 12.7 (WAIVER OF JURY TRIAL), Section 12.8 (Attorneys’ Fees), Section 12.9 (Assignment and Successors), Section 12.11 (Notices), Section 12.12 (Construction; Usage), Section 12.13 (Enforcement of Agreement), Section 12.14 (Severability), Section 12.15 (Schedules and Exhibits) and this Section 9.1, and the definitions used in each of the foregoing sections, including those set forth in EXHIBIT A attached to this Agreement, all of which shall survive such termination and the Termination Date. Notwithstanding the foregoing, nothing contained in this Agreement shall relieve any party from liability for any breach of this Agreement. Upon termination of this Agreement, each of the parties to this Agreement shall, in all events, be bound by and be subject to that certain Confidentiality Agreement, dated as of March 4, 2015, by and between Sorrento and Dr. Junghans (the “Confidentiality Agreement”); the terms of which each of the Purchaser and the Company has previously ratified and approved.

ARTICLE X
INDEMNIFICATION

Section 10.1 Indemnification Obligations of the Stockholders.

(a) The Stockholders, jointly and severally (collectively, the “Indemnifying Parties”), shall indemnify the Purchaser and its Affiliates (including the Company after the Closing), stockholders, officers, directors, managers, employees, agents, partners, Representatives, successors and assigns (collectively, the “Indemnified Parties”) and save and hold each of them harmless against and pay on behalf of or reimburse such Indemnified Parties as and when incurred for any loss, liability, demand, claim, action, cause of action, cost, damage, deficiency, Tax, penalty, fine or expense, whether or not arising out of third-party claims (including interest, penalties, reasonable attorneys’ fees and expenses and all amounts paid in investigation, defense or settlement of any of the foregoing) (collectively, “Losses”), which any such Indemnified Party may suffer, sustain or become subject to, as a result of, in connection with, arising out of, relating or incidental to or by virtue of:

(i) any inaccuracy in or breach of any representation or warranty of the Company or the Stockholders set forth in this Agreement or any of the Schedules or Exhibits attached to this Agreement, the Company Compliance Certificate or any other Stockholder Related Agreement, whether such representation or warranty is made as of the date of this Agreement or as of the Closing Date (without giving effect to any materiality, Company Material Adverse Effect or other similar qualification contained in such representation or warranty);

(ii) any non-fulfillment or breach of any covenant, agreement or undertaking made by the Company or the Stockholders in this Agreement or any of the Schedules or Exhibits attached to this Agreement, or in any Stockholder Related Agreement;

(iii) the Net Debt Adjustment Amount;

(iv) any fraud or intentional misrepresentation of the Company with respect to any representation, warranty or covenant of the Company contained in this Agreement, the Company Compliance Certificate or any other Stockholder Related Agreement;

(v) any liability or obligation of the Company for (i) any Taxes that are the responsibility of the Stockholders pursuant to Section 5.8(c), (ii) any Taxes incurred in any Tax period beginning after the Closing Date but arising from the settlement or other resolution with any Governmental Body of an asserted Tax liability which relates to any Tax period or portion thereof ending on or before the Closing Date, or (iii) the unpaid Taxes of any Person under Treasury Regulations Section 1.1502-6 (or any similar provision of other federal, provincial, state, local or foreign Law), as a transferee or successor, by Contract or otherwise, in each case whether or not disclosed to the Purchaser in any Exhibits or Schedules to this Agreement or otherwise;

(vi) the operations, actions or omissions of the Company prior to the Closing, other than the obligations of the Company under any Material Contracts or Governmental Authorizations held by the Company solely to the extent
such obligations were not required to be performed on or prior to the Closing Date and accrue and relate to the operation of the business of the Company subsequent to the Closing Date; and

(vii) any Legal Proceedings directly or indirectly relating to any breach, alleged breach, liability or other matter of the type referred to in clauses (i) through (vii) above (including any Legal Proceeding commenced by any Indemnified Party for the purpose of enforcing any of its rights under this Section 10.1).

(b) In the event that the Company suffers, incurs or otherwise becomes subject to any Losses as a result of or in connection with any inaccuracy in or breach or alleged breach of any representation, warranty, covenant or obligation of the Company or the Stockholders or other matter referred to in Section 10.1(a), then (without limiting any of the rights of the Purchaser as an Indemnified Party) the Purchaser shall also be deemed, by virtue of their ownership of the Shares, to have suffered, incurred or otherwise become subject to Losses as a result of and in connection with such inaccuracy, breach, alleged breach or other matter.

(c) The current or former stockholders of the Company 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 the Company in connection with any indemnification obligation or any liability to which such current or former stockholders of the Company may become subject under or in connection with this Agreement or any other agreement or document delivered to the Purchaser in connection with this Agreement.

Section 10.2 Indemnification Procedure.

(a) Promptly following receipt by an Indemnified Party of notice by a third-party (including any Governmental Body) of any complaint, dispute or claim or the commencement of any audit, investigation, action or proceeding with respect to which such Indemnified Party may be entitled to indemnification pursuant to this Agreement (a “Third-Party Claim”), or upon realization of a Loss by an Indemnified Party for which the Indemnified Party is entitled to indemnification under this Article X, such Indemnified Party shall provide written notice thereof to the Stockholders’ Representative; provided, however, that the failure to so notify the Stockholders’ Representative shall relieve the Indemnifying Party from liability under this Article X with respect to such Third-Party Claim only if, and only to the extent that, such failure to so notify the Stockholders’ Representative materially prejudices the rights and defenses otherwise available to the Indemnifying Party with respect to such Third-Party Claim. The Indemnifying Party shall have the right, upon written notice from the Stockholders’ Representative delivered to the Indemnified Party within 20 days thereafter assuming full responsibility for any Losses resulting from such Third-Party Claim, to assume the defense of such Third-Party Claim, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of the fees and disbursements of such counsel; provided, however, that the Indemnifying Party shall not have the right to assume the defense of any Third-Party Claim that (i) affects any Intellectual Property Rights that the Company owns or has a right to use in the conduct of its business as currently conducted and as proposed to be conducted by the Company as of the Closing and by the Purchaser after the Closing, (ii) is asserted directly by or on behalf of any Person that is a supplier or a customer of the Company, the Indemnified Party or their Affiliates, (iii) seeks an injunction or other equitable relief against the Indemnified Party or its Affiliates, (iv) involves a finding of any violation of Law or other wrongdoing by the Indemnified Party, the Company or their Affiliates, (v) relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation, or (vi) does not seek only monetary damages and, in the case of this clause (vi), the Indemnified Party reasonably believes an adverse determination with respect to the Third-Party Claim would be detrimental to or materially injure the reputation or future business prospects of the Indemnified Party. In the event, however, that the Indemnifying Party declines or fails to assume the defense of such Third-Party Claim on the terms of this Section 10.2(a) or to employ counsel reasonably satisfactory to the Indemnified Party, in either case within such 10 day period, or thereafter defaults in continuing to defend the Indemnified Party, then any Losses shall include the reasonable fees and disbursements of counsel for the Indemnified Party as incurred. In addition, Losses shall include, as incurred, the reasonable fees and disbursements of counsel for the Indemnified Party: (A) that are incurred prior to the date the Indemnifying Party effectively assumes control of such defense, (B) if the Indemnified Party employs separate counsel due to the Indemnified Party being advised by counsel that a reasonable likelihood exists of a conflict of interest between the Indemnified Party and the Indemnifying Party, (C) if the Indemnified Party employs separate counsel because there are one or more legal or equitable defenses available to the Indemnified Party that are different from or in addition to those available to the Indemnifying Party, or (D) if the Indemnified Party employs separate counsel because
such audit, investigation, action or proceeding involves, or could have a material effect on, any matter beyond the scope of the indemnification or defense obligations of the Indemnifying Party.

(b) In any Third-Party Claim for which indemnification is being sought under this Article X, the Indemnified Party or the Indemnifying Party, whichever is not assuming the defense of such Third-Party Claim, shall have the right to participate in such matter and to retain its own counsel at such party’s own expense. The Indemnifying Party or the Indemnified Party (as the case may be) shall at all times use reasonable efforts to keep the Stockholders’ Representative or Indemnified Party (as the case may be) reasonably apprised of the status of the defense of any matter, the defense of which it is maintaining, and to cooperate in good faith with the other party with respect to the defense of any such matter.

(c) No Indemnified Party may settle or compromise any Third-Party Claim or consent to the entry of any judgment with respect to which indemnification is being sought under this Article X without the prior written consent of the Stockholders’ Representative (which may not be unreasonably withheld, conditioned or delayed), unless (i) the Indemnifying Party fails to assume and maintain diligently the defense of such Third-Party Claim pursuant to Section 10.2(a) or fails to reimburse the Indemnified Party within 30 days for expenses incurred by the Indemnified Party in defending itself against any Third-Party Claim in the circumstance where the Indemnifying Party fails to assume the defense of the Indemnified Party or as required under the last sentence of Section 10.2(a) or, having assumed the defense, thereafter defaults in pursuing such defense, or (ii) such settlement, compromise or consent includes an unconditional release of the Indemnifying Party and its officers, directors, employees and Affiliates from all liability arising out of, or related to, such Third-Party Claim without further monetary liability to the Indemnifying Party. An Indemnifying Party may not, without the prior written consent of the Indemnified Party, settle or compromise any Third-Party Claim or consent to the entry of any judgment with respect to which indemnification is being sought under this Article X unless such settlement, compromise or consent (A) includes an unconditional release of the Indemnified Party and its officers, directors, employees and Affiliates from all liability arising out of, or related to, such Third-Party Claim without further monetary liability to the Indemnifying Party. An Indemnifying Party and the Indemnified Party shall establish the merits and amount of such Direct Claim (by mutual agreement, litigation or otherwise) and, within five Business Days following the final determination of the merits and amount of such Direct Claim, the Indemnifying Party shall pay to the Indemnified Party in immediately available funds an amount equal to such Direct Claim as determined pursuant to this Section 10.2(d). If a dispute exists as to the amount of any Direct Claim, the prevailing party shall be entitled to all legal and other fees paid in asserting or defending such Direct Claim, as the case may be.

(d) In the event an Indemnified Party claims a right to payment pursuant to this Agreement with respect to any Loss or other matter not involving a Third-Party Claim (a “Direct Claim”), such Indemnified Party shall send written notice of such claim to the Stockholders’ Representative (a “Notice of Claim”). Such Notice of Claim shall specify the basis for such Direct Claim. The failure by any Indemnified Party to so notify the Stockholders’ Representative shall not relieve the Indemnifying Party from any liability that it may have to such Indemnified Party with respect to any Direct Claim made pursuant to this Section 10.2(d), it being understood that Notices of Claim in respect of a breach of a representation or warranty must be delivered prior to the expiration of the survival period for such representation or warranty under Section 10.4. In the event the Stockholders’ Representative does not notify the Indemnified Party within 20 days following its receipt of such Notice of Claim that the Stockholders’ Representative disputes the Indemnifying Parties’ liability to the Indemnified Party under this Article X or the amount thereof, the Direct Claim specified by the Indemnified Party in such Notice of Claim shall be conclusively deemed a liability of the Indemnifying Party under this Article X, and the Indemnifying Party shall pay the amount of such liability to the Indemnified Party on demand or, in the case of any notice in which the amount of the Direct Claim (or any portion of the Direct Claim) is estimated, on such later date when the amount of such Direct Claim (or such portion of such Direct Claim) becomes finally determined. In the event the Stockholders’ Representative has timely disputed its liability with respect to such Direct Claim as provided in this Section 10.2(d), as promptly as reasonably practicable, such Indemnified Party and the Stockholders’ Representative shall establish the merits and amount of such Direct Claim (by mutual agreement, litigation or otherwise) and, within five Business Days following the final determination of the merits and amount of such Direct Claim, the Indemnifying Party shall pay to the Indemnified Party in immediately available funds an amount equal to such Direct Claim as determined pursuant to this Section 10.2(d). If a dispute exists as to the amount of any Direct Claim, the prevailing party shall be entitled to all legal and other fees paid in asserting or defending such Direct Claim, as the case may be.

Section 10.3 Offset Against Escrow Amount. In the event any Indemnified Party shall suffer any Losses for which such Indemnified Party is entitled to indemnification under this Article X, such Indemnified Party shall be entitled to recover such Losses by offsetting such Losses against the Escrow Shares until the Escrow Shares are wholly exhausted and, thereafter, any remaining portion of such Loss shall be satisfied by the Indemnifying Party. In no event shall the
aggregate amount of the indemnification obligation of the Indemnifying Parties pursuant to this Article X exceed the Base Price; provided that the foregoing limitation shall not apply in cases of fraud, bad faith, willful misconduct or willful misrepresentation on the part of the Company or any of the Stockholders.

Section 10.4 Survival Period. The representations, warranties and covenants made by the Company and the Stockholders in this Agreement shall not be extinguished by the Closing, but shall survive the Closing for, and all claims for indemnification in connection therewith shall be asserted not later than, 18 months following the Closing Date; provided, however, that (a) each of the representations and warranties contained in Section 2.1 (Organization and Good Standing), Section 2.2 (Capitalization), Section 2.3 (Subsidiaries), Section 2.4 (Authority; No Conflict; Required Filings and Consents), Section 2.16 (Brokerage and Transaction Bonuses), Section 2.17 (Title to and Sufficiency of Assets), Section 2.21 (Related Party Transactions), Section 3.1 (Authority; No Conflict; Required Filings and Consents), Section 3.2 (Ownership; Title to Shares) and Section 3.4 (Brokerage and Transaction Bonuses), shall survive the Closing without limitation as to time, and the period during which a claim for indemnification may be asserted in connection therewith shall continue indefinitely; (b) each of the representations and warranties contained in Section 2.11 (Intellectual Property), Section 2.14 (Employee Matters) and Section 3.14 (Assignment) shall survive the Closing until, and all claims for indemnification in connection therewith shall be asserted not later than 60 days following, the expiration of any statute of limitations applicable to the rights of any Person to bring any claim with respect to such matters; and (c) each of the representations and warranties contained in Section 2.8 (Taxes) shall survive until, and all claims for indemnification in connection therewith shall be asserted not later than the later to occur of: (i) the 180th day following the end of the period, if any, during which an assessment, reassessment or other form of document assessing liability for Taxes in respect of any taxation year to which these representations and warranties extend could be issued to the Company, and (ii) 60 days following the expiration of any statute of limitations applicable to the rights of any Person to bring any claim with respect to such matters. Notwithstanding the foregoing, if, prior to the close of business on the last day a claim for indemnification may be asserted under this Article X, the Stockholders’ Representative shall have been properly notified of a claim for indemnity under this Article X and such claim shall not have been finally resolved or disposed of as of such date, such claim shall continue to survive and shall remain a basis for indemnity under this Article X until such claim is finally resolved or disposed of in accordance with the terms of this Agreement. All representations, warranties and covenants made by the Purchaser shall terminate and expire as of the Closing, and any liability of the Purchaser with respect to such representations and warranties shall thereupon cease. The covenants and agreements of the parties pursuant to this Article X shall survive without limitation as to time, and the period during which a claim for indemnification may be asserted in connection therewith shall continue indefinitely.

Section 10.5 Investigations. The respective representations and warranties of the parties contained in this Agreement or any certificate or other document delivered by any party at or prior to the Closing and the rights to indemnification set forth in this Article X shall not be deemed waived or otherwise affected by any investigation made, or Knowledge acquired, by a party.

Section 10.6 Set-Off. The Purchaser shall be entitled to set-off any amount or right it may be entitled to pursuant to this Agreement against any amount, right or obligations owed to any Stockholder under this Agreement or any Stockholder Related Agreement; provided, however, that, for avoidance of doubt, and without limiting any of the Indemnified Parties’ rights to indemnification under this Agreement or pursuant to the Escrow Agreement, the foregoing set-off rights shall not apply with respect to any obligation of the Purchaser or Sorrento solely pursuant to that certain letter agreement, dated as of even date herewith, by and between the Purchaser and Richard P. Junghans, M.D., Ph.D.

Section 10.7 Characterization of Indemnification Payments. The Purchaser and the Stockholders agree to treat any payment made under this Article X as an adjustment to the Purchaser Stock Consideration.

ARTICLE XI
STOCKHOLDERS’ REPRESENTATIVE

Section 11.1 Stockholders’ Representative.

(a) The Stockholders, by the approval and adoption of this Agreement, hereby irrevocably appoint the Stockholders’ Representative as agent and attorney in fact for the Company and each Stockholder, and authorize the
Stockholders’ Representative (i) to take all action necessary to consummate the transactions contemplated by this Agreement and the Escrow Agreement, or the defense and/or settlement of any claims for which the Stockholders may be required to indemnify the Purchaser or any other Indemnified Party pursuant to Article X, (ii) to give and receive all notices required to be given under this Agreement, the Escrow Agreement or the Stockholder Related Agreements, (iii) to authorize delivery to the Purchaser of the Escrow Shares in satisfaction of claims by the Purchaser, including with respect to the Net Debt Adjustment Amount, (iv) to make decisions on behalf of the Company and the Stockholders and take any and all additional action as is contemplated to be taken by or on behalf of the Stockholders by the terms of this Agreement or the Escrow Agreement, including, without limitation regarding (A) indemnification claims, Direct Claims, Third-Party Claims and Notices of Claims, (B) amendments to this Agreement, the Escrow Agreement or the Stockholder Related Agreements, and (C) the Estimated Net Debt, the Final Net Debt and the Net Debt Adjustment Amount.

(b) All decisions and actions by the Stockholders’ Representative, including without limitation (i) any agreement between the Stockholders’ Representative and the Purchaser relating to the defense or settlement of any claims for which the Stockholders may be required to indemnify the Purchaser pursuant to Article X, (ii) any agreement between the Stockholders’ Representative and the Purchaser relating to the Estimated Net Debt, the Final Net Debt or the Net Debt Adjustment Amount, and (iii) any agreement between the Stockholders’ Representative and the Purchaser relating to the Escrow Agreement or the determination of the Purchaser’s payment obligations under Sections 1.3 or 1.5 or any other matter relating to Article I, shall be binding upon all of the Stockholders, and no Stockholder shall have the right to object, dissent, protest or otherwise contest the same.

(c) The Stockholders’ Representative shall not have any liability to any of the parties to this Agreement or to the Stockholders for any act done or omitted pursuant to this Agreement as the Stockholders’ Representative while acting in good faith and in the exercise of reasonable judgment, and any act done or omitted pursuant to the advice of counsel shall be conclusive evidence of such good faith. The Stockholders shall severally indemnify the Stockholders’ Representative and hold the Stockholders’ Representative harmless against any loss, liability or expense incurred without gross negligence or bad faith on the part of the Stockholders’ Representative arising out of or in connection with the acceptance or administration of the Stockholders’ Representative’s duties under this Agreement.

(d) The Stockholders’ Representative shall have full power and authority on behalf of each Stockholder to take any and all actions on behalf of, execute any and all instruments on behalf of, and execute or waive any and all rights of, the Stockholders under this Agreement, the Escrow Agreement and the Stockholder Related Agreements.

(e) By his, her or its approval of this Agreement and the transactions contemplated by this Agreement, each Stockholder agrees, in addition to the foregoing, that:

(i) the Purchaser shall be entitled to rely conclusively on the instructions and decisions of the Stockholders’ Representative as to (A) the settlement of any claims for indemnification by the Purchaser pursuant to Article X, (B) actions taken in respect of indemnification claims, Direct Claims, Third-Party Claims and Notices of Claims, and (C) any other actions required or permitted to be taken by the Stockholders’ Representative under this Agreement, the Escrow Agreement and any Stockholder Related Agreement, and no Stockholder shall have any cause of action against the Purchaser for any action taken by the Purchaser in reliance upon the instructions or decisions of the Stockholders’ Representative;

(ii) all actions, decisions and instructions of the Stockholders’ Representative shall be conclusive and binding upon the Company and all of the Stockholders and no Stockholder shall have any cause of action against the Stockholders’ Representative for any action taken, decision made or instruction given by the Stockholders’ Representative under this Agreement or the Escrow Agreement except for fraud or willful misconduct by the Stockholders’ Representative in connection with the matters described in this Article XI;

(iii) the provisions of this Article XI are independent and severable, are irrevocable and coupled with an interest and shall be enforceable notwithstanding any rights or remedies that any Stockholder may have in connection with the transactions contemplated by this Agreement, the Escrow Agreement and the Stockholder Related Agreements; and
(f) the provisions of this Article XI shall be binding upon the executors, heirs, legal Representatives, personal Representatives, successor trustees and successors of each Stockholder, and any reference in this Agreement or the Escrow Agreement to a Stockholder or the Stockholders shall mean and include the successors to the rights of the Stockholders under this Agreement, whether pursuant to testamentary disposition, the laws of descent and distribution or otherwise.

ARTICLE XII
MISCELLANEOUS PROVISIONS

Section 12.1 Further Assurances. Each party to this Agreement shall execute and cause to be delivered to each other party to this Agreement such instruments and other documents, and shall take such other actions, as such other parties 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.

Section 12.2 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; provided, however, that the Stockholders shall be responsible for all Transaction Expenses.

Section 12.3 Waiver; Amendment. Any agreement on the part of a party to this Agreement to any extension or waiver of any provision of this Agreement shall be valid only if set forth in an instrument in writing signed on behalf of such party. A waiver by a party to this Agreement of the performance of any covenant, agreement, obligation, condition, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by any party to this Agreement of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time. Prior to the Closing, this Agreement may not be amended, modified or supplemented except by written agreement among the Purchaser, the Company and the Stockholders’ Representative; provided, however, that the provisions of Section 1.6 and Article XII cannot be amended without the consent of Sorrento. Following the Closing, this Agreement may not be amended, modified, altered or supplemented except by written agreement between the Purchaser and the Stockholders’ Representative; provided, however, that the provisions of Section 1.6 and Article XII cannot be amended without the consent of Sorrento.

Section 12.4 Entire Agreement. This Agreement and the other agreements referred to in this Agreement constitute the entire agreement among the parties to this Agreement and supersede all other prior agreements and understandings, both written and oral, among or between any of the parties with respect to the subject matter of this Agreement and thereof; provided, however, that the Confidentiality Agreement shall not be superseded by this Agreement and shall remain in effect in accordance with its terms until the earlier of: (a) the Closing Date, or (b) the date on which the Confidentiality Agreement is terminated in accordance with its terms.

Section 12.5 Execution of Agreement; Counterparts; Electronic Signatures.

(a) This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, and shall become effective when counterparts have been signed by each of the parties to this Agreement and delivered to the other parties to this Agreement; it being understood that all parties to this Agreement need not sign the same counterparts.

(b) This Agreement and any amendments to this Agreement may be executed in one or more counterparts, each of which shall be enforceable against the parties to this Agreement that execute such counterparts, and all of which together shall constitute one and the same instrument. Facsimile and “.pdf” copies of signed signature pages shall be deemed binding originals and no party to this Agreement shall raise the use of facsimile machine or electronic transmission in “.pdf” as a defense to the formation of a contract.
Section 12.6 Governing Law; Venue.

(a) This Agreement shall be governed by and construed in accordance with the internal laws (and not the law of conflicts) of the State of California.

(b) Any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the “ICC”) in accordance with such rules. The place of arbitration shall be San Diego, California. The arbitration shall be conducted in the English language.

(c) The party to this Agreement that initiates the arbitration process (the “Claimant”) shall appoint an arbitrator in its request for arbitration (the “Request”). The other party to this Agreement (or the other parties to this Agreement, acting jointly, if there are more than one) that is a party to the arbitration (the “Respondent”) shall appoint an arbitrator within 30 days of receipt of the Request and shall notify the Claimant of such appointment in writing. If within 30 days of receipt of the Request by the Respondent, either the Claimant or the Respondent has not appointed an arbitrator, then that arbitrator shall be appointed by the ICC. The first two arbitrators appointed in accordance with this Section 12.6(c) shall appoint a third arbitrator within 30 days after the Respondent has notified the Claimant of the appointment of the Respondent’s arbitrator or, in the event of a failure by a party to appoint an arbitrator, within 30 days after the ICC has notified the parties and any arbitrator already appointed of the appointment of an arbitrator on behalf of the party failing to appoint an arbitrator. When the third arbitrator has accepted the appointment, the two arbitrators making the appointment shall promptly notify the parties of the appointment. If the first two arbitrators appointed fail to appoint a third arbitrator or to so notify the parties within the time period prescribed above, then the ICC shall appoint the third arbitrator and shall promptly notify the parties of the appointment. The third arbitrator shall act as chairperson of the arbitration.

(d) The arbitral tribunal shall render an award within six months from the date of the appointment of the arbitral tribunal, unless the parties to this Agreement otherwise agree in writing or the arbitral tribunal determines that an extension is necessary. The arbitral award shall be in writing, state the reasons for the award, and be final and binding upon, and non-appealable by, the parties to this Agreement. The award may include an award of costs, including, without limitation, reasonable attorneys’ fees and disbursements. In addition to monetary damages, the arbitral tribunal shall be empowered to award equitable relief, including, but not limited to, an injunction and specific performance of any obligation under this Agreement. Notwithstanding the foregoing, the parties to this Agreement agree that any of them may seek equitable relief, including, but not limited to, an injunction and specific performance of any obligation under this Agreement from any court of competent jurisdiction, but that the final resolution of any disputes will be settled solely by the arbitral tribunal.

(e) The arbitral tribunal shall not be empowered to award damages in excess of compensatory damages, and each party to this Agreement hereby irrevocably waives any right to recover special, punitive, exemplary, consequential or similar damages with respect to any dispute, except insofar as a claim is for indemnification for an award of such damages awarded against a party in an action brought against it by an independent third party. The arbitral tribunal shall be authorized in its discretion to grant pre-award and post-award interest at commercial rates. Judgment upon the award may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant party or its assets.

(f) The arbitral tribunal, in its discretion, may consolidate two or more arbitrations or claims between any of the parties to this Agreement arising under this Agreement or any other agreement among the parties to this Agreement into one arbitration, or terminate any such consolidation and/or establish other arbitration proceedings for different claims that may arise in any one arbitration. Notwithstanding the foregoing, the arbitral tribunal shall consolidate arbitrations and/or claims, if it determines that it would be more efficient to consolidate such arbitrations and/or claims than to continue them separately and (i) there are matters of fact or law that are common to the arbitrations and/or claims to be consolidated, (ii) there are related payment and performance obligations considered in the arbitrations and/or claims to be consolidated, or (iii) there is a danger of inconsistent awards.

(g) The arbitral tribunal shall render any monetary award and interest related to such award in US Dollars.
(h) The parties to this Agreement agree that the arbitration shall be kept confidential and that the existence of the proceeding and any element of it (including but not limited to any pleadings, briefs or other documents submitted or exchanged, any testimony or other oral submissions, and any awards) shall not be disclosed beyond the tribunal, the ICC, the parties, their counsel and any person necessary to the conduct of the proceeding, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise, or as required by the rules of any other quotation system or exchange on which the disclosing party’s securities are listed or applicable Laws.

(i) The costs of arbitration shall be borne by the losing party unless otherwise determined by the arbitration award.

(j) Each party to this Agreement agrees not to assert (by way of motion, as a defense or otherwise), in any such dispute that any claim arising out of, relating to, or in connection with the interpretation or performance of this Agreement is not subject to the jurisdiction of the arbitrators or that this Agreement may not be enforced by the arbitrators.

Section 12.7 **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES OF THIS AGREEMENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDINGS OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 12.8 **Attorneys’ Fees.** If any Legal Proceeding relating to this Agreement or the enforcement of any provision of this Agreement is brought against any party to this Agreement, 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).

Section 12.9 **Assignment and Successors.** No party to this Agreement may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other parties to this Agreement. Subject to the preceding sentence, this Agreement shall apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the parties to this Agreement.

Section 12.10 **Parties in Interest.** Except for the provisions of Article X, none of the provisions of this Agreement is intended to provide any rights or remedies to any Person other than the parties to this Agreement and their respective successors and assigns (if any). Each of the Indemnified Parties is an express third party beneficiary of Article X.

Section 12.11 **Notices.** All notices, requests, claims, demands, consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party to this Agreement when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid), or (b) sent e-mail with confirmation of transmission by the transmitting equipment confirmed with a copy delivered as provided in clause (a), in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the Person (by name or title) designated below (or to such other address, facsimile number, e-mail address or Person as a party may designate by notice to the other parties to this Agreement):

*If to the Company (before the Closing):*

BDL Products, Inc.
1209 Orange Street
Wilmington, DE 197801
Attention: Richard P. Junghans, M.D., Ph.D.
Email: rich32323@yahoo.com
with a mandatory copy to (which copy shall not constitute notice):

William M. Mandell, Esq.
Pierce & Mandell, P.C.
11 Beacon Street, Suite 800
Boston, MA 02108
Email: bill@piercemandell.com

If to the Stockholders’ Representative (on its own behalf and for the benefit of the Company (prior to the Closing) and the Stockholders):

Richard P. Junghans, M.D., Ph.D.
1 Lyndboro Place
Boston, MA 02116
Email: rich32323@yahoo.com

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

William M. Mandell, Esq.
Pierce & Mandell, P.C.
11 Beacon Street, Suite 800
Boston, MA 02108
Email: bill@piercemandell.com

If to the Purchaser:

TNK Therapeutics, Inc.
c/o Sorrento Therapeutics, Inc.
9380 Judicial Drive
San Diego, CA 92121
Attention: Henry Ji
Email: hji@sorrentotherapeutics.com

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

Paul Hastings LLP
1117 S. California Avenue
Palo Alto, CA 94304
Attention: Jeffrey T. Hartlin, Esq.
Email: jeffhartlin@paulhastings.com

If to Sorrento:

Sorrento Therapeutics, Inc.
9380 Judicial Drive
San Diego, CA 92121
Attention: George Ng
Email: gng@sorrentotherapeutics.com
with a mandatory copy to (which copy shall not constitute notice):

Paul Hastings LLP
1117 S. California Avenue
Palo Alto, CA 94304
Attention: Jeffrey T. Hartlin, Esq.
Email: jeffhartlin@paulhastings.com

Section 12.12 Construction; Usage.

(a) Interpretation. In this Agreement, unless a clear contrary intention appears:

(i) the singular number includes the plural number and vice versa;

(ii) reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(iii) reference to any gender includes each other gender;

(iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(v) reference to any Law means such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Law means that provision of such Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(vi) “hereunder,” “hereof,” “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision of this Agreement;

(vii) “including” means including without limiting the generality of any description preceding such term;

(viii) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto; and

(ix) reference to a “Section” or “Article” in this Agreement shall mean a Section or Article, respectively, of this Agreement unless otherwise provided.

(b) Legal Representation of the Parties. This Agreement was negotiated by the parties to this Agreement with the benefit of legal representation and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party to this Agreement shall not apply to any construction or interpretation of this Agreement.

(c) Headings. The headings contained in this Agreement are for the 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.

(d) Accounting Terms. All accounting terms not specifically defined in this Agreement shall be construed in accordance with GAAP.

(e) Dollar Amounts. All references to “$” contained in this Agreement shall refer to United States Dollars unless otherwise stated.
Section 12.13 Enforcement of Agreement. The parties to this Agreement acknowledge and agree that the Purchaser and Sorrento may be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by the Company, the Stockholders’ Representative or the Stockholders may not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which the Purchaser or Sorrento may be entitled, at law or in equity, each shall be entitled to enforce any provision of this Agreement by a decree of specific performance and temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking. The rights and remedies of the parties to this Agreement shall be cumulative (and not alternative).

Section 12.14 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

Section 12.15 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

Section 12.16 Disclosure Schedule. Nothing in the Disclosure Schedule shall be adequate to disclose an exception to a representation or warranty made in this Agreement except to the extent the Section thereof identifies the exception and describes the facts. Without limiting the generality of the foregoing, the mere listing (or inclusion of a copy) of a document or other item shall not be adequate to disclose an exception to a representation or warranty made in this Agreement unless the representation or warranty has to do with the existence of the document or other item itself. No exceptions to any representations or warranties disclosed on one Section of the Disclosure Schedule shall constitute an exception to any other representations or warranties made in this Agreement except to the extent the disclosure is clear in its disclosure or cross-referenced in such other applicable Section.

Section 12.17 Schedules and Exhibits. The Schedules and Exhibits (including the Disclosure Schedule) are hereby incorporated into this Agreement and are hereby made a part of this Agreement as if set out in full in this Agreement.

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

THE PURCHASER:

TNK THERAPEUTICS, INC.

By: ________________________________
   Name: Henry Ji, Ph.D.
   Title: Chief Executive Officer

THE COMPANY:

BDL PRODUCTS, INC.

By: ________________________________
   Name: ________________________________
   Title: ________________________________

SORRENTO:

SORRENTO THERAPEUTICS, INC.

By: ________________________________
   Name: Henry Ji, Ph.D.
   Title: President & Chief Executive Officer

STOCKHOLDERS’ REPRESENTATIVE:

RICHARD JUNGHANS, M.D., PH.D.
IN WITNESS WHEREOF, the parties hereto have caused this Stock Purchase Agreement to be duly executed, as of the date first above written.

STOCKHOLDERS:

RICHARD P. JUNGHANS, M.D., PH.D.

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**EXHIBIT A**

**DEFINITIONS**

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

“**Acquisition Transaction**” means any transaction or series of transactions involving:

(a) any merger, consolidation, share exchange, business combination, issuance of securities, direct or indirect acquisition of securities, recapitalization, tender offer, exchange offer or other similar transaction involving the Company;

(b) any direct or indirect sale, lease, exchange, transfer, license, acquisition or disposition of a material portion of the business or assets of the Company; or

(c) any liquidation or dissolution of the Company.

“**Affiliate**” means, with respect to any specified Person, any other Person who or which, directly or indirectly, controls, is controlled by, or is under common control with such specified Person, including, without limitation, any general partner, limited partner, member, officer, director or manager of such Person and any venture capital or private equity fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person. For purposes of this definition, the terms “**controls**, “**controlled by**,” or “under common control with**” means the possession, direct or indirect, of power to direct or cause the direction of management or policies (whether through ownership of voting securities, by contract or otherwise).

“**Agreement**” means this Stock Purchase Agreement, as amended or restated from time to time.

“**Base Price**” means six million United States Dollars ($6,000,000).

“**Business Day**” means a weekday on which banks are open for general banking business in San Diego, California.

“**Cash**” means the cash and cash equivalents of the Company unrestricted and readily available at no cost, calculated in accordance with GAAP, less any amount advanced by the Purchaser or its Affiliates to the Company in connection with the transactions contemplated under the Agreement.

“**Closing**” means the consummation of the purchase and sale of the Shares, as set forth in Article VIII of the Agreement.

“**Closing Consideration**” means one hundred United States Dollars ($100).


“**Company Common Shares**” means the shares of common stock, par value $0.01 per share, of the Company.

“**Company Contract**” means any Contract, including any amendment or supplement thereto: (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 Licensed Intellectual Property**” means all Intellectual Property Rights that are licensed to the Company by any other third-party and are material to the Company.
“**Company Material Adverse Effect**” means any state of facts, change, event, effect, occurrence or circumstance that, individually or in the aggregate (considered together with all other state of facts, change, event, effect, occurrence or circumstance) has, has had or could reasonably be expected to have or give rise to a material adverse effect on (a) the business, condition (financial or otherwise), results of operations, prospects, capitalization, assets, liabilities, operations or financial performance of the Company, (b) the ability of the Company to consummate the transactions contemplated by the Agreement or to perform any of its obligations under the Agreement prior to the Termination Date, or (c) the Purchaser’s ability to vote, receive dividends with respect to or otherwise exercise ownership rights with respect to the shares of the Company.

“**Company Owned Intellectual Property**” means all Intellectual Property Rights that are owned or purported to be owned by the Company, in whole or in part, and are material to the Company.

“**Company Registrations**” means Patent Rights, registered trademarks and service marks, registered copyrights and designs, domain name registrations and applications (including intent to use applications) for each of the foregoing that are registered or filed or recorded with any Person in the name of or licensed by the Company, alone or jointly with others.

“**Confidential Information**” means any data or information concerning the Company (including trade secrets), without regard to form, regarding (for example and including) (a) business process models, (b) proprietary software, (c) research, development, products, services, marketing, selling, business plans, budgets, unpublished financial statements, licenses, prices, costs, contracts, suppliers, customers, and customer lists, (d) the identity, skills and compensation of employees, contractors, and consultants, (e) specialized training, or (f) discoveries, developments, trade secrets, processes, formulas, data, lists, and all other works of authorship, mask works, ideas, concepts, know-how, designs, and techniques, whether or not any of the foregoing is or are patentable, copyrightable, or registrable under any intellectual property Laws or industrial property Laws in the United States or elsewhere. Notwithstanding the foregoing, no data or information constitutes “Confidential Information” if such data or information is publicly known and in the public domain through means that do not involve a breach by the Company or a Stockholder of any covenant or obligation set forth in the Agreement.

“**Contract**” means any written, oral or other agreement, contract, subcontract, lease, understanding, instrument, note, warranty, license, sublicense, insurance policy, benefit plan or legally binding commitment or undertaking of any nature, whether express or implied.

“**Disclosure Schedule**” means the disclosure schedule (dated as of the date of the Agreement) delivered to the Purchaser on behalf of the Company and the Stockholders on the date of the Agreement.

“**Entity**” means 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.

“**Escrow Shares**” means, as of a particular time, whichever of the Initial Escrow Shares or the Sorrento Escrow Shares that are then held by the Escrow Agent pursuant to the terms of the Escrow Agreement.

“**Estimated Purchase Price**” means, if as of the time of calculation: (a) the Final Net Debt has not been determined in accordance with Section 1.3, the Base Price minus the Estimated Net Debt minus any amounts deducted pursuant to Section 5.13; and (b) the Final Net Debt has been determined in accordance with Section 1.3, the Base Price minus the Final Net Debt minus any amounts deducted pursuant to Section 5.13.

“**Exploit**” means develop, design, test, modify, make, use, sell, have made, used and sold, import, reproduce, market, distribute, commercialize, support, maintain, correct and create derivative works of.

“**FDA**” means the U.S. Food and Drug Administration or any successor thereto.

“**FDA Registrations**” means authorizations, approvals, licenses, permits, certificates, or exemptions issued by the FDA (including, without limitation, pre-market approval applications, pre-market notifications, investigational new drug
applications, new drug applications, biologic license applications, manufacturing approvals and authorizations, pricing and reimbursement approvals, labeling approvals or their foreign equivalent) held by the Company that are required for, among other things, the research, development, manufacture, processing, labeling, distribution, marketing, storage, transportation, use, sale and provision of the products and services of the Company.

“GAAP” means United States generally accepted accounting principles as in effect from time to time.

“Government Bid” means any quotation, bid or proposal submitted to any Governmental Body or any proposed prime contractor or higher-tier subcontractor of any Governmental Body.

“Government Contract” means any prime contract, subcontract, letter contract, purchase order or delivery order executed or submitted to or on behalf of any Governmental Body or any prime contractor or higher-tier subcontractor, or under which any Governmental Body or any such prime contractor or subcontractor otherwise has or may acquire any right or interest.

“Governmental Authorization” means any (a) approval, permit, license, certificate, certificate of approval, franchise, permission, clearance, registration, qualification or other authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Law, or (b) right under any Contract with any Governmental Body.

“Governmental Body” means any domestic or foreign multinational, federal, state, provincial, municipal or local government (or any political subdivision thereof) or any domestic or foreign governmental, regulatory or administrative authority or any department, commission, board, agency, court, tribunal, judicial body or instrumentality thereof, or any other body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature (including any arbitral body).

“Indebtedness” means, without duplication, the aggregate of the following: (a) all obligations for borrowed money (including the current portion thereof and all sums due on early termination and repayment or redemption calculated to the Closing Date), whether or not contingent, or issued or incurred in substitution or exchange for any such liability for borrowed money, or extensions of credit (including under credit cards, bank overdrafts and advances), (b) all obligations evidenced by bonds, debentures, notes or other similar instruments (and including all sums due on early termination and repayment or redemption calculated to the Closing Date), (c) all obligations to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business consistent with past practice, (d) all obligations as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases in or services, except trade accounts payable arising in the ordinary course of business consistent with past practice, (d) all obligations as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases in respect of which the Company is liable as a lessee; (e) all obligations of others secured by a Lien on any asset of the Company (including accounts and contract rights), whether or not such obligations are assumed; (f) all obligations, contingent or otherwise, directly or indirectly guaranteeing any obligations of any other Person, all obligations to reimburse the issuer in respect of letters of credit or under performance or surety bonds, or other similar obligations; all obligations under which the Company has agreed (contingently or otherwise) to purchase or otherwise acquire the liability of any other Person or in respect of which the Company has otherwise assured a creditor against loss, (g) all obligations in respect of bankers’ acceptances, note purchases or similar facilities and under reverse repurchase agreements, (h) all obligations in respect of futures contracts, other financial contracts and other similar obligations (determined on a net basis as if such contract or obligation was being terminated early on such date), (i) the amount of any termination payments in connection with the payment in full of any obligations, (j) accrued employment obligations, including without limitation, accrued salary, accrued vacation and accrued bonuses, (k) deferred revenue, (l) all obligations created or arising under any conditional sale or other title retention agreement with respect to property acquired by the Company or any of its Subsidiaries (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (m) all obligations to purchase, redeem, retire or otherwise acquire for value any ownership interests or capital stock of the Company or any rights to acquire any ownership interests or capital stock of the Company, valued, in the case of redeemable ownership interests or capital stock, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, and (n) any obligations under any interest rate, foreign exchange, currency, commodity, credit or equity swap, cap, collar, floor, option, forward or other hedging agreement or derivative contract, net of any obligations to the Company thereunder. For purposes of the Agreement, “Indebtedness” includes (i) any and all accrued interest, fees, change of control payments, prepayment premiums, make whole premiums or penalties and fees or expenses actually incurred (including attorneys’ fees)
associated with the repayment of any Indebtedness, and (ii) any and all amounts of the nature described in clauses (a)-(n) above owed by the Company to any of its Affiliates, including any of the Stockholders. Notwithstanding anything herein to the contrary, no indebtedness arising from any claim, cost, expense or other liability covered by that certain letter agreement, dated as of even date herewith, by and between the Purchaser and Richard P. Junghans, M.D., Ph.D., shall be included in this definition of “Indebtedness” for purposes of calculating the “Net Debt”.

“Initial Escrow Shares” means the number of shares of Purchaser Common Stock or Sorrento Common Stock, as applicable, equal to 20% of the Purchaser Stock Consideration, rounded down to the nearest whole share.

“Intellectual Property Rights” means all (a) foreign and domestic patents, patent applications, patent disclosures and inventions, (b) Internet domain names, trademarks, service marks, trade dress, trade names, logos and corporate or company names (both foreign and domestic) and registrations and applications for registration thereof together with all of the goodwill associated therewith, (c) copyrights (registered or unregistered) and copyrightable works (both foreign and domestic) and registrations and applications for registration thereof, (d) mask works and registrations and applications for registration thereof, (e) computer software, data, data bases and documentation thereof, including rights to third party software used in the business, (f) trade secrets and other Confidential Information (including ideas, formulas, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, financial and marketing plans and customer and supplier lists and information), (g) other intellectual property rights, and (h) copies and tangible embodiments thereof (in whatever form or medium).

“IPO” means the Purchaser’s first firm commitment underwritten public offering of common stock of the Purchaser registered under the Securities Act, pursuant to which such shares are approved for listing on a national securities exchange.

“Knowledge” An individual shall be deemed to have “Knowledge” of a particular fact or other matter if:

(a) such individual is actually aware of such fact or other matter after due inquiry and investigation of the matter; or

(b) such individual would have had knowledge of such fact following a reasonable investigation, if under the circumstances a reasonable person would have determined such investigation was required or appropriate in the normal course of fulfillment of such individual’s duties.

The Company shall be deemed to have “Knowledge” of a particular fact or other matter if any officer, director, management employee or other Representative of the Company, as applicable, has Knowledge of such fact or other matter.

“Law” means any federal, national, state, provincial, territorial, local, municipal, foreign or international, multinational 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.

“Legal Proceeding” means any ongoing or threatened action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, order, 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.

“Lien” means any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, claim, infringement, interference, option, right of first refusal, preemptive right, community property interest or restriction of any nature affecting property, real or personal, tangible or intangible, including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset, any restriction on the possession, exercise or transfer of any other attribute of
ownership of any asset, any lease in the nature thereof and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statute of any jurisdiction).

“Net Debt” means an amount equal to Cash minus Indebtedness.

“Non-Escrow Shares” means the number of shares of Purchaser Common Stock or Sorrento Common Stock, as applicable, equal to (a) the Purchaser Stock Consideration less (b) the Initial Escrow Shares.

“Non-Escrow Sorrento Shares” means such number of shares of Sorrento Common Stock as is equal to (a) the Repurchase Sorrento Shares less (b) the Sorrento Escrow Shares.

“Organizational Documents” means, with respect to any Entity, the constitution, certificate of incorporation, articles of incorporation, by-laws, articles of organization, articles of association, partnership agreement, limited liability company agreement, trust deed, formation agreement, joint venture agreement or other similar organizational documents of such Entity (in each case, as amended through the date of the Agreement).

“Patent Rights” means all patents, patent applications, utility models, design registrations and certificates of invention and other governmental grants for the protection of inventions or industrial designs (including all related continuations, continuations-in-part, divisionals, reissues and reexaminations).

“Per Share Price” means (a) with respect to the issuance of Purchaser Common Stock, the lowest price per share paid by investors in the Qualified Financing, and (b) with respect to the issuance of Sorrento Common Stock, the Sorrento Closing Price.

“Permitted Lien” means any (a) Lien for Taxes not yet due and payable (excluding Liens arising under the Code), (b) Liens of carriers, warehousemen, mechanics, materialmen and repairmen incurred in the ordinary course of business consistent with past practice and not yet delinquent, and (c) in the case of real property, zoning, building, occupancy or other restrictions, variances, covenants, rights of way, encumbrances, easements and other minor irregularities in title, none of which, individually or in the aggregate, (i) interfere in any material respect with the present use of or occupancy of the affected parcel by the Company, (ii) have more than an immaterial effect on the value thereof or its use, or (iii) would impair the ability of such parcel to be sold for its present use.

“Person” means any individual, Entity, trust, Governmental Body or other organization.

“Personal Information” means any “personal information” (as defined in the Privacy Laws) about an identifiable individual in the possession, custody or control of the Company.

“Privacy Laws” means any national, provincial, territorial, state, local or foreign Law now in force or that may in the future come into force governing individual privacy and/or access to Personal Information, or the collection, use, disclosure, access and management of Personal Information, including without limitation, the Health Insurance Portability and Accountability Act of 1996, as amended, the Health Information Technology for Economic and Clinical Health Act, state data breach notification Laws, state social security number protection Laws, the Federal Trade Commission Act, the Financial Services Modernization Act of 1999, the Fair Credit Reporting Act, the Fair and Accurate Credit Transactions Act and state consumer protection Laws.

“Purchaser Common Stock” means the shares of the Class A common stock, par value $0.0001 per share, of the Purchaser.

“Purchaser Related Agreement” means any certificate, agreement, document or other instrument, other than the Agreement, to be executed and delivered by the Purchaser in connection with the transactions contemplated by the Agreement.

“Purchaser Stock Consideration” means the number of shares of Purchaser Common Stock or Sorrento Common Stock, as applicable, equal to the quotient obtained by dividing (a) the Estimated Purchase Price by (b) the applicable Per Share Price, rounded down to the nearest whole share.
“Qualified Financing” means the Purchaser’s first issuance of shares of Purchaser Common Stock or shares of a previously unissued series of preferred stock, par value $0.0001 per share, of the Purchaser, completed after the date of the Agreement and prior to March 15, 2016, for the principal purpose of capital-raising resulting in gross proceeds (individually or in the aggregate) to the Purchaser of at least $50,000,000.

“Receivables” means the accounts receivable, notes receivable and other receivables of the Company as of the close of business on the Closing Date.

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

“Representatives” means, with respect to a Person, the officers, directors, employees, agents, attorneys, accountants, advisors and representatives of such Person.

“Repurchase Sorrento Shares” means such number of shares of Sorrento Common Stock as is equal to the lesser of (a) the quotient obtained by dividing six million United States Dollars ($6,000,000) by the Sorrento Closing Price, rounded down to the nearest whole share, and (b) five hundred thousand (500,000) shares (subject to adjustment for stock splits recapitalizations and similar transactions occurring on or after the date of the Agreement).

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

“Sorrento Closing Price” means the closing price per share of the Sorrento Common Stock, as reported on the Nasdaq Capital Market as of the Business Day immediately prior to the Closing Date.

“Sorrento Common Stock” means the common stock, par value $0.0001 per share, of Sorrento.

“Sorrento Escrow Shares” means the number of shares of Sorrento Common Stock equal to the product of: (a) the Repurchase Sorrento Shares multiplied by (b) the quotient obtained by dividing (i) the Escrow Shares as of the date of the Repurchase Closing by (ii) the Purchaser Stock Consideration, rounded down to the nearest whole share.

“Stockholder Related Agreement” means any certificate, agreement, document or other instrument, other than the Agreement, to be executed and delivered by the Company or a Stockholder in connection with the transactions contemplated the Agreement, including without limitation the certificates, agreements, documents and other instruments set forth in Section 6.6.

“Subsidiary” means, with respect to any party, any corporation, partnership, trust, limited liability company or other non-corporate business enterprise in which such party (or another Subsidiary of such party) holds stock or other ownership interests representing (a) more that 50% of the voting power of all outstanding stock or ownership interests of such Entity, or (b) the right to receive more than 50% of the net assets of such Entity available for distribution to the holders of outstanding stock or ownership interests upon a liquidation or dissolution of such Entity.

“Taxes” means any and all taxes, charges, fees, levies or other similar assessments or liabilities in the nature of a tax, including income, gross receipts, ad valorem, premium, value-added, net worth, capital stock, capital gains, documentary, recapture, alternative or add-on minimum, disability, estimated, registration, recording, excise, real property, personal property, sales, use, license, lease, service, service use, transfer, withholding, employment, unemployment, insurance, employment insurance, social security, business license, business organization, environmental, worker’s compensation, pension, payroll, profits, severance, stamp, occupation, windfall profits, customs, franchise and other taxes of any kind whatsoever imposed by the United States, or any state, provincial, local or foreign government, or any agency or political subdivision thereof, and any interest, penalties or additions to tax imposed with respect to such items or any contest or dispute thereof.
“**Tax Returns**” means any and all reports, returns, or declarations relating to Taxes filed or required to be filed with any Governmental Body, including any schedule or attachment thereto, including any amendment thereof.

“**Termination Date**” means the date prior to the Closing on which the Agreement is terminated in accordance with Article IX of the Agreement.

“**Transaction Expenses**” means the sum of all fees, costs and expenses (including legal fees and accounting fees and including the amount of all special bonuses and other amounts that may become payable to any officers of the Company or other Persons in connection with the consummation of the transactions contemplated by the Agreement) that are incurred by the Company for the benefit of the Company or a Stockholder in connection with the transactions contemplated by the Agreement, including, without limitation, the costs of obtaining any consents required to be obtained pursuant to the Agreement.

“**Transfer**” means any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by request, devise, or descent, or other transfer or disposition of any kind, including, but not limited to, transfers to receivers, levying creditors, trustees, or receivers in bankruptcy proceedings or general assignees for the benefit of creditors, whether voluntary or by operation of law, directly or indirectly, of any of the shares of Purchaser Common Stock acquired pursuant to the Agreement and any securities issued in respect of or exchange therefor.

“**Treasury Regulations**” means the temporary and final income Tax regulations promulgated under the Code.

“**User Data**” means any Personal Information or other data or information collected by or on behalf of the Company from users of the Company’s products or of any website or service operated or maintained by the Company.
BINDING TERM SHEET FOR LICENSE BETWEEN
CYTOLUMINA/FETOLUMINA AND TNK THERAPEUTICS

A. Parties; Transaction & License:
The parties (“Parties”) to the transaction are as follows:

- TNK Therapeutics, Inc. and its affiliates and subsidiaries (“TNK”)
- Sorrento Therapeutics, Inc. and its affiliates and subsidiaries (“Sorrento”)
- Cytolumina Technologies Corporation and its affiliates and subsidiaries (“CTC”)
- Fetolumina Technologies Corporation and its affiliates and subsidiaries (“FTC”)

Each of Sorrento, TNK, CTC and FTC shall be referred hereinafter as a “Party” and collectively, as the “Parties”.

CTC and FTC each will grant to TNK an exclusive and perpetual license, with full rights to sublicense, under CTC’s and FTC’s respective rights in and to the Technology to research, develop, use, offer for sale, sell, have sold, distribute, import, and export Technology and Products for all uses in the Field in the Territory.

CTC and FTC each will also grant to Sorrento an exclusive and perpetual license, with full rights to sublicense, under CTC’s and FTC’s respective rights in and to the Technology to research, develop, use, offer for sale, sell, have sold, distribute, import, and export Technology and Products that incorporate a Sorrento proprietary antibody for all uses or applications in the Territory.

B. Product:
A “Product” means any molecule, composition of matter or pharmaceutical product that is developed from or includes Technology.

C. Technology:
The “Technology” means the CTC and FTC’s Patent Rights, CTC’s and FTC’s other intellectual property, the CTC and FTC’s Regulatory Filings (as defined below), and other discoveries, processes, trade secrets, know-how and technical information owned or controlled by CTC, FTC and its or their affiliates related to circulating tumor cell profiling. The “CTC and FTC’s Patent Rights” means all patents and patent applications owned or controlled by CTC, FTC and its or their affiliates throughout the Territory that claim the compositions of matter, Products and Technology, and manufacture, use or sale of any composition of matter and Products relating to Technology, including, but not limited to, the patents and patent applications set forth in Exhibit A. The “CTC and FTC’s Regulatory Filings” means all regulatory filings made in the Territory that relate to Technology or Products.

The definitive license agreement (“License Agreement”) will contain customary representations and warranties, including but not limited to, representations and warranties indicating that none of CTC, FTC or any affiliate of CTC or FTC owns or controls any intellectual property other than the intellectual property included in the Technology, that are necessary for or related to any Product or the development, manufacture, use, sale, importation, or commercialization thereof.

D. Territory:
The term “Territory” shall mean the entire world.

E. Field:
The term “Field” shall mean all uses or applications for cell based therapies, including but not limited to CAR-T and CAR.TNK immunotherapies.

F. Payment
Subject to satisfaction of the Closing Conditions (set forth below), TNK shall acquire shares constituting 4.166% of the total capital stock of CTC and 4.166% of the total capital stock of FTC, in each case calculated on a fully-diluted basis (assuming the exercise or conversion of all then exercisable options, warrants, rights or convertible securities) after giving effect to the issuance of such shares to TNK. The purchase price for the shares will be $5 million in total (to be allocated as mutually agreed between CTC and FTC).
The Parties agree that they will use commercially reasonable efforts to structure the transaction in a tax efficient manner for the Parties, and that any such structure will be subject to the mutual agreement of the Parties.

G. Profit Sharing

TNK, on the one hand, CTC and FTC, on the other hand, shall share the profits from the net sales of TNK for any Product in the Field in the Territory on a 50/50 basis (i.e., 50% to TNK and 50% to be allocated between CTC and FTC).

Sorrento, on the one hand, CTC and FTC, on the other hand, shall share the profits from the net sales of Sorrento for any Product that incorporates a Sorrento proprietary antibody outside the Field in the Territory on a 50/50 basis (i.e., 50% to Sorrento and 50% to be allocated between CTC and FTC).

CTC and FTC shall pay Sorrento ten percent (10%) of the net profit of CTC and FTC, respectively, for sales of any Product that incorporates a Sorrento proprietary antibody outside the Field in the Territory.

Anti-Stacking: If it is necessary to license or obtain rights under one or more patent applications or patents from a third party in order to manufacture, sell, use, import or export any Product, the selling party, TNK, Sorrento, CTC or FTC, shall be entitled to add the consideration paid to such third party for such rights to the deductions applied to gross revenue when calculating net sales in the year in which such payments were paid (such consideration the “Anti-Stacking Payments”).

Combination Products: Net sales of Products constituting combination products shall be calculated based on the ratio of the market values of the individual products included in such combination products.

H. Shareholder Rights

TNK’s fully-diluted percentage interest in each of CTC and FTC shall not be reduced to an amount below 4.166% (assuming the exercise or conversion of all then exercisable options, warrants, rights or convertible securities), respectively, prior to a firm commitment underwritten public offering of common stock of CTC and FTC, respectively, on a national securities exchange.

I. Technology Transfer

Technology transfer means that CTC and FTC agree to provide to TNK and Sorrento all necessary technical instructions with respect to Technology under Section C above to assist TNK and Sorrento in using the Technology that are necessary for or related to any Product or the development, manufacture, use, sale, importation, or commercialization thereof.

As time is of the essence, CTC and FTC shall complete the transfer of all Technology to TNK and Sorrento within ninety (90) days of the License Agreement effective date.

J. Responsibilities

TNK assumes responsibility for all costs associated with the development, manufacture and marketing for the Products in the Field in the Territory.

Sorrento, on the one hand, and/or CTC and FTC, on the other hand, will assume responsibility for all costs associated with the development, manufacture and marketing for the Products that incorporate a Sorrento proprietary antibody for all uses and applications expect for cell-based therapies in the Territory.

TNK, Sorrento, and/or CTC and FTC shall use commercially reasonable efforts to develop Products.

K. Patent Prosecution

CTC and FTC will continue to have primary responsibility (including costs) for prosecution and maintenance of the CTC and FTC’s Patent Rights, including, but notwithstanding, any patents (and corresponding patent applications) covering Products and/or their uses in the Field and timely provide TNK the reasonable opportunity to comment and provide suggestions on (and shall consider any TNK comments and suggestions in) any correspondence and documents with any patent office prior to submission; provided, however, that CTC and FTC shall not abandon, or fail to prosecute or maintain, the CTC and FTC’s Patent Rights without the prior written consent of TNK nor through
action or inaction adversely impact the CTC and FTC’s Patent Rights or any other intellectual property covering any Product.

L. Expiration and Exclusivity: In addition, CTC and FTC hereby agree, for the period beginning on the Effective Date (as defined below) and ending on 5 p.m. Pacific Daylight Time on that date ninety (90) days from the Effective Date (the “Exclusivity Period”), that CTC and FTC and their directors, officers, representatives and their respective affiliates shall deal exclusively with Sorrento and TNK with respect to a license to the Technology and Products in the Field, and shall not, directly or indirectly, through any affiliate or representative or otherwise, solicit or entertain offers from, negotiate with or in any manner encourage, discuss, accept or consider any proposal of any other person, entity or group (other than TNK, Sorrento and its and their representatives) relating to the Technology, Products or the CTC and FTC’s Patent Rights in the Field, whether directly or indirectly, through purchase, merger, consolidation, tender offer or otherwise.

M. Confidentiality: Each of the Parties agrees that any confidential information of the other party received in the course of performance under this Term Sheet shall be subject to that certain Confidentiality Agreement, dated June 6, 2015, by and between CTC and Sorrento (“Confidentiality Agreement”). Without limiting the generality of the foregoing, all parties shall keep confidential the terms and details of this Term Sheet until the definitive agreements for the exclusive license have been executed; provided that a party (or its parent company) may disclose such information to the extent reasonably necessary to comply with any applicable laws, rules and regulations, including SEC rules and regulations and the rules of the stock exchange upon which a party’s (or party’s parent company’s) shares are traded, and TNK (through its parent company, Sorrento) may disclose terms and details of the Term Sheet in a press release (“Press Release”) approved in advance by CTC and FTC, and such approval shall not be unreasonably withheld, conditioned or delayed. This Term Sheet should only be discussed by and between the senior officers, members of the board of directors of the parties and others as necessary to accomplish the objectives of this Term Sheet. All such individuals shall be subject to obligations of confidentiality.

N. Expenses Each of the parties shall be responsible for and bear its own expenses related to the actions necessary to negotiate and execute the definitive agreements contemplated hereby.

O. Due Diligence Subject to the confidentiality provisions herein (as set forth in Section M), CTC, FTC and their affiliates will provide TNK and TNK’s accountants, attorneys, partners, consultants, financing sources and all other representatives and agents of TNK full access, as reasonably necessary for TNK, to CTC’s and FTC’s management, consultants, accountants, advisors and all other representatives, and to all properties, operating and financial data, records, agreements and other information relating to the Technology, Products and the CTC and FTC’s Patent Rights, to the extent reasonably requested by TNK. CTC and FTC will use their best efforts to keep TNK informed of any material changes that have occurred or may occur affecting the Technology, Products and the CTC and FTC’s Patent Rights.

P. Governing Law; Entire Agreement This Term Sheet shall be governed by the laws of the State of California without regard to its or any other jurisdiction’s conflicts of laws principles. For purposes of this Term Sheet, it shall be deemed to have been executed in San Diego, California. This Term Sheet supersedes all prior discussions and writings and constitutes, with the Confidentiality Agreement, the entire agreement between the Parties with respect to the subject matter hereof. No waiver or modification of this Term Sheet will be binding upon either Party unless made in writing and signed by a duly authorized representative of such Party, and no failure or delay in enforcing any right will be deemed a waiver. In addition, this Term Sheet may be executed in two or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Facsimile and pdf signatures shall have the same legal effect as original signatures.

Q. Dispute Resolution Any controversy, conflict or dispute of any nature arising out of or relating to this Term Sheet and the transaction contemplated herein will be settled exclusively and finally by arbitration governed by ICC rules carried out in the State of California. CTC and FTC, on the one hand, and TNK, on the
other hand, will each select one arbitrator to represent them, and the two arbitrators together will select a third arbitrator for the proceedings.

**R. Intentions of the Parties**

The Parties acknowledge and agree that this is a binding Term Sheet and shall constitute an obligation for the parties to enter into a transaction consistent with the terms set forth herein. The Parties further acknowledge and agree that this Term Sheet does not contain all matters upon which agreement must be reached for the transactions contemplated by this Term Sheet to be consummated. If the Parties are unable to agree on the terms and conditions of the definitive agreements (other than those set forth herein) within thirty (30) days after the Effective Date, such terms and conditions shall be determined through binding arbitration. Notwithstanding any of the foregoing, TNK’s obligations herein are conditioned upon due diligence (as described in Section O above) reasonably satisfactory to the TNK and on the approval of the board of directors of TNK.

**S. Definitive Agreements:**

The Parties agree to negotiate in good faith to enter into definitive transaction documents with respect to the subject matter set forth herein that include terms, including, but not limited to, representations and warranties, that are customary for transactions of this size and nature, and are otherwise consistent with this Term Sheet, with an anticipated signing on or prior to September 1, 2015.

[Remainder of Page Intentionally Left Blank]
IN WITNESS WHEREOF, the Parties hereto have executed this Term Sheet by their duly authorized representatives, effective as of July 27, 2015 (the “Effective Date”).

CYTOLUMINA TECHNOLOGIES CORPORATION

/s/ Daniel Wang
Signature

Daniel Wang
Print name

President
Print title

7/27/2015
Date

FETOLUMINA TECHNOLOGIES CORPORATION

/s/ Tom Lee
Signature

Tom Lee
Print name

President
Print title

7/27/2015
Date

TNK THERAPEUTICS, INC.

/s/ HENRY JI
Signature

HENRY JI
Print name

President & CEO
Print title

8/7/2015
Date

SORRENTO THERAPEUTICS, INC.

/s/ HENRY JI
Signature

HENRY JI
Print Name

President & CEO
Print Title

8/7/2015
Date
## EXHIBIT A

### EXISTING LICENSED PATENTS AND PATENT APPLICATIONS

<table>
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<tr>
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<tbody>
<tr>
<td><strong>Device for capturing circulating cells</strong></td>
<td>US 20120003711 A1 18 Mar 2010</td>
<td>The present invention provides devices and methods for capturing rare cells. The devices and methods described herein can be used to facilitate the diagnosis and monitoring of metastatic cancers.</td>
<td>EU, China, and Japan</td>
</tr>
<tr>
<td><strong>Systems, methods and components for isolating cells from a fluid sample</strong></td>
<td>WO 2013181285 A1 29 May 2013</td>
<td>A system for isolating preselected cell types from a fluid sample that includes a plurality of cell types includes a cell-capture fluidic chip, and a chip holder configured to receive the cell-capture fluidic chip and to maintain the cell-capture fluidic chip with a substantially fluid-tight seal while in operation. The chip holder is further configured to release the cell-capture fluidic chip to be removed from the chip holder for further processing. The cell-capture fluidic chip includes a substrate, a laser micro-dissection membrane disposed on the substrate, and a channel-defining layer disposed on the laser micro-dissection membrane. The laser micro-dissection membrane has a surface adapted to capture preselected cell types preferentially over other cell types of the plurality of cell types. The channel-defining layer is removable from the laser micro-dissection membrane for further processing of the cell-capture fluidic chip.</td>
<td>EU, China, and Japan</td>
</tr>
<tr>
<td><strong>Selective capture and stimulated release of circulating cells on nanostructured devices</strong></td>
<td>WO 2014022581 31 Jul 2013</td>
<td>A device for capturing preselected cell types from a fluid sample that includes a plurality of cell types includes a substrate, a plurality of nanowires at least one of attached to or integral with a surface of the substrate such that each nanowire of the plurality of nanowires has an unattached end, and a layer of temperature-responsive material formed on at least the unattached end of each of the plurality of nanowires. The layer of temperature-responsive material has a compact configuration at a first temperature and an expanded configuration at a second temperature so as to facilitate release of cells captured at the first temperature to be released at the second temperature.</td>
<td>EU, China, and Japan</td>
</tr>
<tr>
<td><strong>Method of assessing disease condition of cancer</strong></td>
<td>TBD 26 Sep 2015</td>
<td>This is a provisional patent which will be converted by September 26th, 2015.</td>
<td>US only</td>
</tr>
</tbody>
</table>
EXCLUSIVE LICENSE AGREEMENT

THIS EXCLUSIVE LICENSE AGREEMENT (the “Agreement”) is made and entered into as of the 25th day of September, 2015 (the “Effective Date”) by and between LA Cell, Inc., a Delaware corporation with a principal place of business at 9380 Judicial Drive, San Diego, CA 92121 (“Licensee”) and City of Hope, a California nonprofit public benefit corporation located at 1500 East Duarte Road, Duarte, California 91010 (“City of Hope” or “COH”). Licensee and COH are each sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

WHEREAS:
A. COH operates an academic research and medical center that encourages the use of its inventions, discoveries and intellectual property for the benefit of the public, and COH owns or Controls (as defined below) certain Patent Rights (as defined below) useful in the Field (as defined below);
B. The research was sponsored in part by the National Institute of Health, and as a consequence this license is subject to obligations to the United States Federal Government under 35 U.S.C. §§ 200-212 and applicable U.S. government regulations;
C. Licensee is a company dedicated to the commercial development and exploitation in the Field (as defined below) of products and services that incorporate one or more of the technologies described in the Patent Rights and therefore Licensee desires to obtain from COH a worldwide, exclusive license under the Patent Rights, on the terms and subject to the conditions set forth herein; and
D. The Certificate of Incorporation of Licensee is in the form attached hereto as Exhibit A (as it may be amended or restated from time to time in accordance with its terms, the “Charter”) and provides, among other things, for the rights and preferences of a class of stock, referred to therein as Class C Common Stock, to be issued to COH or its designee(s) in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the amount and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1: DEFINITIONS

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

1.2 “Affiliate” of a Party means a Person that, directly or indirectly (through one or more intermediaries) controls, is controlled by, or is under common control with such Party. For purposes of this Section 1.2, “control” means (i) the direct or indirect ownership of 50 percent or more of the voting stock or other voting interests or interests in profits, or (ii) the ability to otherwise control or direct the decisions of board of directors or equivalent governing body thereof by contract or otherwise.

1.3 “Annual Report” has the meaning set forth in Section 2.3.

1.4 “Business Day” means any day, other than a Saturday, Sunday or day on which commercial banks located in Los Angeles, California, are authorized or required by law or regulation to close.

1.5 “Change of Control” means (i) any transaction or series of related transactions following which the holders of Licensee’s capital stock immediately prior to such transaction or series of related transactions do not retain voting securities representing at least 50% of the outstanding voting power of Licensee, or (ii) a sale of all or substantially all of Licensee’s assets taken as a whole; provided, however, an initial public offering of the stock of Licensee shall not be considered a Change of Control.

1.6 “Class C Common Stock” means Class C Common Stock, par value $0.0001 per share, of Licensee, with such rights preferences and privileges as are set forth in the Charter.

1.7 “Commercially Reasonable Efforts” means the exercise of such efforts and commitment of such resources by Licensee, directly or through one or more Sublicensees, in a reasonable manner consistent with similar organizations in the
pharmaceutical industry for a comparable development or commercialization program at a similar stage of development or commercialization. In the event that Licensee or a Sublicensee with respect to a given Licensed Product or Licensed Service, has a program or product that competes with the programs contemplated by this Agreement for the same indication and similar patient population with respect to such Licensed Product or Licensed Service, then “Commercially Reasonable Efforts” shall also mean efforts at least comparable to those efforts and resources expended by Licensee or its Sublicensee that are directly attributable to Licensee’s or Sublicensee’s competing program and/or product or service.

1.8 “COH Indemnites” has the meaning set forth in Section 10.1.

1.9 “COH Shares” means the shares of Class C Common Stock to be issued to COH or its designees in accordance with Section 4.3.

1.10 “COH Confidential Information” means Confidential Information disclosed or provided by, or on behalf of, COH to Licensee or its designees.

1.11 “COH VP” has the meaning set forth in Article 12.

1.12 “Completion” means, with respect to a particular clinical trial, the earlier of (i) the database lock or freeze related to the completion of treatment or examination of participants in such clinical trial or (ii) the dosing of the first patient in a clinical trial in a subsequent phase for the same indication (e.g. with respect to a Phase 1 Clinical Trial, the Phase 1 Clinical Trial will be deemed completed in the event a patient is dosed in a Phase 2 Clinical Trial for the same indication before a database lock in the related Phase 1 Clinical Trial).

1.13 “Common Stock” means Class A Common Stock, par value $0.0001 per share, of Licensee.

1.14 “Confidential Information” means: (i) all information and materials (of whatever kind and in whatever form or medium) disclosed by or on behalf of a Party to the other Party (or its designee) in connection with this Agreement, whether prior to or during the term of this Agreement and whether provided orally, electronically, visually, or in writing; provided that all such information and materials initially disclosed in writing or electronically shall be clearly marked as “CONFIDENTIAL” and all such materials and information initially disclosed orally shall be reduced to writing and marked as “CONFIDENTIAL” within 10 days following the date of initial oral disclosure; (ii) all copies of the information and materials described in (i) above; and (iii) the existence and each of the terms and conditions of this Agreement; provided further that Confidential Information shall not include information and materials to the extent a Party can demonstrate through its contemporaneous written records that such information and materials are or have been:

(a) known to the receiving Party, or in the public domain, at the time of its receipt by a Party, or which thereafter becomes part of the public domain other than by virtue of a breach of this Agreement or the obligations of confidentiality under this Agreement;

(b) received without an obligation of confidentiality from a Third Party having the right to disclose without restrictions such information;

(c) independently developed by the receiving Party without use of or reference to Confidential Information disclosed by the other Party; or

(d) released from the restrictions set forth in this Agreement by the express prior written consent of the disclosing Party.

1.15 “Control(s)” or “Controlled” means the possession by a Party, as of the Effective Date, of rights sufficient to effect the grant of rights set forth in this Agreement without violating the terms of any agreement with any Third Party.

1.16 “Covers” or “Covered by,” with reference to a particular Licensed Product or Licensed Service means that the manufacture, use, sale, offering for sale, or importation of such Licensed Product or performance of such Licensed Service would, but for ownership of, or a license granted under this Agreement to, the relevant Patent Right, infringe a Valid Claim in the country in which the activity occurs.

1.17 “Deadline Date” has the meaning set forth in Section 2.2.1.

1.18 “Designated Representative” has the meaning set forth in Section 2.3.
1.19 “Development Milestone Event” has the meaning set forth in Section 4.4.

1.20 “Diligence Milestones” has the meaning set forth in Section 2.2.1.

1.21 “Dispute” means any controversy, claim, allegation, suit or legal proceeding arising out of or relating to this Agreement, or the interpretation, breach, termination, or invalidity thereof.

1.22 “Equity Financing” means the sale and issuance of capital stock of Licensee, in one or more transactions, for capital raising purposes, including any such capital stock issuable (assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability) upon the exercise, conversion or exchange of all evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, including all rights, options or warrants to subscribe for, purchase or otherwise acquire shares of Common Stock.

1.23 “Expiration” as the meaning set forth in Section 8.1.

1.24 “Field” means the research, diagnosis, treatment or prevention of any of the following human diseases: *. For the avoidance of doubt, (a) any disease that is not listed in the foregoing sentence is specifically excluded from the Field, and (b) the field of research reagents, including the detection of intracellular targets using antibodies, other proteins or oligonucleotides as probes, in each case, for non-clinical research purposes is also specifically excluded from the Field.

1.25 “First Commercial Sale” means (i) with respect to a particular Licensed Product in a given country, the first arm’s-length commercial sale of such Licensed Product by or under authority of Licensee or any Sublicensee to a Third Party who is not a Sublicensee, and (ii) with respect to a particular Licensed Service in a given country, the first arm’s length performance of such Licensed Service for value by or under authority of Licensee or any Sublicensee to and for the benefit of a Third Party who is not a Sublicensee, in the case of (i) or (ii) solely following Marketing Approval in such country.

1.26 “GAAP” means generally accepted accounting principles, consistently applied, as promulgated from time to time by the Financial Accounting Standards Board.

1.27 “Initiating Party” has the meaning set forth in Article 12.

1.28 “Intellectual Property Rights” means all: (i) rights in patents and patent applications anywhere in the world, (ii) trade secret rights and other rights in proprietary information and know-how, (iii) rights in industrial designs and any registrations and applications therefor, (iv) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto, (v) rights in databases and data collections, (vi) moral and economic rights of authors and inventors, however denominated, and (vii) any other similar rights of any kind or nature anywhere in the world with respect to the Know-How.

[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.

1.29 “Know-How” means the know-how, trade secrets, techniques, methods, processes, formulations, testing procedures, and any other information identified on Exhibit B.

1.30 “Knowledge Group” means (i) *, (ii) the Director COH’s Office of Technology Transfer, (iii) those individuals that are direct reports to the Director COH’s Office of Technology Transfer, (iv) COH’s general counsel and (v) those individuals within the Office of General Counsel that are direct reports to COH’s general counsel.

1.31 “License Year” means each calendar year during the Term; except that the first License Year shall commence on the Effective Date and end on December 31 of the calendar year in which the Effective Date occurs.

1.32 “Licensed Product” means a product, material, composition or apparatus (including, without limitation, kits, component sets or components thereof, regardless of concentration or formulation) that is Covered by a Valid Claim. By way of clarification, “Licensed Product” shall include a product manufactured in a country in which such manufacture is Covered by a Valid Claim and thereafter exported to and sold in a country in which no Valid Claim exists.

1.33 “Licensed Service” means any process, method or service that is Covered by a Valid Claim.

1.34 “Licensee Confidential Information” means Confidential Information disclosed or provided by, or on behalf of, Licensee to COH or its designees.
“Losses” has the meaning set forth in Section 10.1.

“Marketing Approval” means all approvals, licenses, registrations or authorizations of any federal, state or local regulatory agency, department, bureau or other governmental entity, necessary for the manufacturing, use, storage, import, transport, marketing and sale of Licensed Products or performance of Licensed Services in a country or regulatory jurisdiction.

“Marks” has the meaning set forth in Section 7.2.

“Net Proceeds” means the net proceeds actually received by Licensee from all sales of shares of capital stock after deduction of all transaction expenses, finder’s fees, advisory fees, legal fees, sales commissions or similar amounts paid to brokers or dealers and other costs and expenses incurred by Licensee or its subsidiaries in connection therewith. In the event such net proceeds are not paid to Licensee in cash, the value of such net proceeds will be the fair market value of the assets constituting such net proceeds.

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“Net Sales” means the total gross amount invoiced by Licensee and its Affiliates (regardless of whether and when such invoices are actually paid) on the sale of Licensed Products and Licensed Services to Third Parties (including, without limitation, the provision of any product by Licensee and its Affiliates that incorporates a Licensed Product or Licensed Service, but for clarity excluding documented sponsored research and/or development activities (including costs for preclinical and clinical development), valued at the actual direct cost of such activities on a fully burdened basis (including reasonable margin for overhead)), less the following items, as determined from the books and records of Licensee and its Affiliates:

(a) insurance, handling and transportation charges prepaid, allowed, or actually invoiced;

(b) amounts repaid, credited or allowed for rejection, return or recall;

(c) sales or other excise taxes or other governmental charges levied on or measured by the invoiced amount (including, without limitation, value added taxes);

(d) brokerage, customs and import duties or charges; and

(e) normal and customary trade, quantity and cash discounts (including chargebacks and allowances) and rebates that relate to the Licensed Products or Licensed Services.

Sales of Licensed Products or the provision of Licensed Services between or among Licensee, its Affiliates or its Sublicensees shall be excluded from the computation of Net Sales, except in those instances in which the purchaser is also the commercial end-user of the Licensed Product sold or Licensed Service provided. Further, transfers of reasonable quantities of Licensed Product by Licensee, any of its Affiliates or of its Sublicensee to a Third Party that is not a Sublicensee for use in the development of such Licensed Product (and not for resale) and transfers of industry standard quantities of Licensed Product for promotional purposes shall not be deemed a sale of such Licensed Product that gives rise to Net Sales for purposes of this Section 1.39.

If a Licensed Product is sold in a combination with other active components (“Combination Sale”), Net Sales on the Combination Sale shall be calculated by multiplying the Net Sales of that Combination Sale by the fraction A/(A+B), where A is the average sale price in the relevant country of the Licensed Product included in the Combination Sale (or similar Licensed Product with the same dosage and route of administration) when sold separately in finished form and B is the average sale price in that country of the other product(s) included in the Combination Sale when sold separately in finished form. If no such separate sales are made by Licensee or its Affiliates, Net Sales for royalty determination shall be calculated by multiplying Net Sales of the Combination Sale by the fraction C/(C+D), where C is the fully allocated cost attributable to the Licensed Product included in the Combination Sale and D is the fully allocated cost attributable to such other active components.

“Non-Proprietary Sublicense” has the meaning set forth in Section 3.3.2.

“Options” has the meaning set forth in Section 9.3.5.

“Partner Patent Rights” means, if any, those patent or patent applications relating to the subject matter of the Patent Rights and Controlled by COH as a result of a Research Reagent Agreement within * years of the Effective Date.
1.43 “Patent Challenge” has the meaning set forth in Section 7.3.

1.44 “Patent Rights” means: (i) Patent Cooperation Treaty (PCT) application *; (ii) U.S. Patent Application No. *; (iii) U.S. Patent Application *; (iv) U.S. Patent Application *; (v) COH internal patent disclosure number * (not filed as of the Effective Date); (vi) COH internal patent disclosure number * (not filed as of the Effective Date); (vii) patents, patent applications, continuations and divisional applications and foreign equivalents to any of the foregoing, (viii) continuation-in-part applications that repeat a substantial portion of any of the foregoing that are Controlled by COH, (ix) any patents or patent applications that claim the same invention(s) or claim priority, directly or indirectly, to any of the foregoing, that are Controlled by COH, (x) letters patent or the equivalent issued on any of the foregoing throughout the world, (xi) amendments, extensions, renewals, reissues, and re-examinations of any of the foregoing, and (xii) any Partner Patent Rights. Notwithstanding the foregoing, “Patent Rights” shall only include any continuation-in-part application to the extent that claims in such continuation-in-part application are supported in the specification of the parent application, unless otherwise mutually agreed to in writing by the parties to this Agreement.

1.45 “Person” means any person or entity, including any individual, trustee, corporation, partnership, trust, unincorporated organization, limited liability company, business association, firm, joint venture or governmental agency or authority.

1.46 “Phase 1 Clinical Trial” means, as to a specific Licensed Product or Licensed Service, a study as described in 21 C.F.R. §312.21(a) or a comparable clinical study in a country other than the United States.

1.47 “Phase 2 Clinical Trial” means, as to a specific Licensed Product or Licensed Service, a study in humans designed with the principal purpose of determining initial efficacy and dosing of such Licensed Product in patients for the indication(s) being studied as described in 21 C.F.R. §312.21(b); or a comparable clinical study in a country other than the United States.

1.48 “Phase 3 Clinical Trial” means, as to a specific Licensed Product or Licensed Service, a lawful study in humans of the efficacy and safety of such Licensed Product or Licensed Service, which is prospectively designed to demonstrate statistically whether such Licensed Product is effective and safe for use in a particular indication in a manner sufficient to file an application to obtain Marketing Approval to market and sell that Licensed Product or Licensed Service in the United States or another country for the indication being investigated by the study, as described in 21 C.F.R. § 312.21(c); or a comparable clinical study in a country other than the United States.

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1.49 “Proprietary Sublicense” has the meaning set forth in Section 3.3.1.

1.50 “Qualified IPO” shall have the meaning set forth in Licensee’s Certificate of Incorporation, as may be amended or restated from time to time.

1.51 “Research Reagent Agreement” means a license agreement between COH and a Third Party pursuant to which such Third Party is granted rights to the Patent Rights in the field of detection of intracellular targets using antibodies, other proteins or oligonucleotides as probes, in each case, solely for non-clinical research purposes or in a functionally similar field.

1.52 “Responding Party” has the meaning set forth in Article 12.

1.53 “Royalty Period” has the meaning set forth in Section 5.1.

1.54 “Sales Milestone Event” has the meaning set forth in Section 4.5.

1.55 “Sublicensee” means any Affiliate of Licensee or Third Party which enters into an agreement with Licensee or another sublicensee involving the grant to such Affiliate or Third Party of any rights under the license granted to Licensee pursuant to this Agreement.
1.56 "Sublicensee Net Sales" means the total gross amount invoiced by Sublicensees (other than a Sublicensee that is an Affiliate of Licensee) (regardless of whether and when such invoices are actually paid) on the sale of Licensed Products or the provision of Licensed Services to Third Parties (including, without limitation, the provision of any product by any Sublicensee (other than a Sublicensee that is an Affiliate of Licensee) that incorporates a Licensed Product or Licensed Service but for clarity excluding documented sponsored research and/or development activities (including costs for preclinical and clinical development), valued at the actual direct cost of such activities on a fully burdened basis (including reasonable margin for overhead)), less the following items, as determined from the books and records of Sublicensees:

(a) insurance, handling and transportation charges prepaid, allowed, or actually invoiced;
(b) amounts repaid, credited or allowed for rejection, return or recall;
(c) sales or other excise taxes or other governmental charges levied on or measured by the invoiced amount (including, without limitation, value added taxes);
(d) brokerage, customs and import duties or charges; and
(e) normal and customary trade, quantity and cash discounts (including chargebacks and allowances) and rebates that relate to the Licensed Products or Licensed Services.

Sales of Licensed Products or the provision of Licensed Services between or among Licensee, its Affiliates or its Sublicensees shall be excluded from the computation of Sublicensee Net Sales, except in those instances in which the purchaser is also the commercial end-user of the Licensed Product sold or Licensed Service provided. Further, transfers of reasonable quantities of Licensed Product by Licensee, any of its Affiliates or of its Sublicensee to a Third Party that is not a Sublicensee for use in the development of such Licensed Product (and not for resale) and transfers of industry standard quantities of Licensed Product for promotional purposes shall not be deemed a sale of such Licensed Product that gives rise to Sublicensee Net Sales for purposes of this Section 1.56.

If a Licensed Product is sold in a combination with other active components ("Sublicensee Combination Sale"), Sublicensee Net Sales on the Sublicensee Combination Sale shall be calculated by multiplying the Sublicensee Net Sales of that Sublicensee Combination Sale by the fraction A/(A+B), where A is the average sale price in the relevant country of the Licensed Product included in the Sublicensee Combination Sale (or similar Licensed Product with the same dosage and route of administration) when sold separately in finished form and B is the average sale price in that country of the other product(s) included in the Sublicensee Combination Sale when sold separately in finished form. If no such separate sales are made Sublicensees, Sublicensee Net Sales for royalty determination shall be calculated by multiplying Sublicensee Net Sales of the Sublicensee Combination Sale by the fraction C/(C+D), where C is the fully allocated cost attributable to the Licensed Product included in the Combination Sale and D is the fully allocated cost attributable to such other active components.

1.57 "Sublicense Revenues" means all consideration, in whatever form, due from a Sublicensee to Licensee or to another Sublicensee in return for the grant of a sublicense of Licensee’s rights under Section 3.1 and Section 3.2 of this Agreement, excluding consideration in the form of: (i) royalties received by Licensee and calculated wholly as a function of sales of Licensed Products or Licensed Services, (ii) payments or reimbursement for documented sponsored research and/or development activities, valued at the actual direct cost of such activities on a fully burdened basis (including reasonable margin for overhead), (iii) payment or reimbursement of reasonable patent expenses actually incurred or paid by Licensee and not otherwise reimbursed, or payment of patent expenses required to be paid by Licensee hereunder, (iv) payments for the purchase of equity in Licensee at the fair market value of such equity on the date that the obligation to make such payment arises, (v) payments recognized as Net Sales or Sublicensee Net Sales under this Agreement for which a royalty is payable to COH (vi) capital investments (debt and/or equity) at fair market value, and (vii) amounts paid for supplies of materials or other tangible materials which are not Licensed Products or performance of services which are not Licensed Services. By way of clarification, the principal amount of any bona fide loan or other extension of credit provided to Licensee or an Affiliate of Licensee shall not be deemed to constitute “Sublicense Revenues.”

1.58 "Term" has the meaning set forth in Section 8.1.

1.59 "Territory" means the entire world.

1.60 "Third Party" means a Person that is neither a Party to this Agreement nor an Affiliate of a Party.

1.61 "Third Party Infringement" has the meaning set forth in Section 7.1.4.

1.62 "Valid Claim" means a claim of a pending patent application or an issued and unexpired patent included in the Patent Rights in a particular jurisdiction, which claim has not, in such jurisdiction been finally rejected or been declared invalid or
cancelled by the patent office or a court of competent jurisdiction in a decision that is no longer subject to appeal as a matter of right; provided, that in the case of a pending patent application, a claim will only be considered a Valid Claim the claim has pending before the relevant patent office for less than a period of seven (7) years from the date of first examination on the merits of that patent application.

1.63 “Validity Action” has the meaning set forth in Section 7.1.4.

1.64 “Warrant” has the meaning set forth in Section 9.3.5.

ARTICLE 2: DEVELOPMENT AND COMMERCIALIZATION EFFORTS

2.1 Development and Commercialization Responsibilities. Licensee shall have the sole right to control all development, manufacturing and commercialization activities (including all regulatory activities) with respect to Licensed Products, Licensed Services, and all other products, materials, compositions, apparatuses, processes, methods, and services claimed or otherwise subject to the Patent Rights in the Field.
### Licensee Diligence

**2.2.1 Diligence Milestones.** Licensee shall use Commercially Reasonable Efforts to develop and commercialize Licensed Products and Licensed Services in the Field, directly or through one or more Sublicensees. Without limiting the foregoing, if Licensee, directly or through one or Sublicensees, fails to accomplish any one of the “Diligence Milestones” set forth in this Section 2.2.1 for a particular specific category of human disease set forth in such Diligence Milestone by the date specified (each a “Deadline Date”) corresponding to such Diligence Milestone, then COH shall have the right to exercise the rights set forth in Section 2.2.2 solely with respect to such category of human disease.

<table>
<thead>
<tr>
<th>“Deadline Date”</th>
<th>“Diligence Milestone”</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Six (6) months from the Effective Date</td>
<td>Licensee to receive proceeds of not less than $* million through any combination of: (i) Net Proceeds of Equity Financings, (ii) unrestricted grants or gifts and (iii) up to $* million in payments for reimbursement of sponsored research activities.</td>
</tr>
<tr>
<td>2. Two (2) years from the Effective Date</td>
<td>Licensee to receive proceeds of not less than $* million through any combination of: (i) Net Proceeds of Equity Financings, (ii) unrestricted grants or gifts and (iii) up to $* million in payments for reimbursement of sponsored research activities.</td>
</tr>
<tr>
<td>3. Three (3) years from the Effective Date</td>
<td>Licensee to receive proceeds of not less than $* million through any combination of: (i) Net Proceeds of Equity Financings, (ii) unrestricted grants or gifts and (iii) up to $* million in payments for reimbursement of sponsored research activities.</td>
</tr>
<tr>
<td>4. Four (4) years from the Effective Date</td>
<td>Licensee to initiate first Phase 1 Clinical Trial for the first Licensed Product or Licensed Service for each of the eight specific categories of human disease in the Field.</td>
</tr>
<tr>
<td>5. Six (6) years from the Effective Date</td>
<td>Licensee to initiate first Phase 2 Clinical Trial for the first Licensed Product or Licensed Service for each of the eight specific categories of human disease in the Field.</td>
</tr>
</tbody>
</table>
| 6. Eight (8) years from the Effective Date | Licensee to initiate first Phase 3 Clinical Trial for the first Licensed Product or Licensed Service for each of the following categories of human disease in the Field: *.

| 7. Nine (9) years from the Effective Date | Licensee to initiate first Phase 3 Clinical Trial for the first Licensed Product or Licensed Service for each of the following categories of human disease in the Field: *.

| 8. Ten (10) years from the Effective Date | Receive FDA Marketing Approval for the first Licensed Product or Licensed Service for each of the following categories of human disease in the Field: *.

| 9. Eleven (11) years from the Effective Date | Receive FDA Marketing Approval for the first Licensed Product or Licensed Service for each of the following categories of human disease in the Field: *.

Licensee shall provide COH with prompt notice of meeting each of the foregoing diligence milestones, as applicable, with respect to each specific category of human disease in the Field, which such notice shall be accompanied by reasonable documentary evidence of the satisfaction of the applicable diligence milestone. Licensee acknowledges and agrees that Licensee may not use the same active
pharmaceutical ingredient for more than one category of human disease in the Field to satisfy diligence milestones 4-9 even if independent clinical trials are conducted for each disease category.

2.2.2 **Termination and License Conversion for Failure to Reach Milestones.** In the event that Licensee fails to meet any of the Diligence Milestones 1 through 3 above then COH may, as COH’s sole and exclusive remedy and as Licensee’s sole liability, terminate this Agreement in its entirety on written notice to Licensee. In the event Licensee fails to meet any of the diligence milestone 4 through 9 above with respect to any specific category of human disease in the Field then COH may, as COH’s sole and exclusive remedy and as Licensee’s sole liability, on notice to Licensee, either (i) terminate the grant of rights to Licensee hereunder solely with respect to such category of human disease, or (ii) convert the grant of rights to Licensee hereunder solely with respect to such category of human disease from exclusive to non-exclusive, without any change in the other terms and conditions of this Agreement. Conversion of the license with respect to a category of human disease to non-exclusive pursuant to this Section 2.2.2 shall not constitute a waiver of COH’s right to terminate the license to such category of human disease thereafter if Licensee’s obligations under Section 2.2.1 continue to be unmet with respect to such category of human disease

2.3 **Governance.** COH and Licensee shall each designate one individual to serve as the main point of contact for communications related to development and commercialization of Licensed Products and Licensed Services under this Agreement (each a “Designated Representative”). The initial Designated Representative of COH shall be George Megaw and the initial Designated Representative of Licensee shall be Henry Ji. Each Party may replace its Designated Representative at any time upon prior notice to the other Party. Licensee shall keep COH reasonably informed as to progress in the development and commercialization of Licensed Products and Licensed Services. Without limiting the foregoing, on or before January 15 of each year during the term of this Agreement, Licensee shall provide to COH a written report setting forth, in reasonable detail, Licensee’s activities and achievements with respect to the development and commercialization of Licensed Products and Licensed Services during the preceding twelve (12) months, including activities relating to the achievement of diligence milestones (the “Annual Report”). The Designated Representatives shall meet in person, or if mutually agreed, via video or conference call, once each calendar year to present and discuss the current Annual Report. If the meeting shall be in person, the meeting shall be at such location and date as mutually agreed. Each Party shall be responsible for all expenses incurred by its Designated Representative in the participation in such annual meetings.

2.4 **Clinical Trial Center.** Upon request of COH, Licensee agrees that COH will be included as a site of clinical trials related to the oncology and diabetes categories of human disease in the Field; provided such site is (and its personnel that will conduct the clinical studies are) qualified, as determined under prevailing industry standards, guidelines and best practices, to conduct such clinical trials and in compliance with all applicable federal, state and local laws, regulations and guidances; and further provided COH and LA Cell enter into a mutually agreed upon clinical trial agreement.

ARTICLE 3: LICENSE GRANTS

3.1 **Grant of Rights.**

3.1.1 **Exclusive Patent License.** COH hereby grants to Licensee an exclusive, transferable (as set forth in Section 14.1), sublicenseable (as set forth in Section 3.3), royalty-bearing right and license under the Patent Rights to make, have made, use, have used, offer for sale, sell and import, export, and otherwise dispose of, commercialize, and exploit in any manner the Licensed Products, the Licensed Services, in the Field, in the Territory.

3.1.2 **Know-How License.** COH hereby grants to Licensee an exclusive, transferable (as set forth in Section 14.1), sublicenseable (as set forth in Section 3.3), royalty-bearing right and license under all Intellectual Property Rights embodied in, relating to, or otherwise covering the Know-How, to make, have made, use, have used, offer for sale, sell, import, export, and otherwise dispose of, commercialize, and exploit in any manner the Licensed Products and the Licensed Services in the Field in the Territory.

3.1.3 The foregoing grants of rights in Section 3.1.1 and Section 3.1.2 shall be subject to: (i) the retained rights of the U.S. Government in the Patent Rights pursuant to 35 U.S.C. §§ 200-212 and applicable U.S. government regulations, (ii) the royalty-free right of COH and its Affiliates to practice the Patent Rights and all Intellectual Property Rights embodied in, relating to, or otherwise covering the Know-How solely for not-for-profit, internal educational and research uses (which uses shall in no event be for the benefit of or carried out on behalf of any for-profit Third Party), (iii) the right of COH and its Affiliates to publicly disclose research results, and (iv) the right of COH and its Affiliates to allow other non-profit institutions to use the Patent Rights and Know-How for the same purposes as (ii) and (iii).

3.2 **No Implied Licenses.** Licensee acknowledges that the licenses granted in this Agreement are limited to the scope expressly granted and that, subject to the terms and conditions of this Agreement, all other rights under all Patent Rights and other
Intellectual Property Rights Controlled by COH are expressly reserved to COH regardless of whether such patents are dominant or subordinate to the Patent Rights. COH retains final decision making rights with respect to granting licenses to the Patent Rights and Know-How outside of the Field to Third Parties, provided, however, COH agrees to timely and reasonably consult with Licensee regarding any potential licenses to the Patent Rights and Know-How outside the Field, and provided further, however, that COH shall not be required to consult with Licensee in licensing the Patent Rights and Know-How in the field of research reagents, including the detection of intracellular targets using antibodies, other proteins or oligonucleotides as probes, in each case, for non-clinical research purposes outside the Field. Licensee shall own and retain ownership of all rights, title and interest in and to all of its Intellectual Property Rights in existence as of the Effective Date or which Licensee may make, have made, conceive, reduce to practice, or otherwise acquire during or after the Term, and no licenses, express or implied, are granted to COH hereunder to any such Intellectual Property Rights.

3.3 Sublicensing

3.3.1 Proprietary Sublicenses. Licensee shall have the right to sublicense its rights hereunder (through multiple tiers of sublicensees) in connection to Third Parties with a license of proprietary antibodies or antibody products (a) developed by Licensee or its Affiliates, or (b) for which Licensee or its Affiliates have the exclusive right to commercialize (collectively, the “Proprietary Sublicenses”) without the consent of COH, which sublicenses shall be effective immediately upon execution provided that Licensee provides written notice of any such sublicense within 5 days of entry into such sublicense.

3.3.2 Non-Proprietary Sublicenses.

(a) The Parties shall establish a joint licensing steering committee (the “JLSC”) that will be responsible for and coordinate the sublicensing of Licensee’s rights hereunder to Third Parties in connection with the development and commercialization of antibodies or antibody-related products other than proprietary antibodies or antibody products (a) developed by Licensee or its Affiliates, or (b) for which Licensee or its Affiliates have the exclusive right to commercialize, including scenarios where COH or Licensee is approached by or otherwise identifies a potential Third Party sublicense in connection with the development and commercialization of antibodies or antibody-related products other than proprietary antibodies or antibody products (a) developed by Licensee or its Affiliates, or (b) for which Licensee or its Affiliates have the exclusive right to commercialize (collectively, the “Non-Proprietary Sublicenses”).

(b) The JLSC shall be comprised of two (2) members appointed by each Party for a total of four (4) members. Each Party will designate its members within thirty (30) days after the Effective Date. Each Party may replace any of its members on the JLSC at any time with prior written notice to the other Party. The members of the JLSC shall appoint the first chairperson. Each chairperson shall serve in such role for up to two (2) year(s), at which time a member designated by the other Party shall assume the role of chairperson. The JLSC shall meet at least quarterly by telephone or in person as may be agreed by the Parties from time to time. The JLSC shall attempt in good faith to make decisions by unanimous consent; provided, that Licensee shall have final decision making authority as to whether to enter a Non-Proprietary Sublicense.

3.3.3 Affiliate Sublicenses. Prior to a Qualified IPO, Affiliates may only obtain sublicenses of a non-exclusive nature to conduct research and development activities in collaboration with Licensee.

3.3.4 Sublicense Terms. The terms and conditions of each sublicense of Licensee’s rights hereunder shall be consistent with this Agreement. A true and complete copy of each sublicense of Licensee’s rights hereunder, as well as any amendment thereto, shall be delivered to COH promptly following the effective date of each such sublicense or amendment.

3.4 Effect of Termination on Sublicenses.

3.4.1 In the event that this Agreement terminates at any time for any reason, each sublicense validly granted hereunder which is in good standing as of the effective date of such termination shall continue in effect as a direct license between COH (as licensor) and Sublicensee (as licensee), provided that: (i) such sublicense, as determined by COH in its reasonable and good faith discretion, contains or imposes on COH no material obligation or liability additional to those set forth in this Agreement, (ii) the Sublicensee delivers to COH, within 30 days of the effective date of the termination of this Agreement, written acknowledgement that all payment and other obligations previously payable to Licensee under such sublicense shall thereafter be payable and due, and be paid directly to COH, and (iii) such Sublicensee (including its employees and contractors) is not at such time debarred or excluded or otherwise ineligible for participation in federally funded programs. All other sublicenses in existence as of the effective date of the termination of this Agreement which fail to satisfy the foregoing conditions shall, upon such termination, terminate.

3.4.2 Further and in addition to the requirements of Section 3.4.1, above, the conversion of a sublicense into a direct license between COH (as licensor) and Sublicensee (as licensee) upon termination of this Agreement shall require that either [A] or [B] (but not both), below, be satisfied:
[A] On the effective date of the termination of this Agreement:

(i) the Sublicensee is not a party to a proceeding in bankruptcy or insolvency filed by or against such Sublicensee, has not made a general assignment for the benefit of its creditors, and is not in litigation with COH or any Affiliate of COH, and

(ii) (1) the effective royalty rate payable on Sublicensee’s Net Sales of Licensed Products and Licensed Services, (2) the aggregate of other non-sale/royalty-based consideration due from Sublicensee, and (3) the other material terms and conditions of the sublicense are materially no less favorable to COH than the corresponding terms (excluding the stock grant due pursuant to Section 4.3, below) of this Agreement, or

[B] The terms and conditions of the sublicense had been approved by COH prior to its having been entered into by Licensee and the Sublicensee, such approval having been considered by COH expeditiously and not conditioned on the payment by Licensee of any additional consideration.

3.5 Documentation of Licensed Services. Licensee and its Sublicensees shall provide Licensed Services only pursuant to one or more written agreements which set forth, in reasonable detail, all consideration due to Licensee for the provision of such services. Licensee shall provide a true and complete copy of each such agreement to COH promptly following the effective date of such agreement.

ARTICLE 4: PAYMENTS

4.1 Up-Front Payment. Licensee shall pay to COH non-refundable license fees of (i) * ($*) within five (5) days after the Effective Date; and (ii) * ($*) within six (6) months after the Effective Date.

4.2 License Maintenance Fee. On or before the tenth Business Day after the end of each License Year (excluding the first License Year ending December 31, 2015), Licensee shall pay to COH the amount indicated in the table below opposite the applicable License Year:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 2</td>
<td>$*</td>
</tr>
<tr>
<td>Year 3</td>
<td>$*</td>
</tr>
<tr>
<td>Year 4</td>
<td>$*</td>
</tr>
<tr>
<td>Year 5</td>
<td>$*</td>
</tr>
<tr>
<td>Year 6 and onward</td>
<td>$*</td>
</tr>
</tbody>
</table>

The license maintenance fee paid in a given License Year shall be applied as credit against royalties otherwise due to COH under this Agreement during the License Year in which payment was made but may not be carried over and applied as credit against royalties due in subsequent years.

4.3 Stock Grant; COH Representations and Warranties.

4.3.1 Concurrently with the execution of this Agreement, Licensee will issue to COH or its designees stock certificates evidencing * validly issued, fully-paid, non-assessable shares of Class C Common Stock (the “Shares”).
4.3.2 COH understands that neither the COH Shares nor the shares of Class A Common Stock issuable upon conversion of the COH Shares (including based on any adjustment to the conversion rate pursuant to the Charter) (the “Conversion Shares”) have been registered under the Act. COH also understands that the COH Shares are being offered and sold pursuant to an exemption from registration contained in the Act based in part upon COH’s representations contained in the Agreement. COH hereby represents and warrants as follows:

[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion

(a) COH has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to the Licensee so that it is capable of evaluating the merits and risks of its investment in the Licensee and has the capacity to protect its own interests. COH must bear the economic risk of this investment indefinitely unless the COH Shares (or the Conversion Shares) are registered pursuant to the Act, or an exemption from registration is available. COH understands that the Licensee has no present intention of registering the COH Shares, the Conversion Shares or any shares of its Common Stock. COH also understands that there is no assurance that any exemption from registration under the Act will be available and that, even if available, such exemption may not allow COH to transfer all or any portion of the COH Shares or the Conversion Shares under the circumstances, in the amounts or at the times COH might propose.

(b) COH is acquiring the COH Shares and the Conversion Shares for COH’s own account for investment only, and not with a view towards their distribution.

(c) COH represents that by reason of its, or of its management’s, business or financial experience, COH has the capacity to protect its own interests in connection with the transactions contemplated in this Agreement.

(d) COH represents that it is an accredited investor within the meaning of Regulation D under the Act.

(e) COH has had an opportunity to discuss the Licensee’s business, management and financial affairs with directors, officers and management of the Licensee. COH has also had the opportunity to ask questions of and receive answers from, the Licensee and its management regarding the terms and conditions of this investment.

(f) COH acknowledges and agrees that the COH Shares, and, if issued, the Conversion Shares are “restricted securities” as defined in Rule 144 promulgated under the Act as in effect from time to time and must be held indefinitely unless they are subsequently registered under the Act or an exemption from such registration is available. COH has been advised or is aware of the provisions of Rule 144, which permits limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including, among other things: the availability of certain current public information about the Licensee, the resale occurring following the required holding period under Rule 144 and the number of shares being sold during any three-month period not exceeding specified limitations.
4.4 **Development Milestone Payments.** Within 30 days after the occurrence of each “Development Milestone Event” set forth below whether achieved by Licensee, its Affiliate or a Sublicensee, Licensee shall pay COH or its designee the amount indicated below for each of the first eight (8) antibodies or antibody-related products Covered by the Patent Rights in the Field to enter clinical trials:

<table>
<thead>
<tr>
<th>Development Milestone Event</th>
<th>Amount Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>#1. Upon the dosing of the first patient in a Phase 1 Clinical Trial for each of the first eight (8) antibodies or antibody-related products within the scope of the Patent Rights in the Field</td>
<td>$*</td>
</tr>
<tr>
<td>#2. Upon the dosing of the first patient in a Phase 2 Clinical Trial for each of the first eight (8) antibodies or antibody-related products within the scope of the Patent Rights in the Field</td>
<td>$*</td>
</tr>
<tr>
<td>#3. Upon the dosing of the first patient in a Phase 3 Clinical Trial for each of the first eight (8) antibodies or antibody-related products within the scope of the Patent Rights in the Field</td>
<td>$*</td>
</tr>
<tr>
<td>#4. Upon FDA Marketing Approval of each of the first eight (8) antibodies or antibody-related products within the scope of the Patent Rights in the Field</td>
<td>$*</td>
</tr>
<tr>
<td>#5. Upon Marketing Approval in any jurisdiction outside of the U.S. Approval of each of the first eight (8) antibodies or antibody-related products within the scope of the Patent Rights in the Field</td>
<td>$*</td>
</tr>
</tbody>
</table>

In the event that any development milestone event is met with respect to a specific antibody or antibody-related product prior to the satisfaction of any prior milestone event with respect to the applicable antibody or antibody-related product, then Licensee shall also pay the amount due for occurrence of all prior milestone events not previously paid upon meeting the applicable development milestone (e.g., if a patient is dosed in a Phase 3 Clinical Trial prior to dosing of a first patient in a Phase 2 trial, Licensor shall pay COH $* million upon dosing the first patient in a Phase 3 Trial). For clarity, only one payment will be due per antibody or antibody-related product per Development Milestone Event. For example, if a particular antibody receives Marketing Approval in Canada and Mexico, only one (1) $* payment shall be due to COH.

[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion

4.5 **Sales Milestone Payments.** Within sixty (60) days following the end of each License Year that Licensee its Affiliate or a Sublicensee achieves the “Sales Milestone Event” set forth below, Licensee shall pay COH or its designee the amount indicated below for each of the first eight (8) antibodies or antibody-related products Covered by the Patent Rights obtain Marketing Approval:

<table>
<thead>
<tr>
<th>Sales Milestone Event for each of the first eight (8) antibodies or antibody-related products Covered by the Patent Rights</th>
<th>Amount Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>#1. $* million in Net Sales or Sublicensee Net Sales of Licensed Products or Licensed Services in the Field</td>
<td>$*</td>
</tr>
<tr>
<td>#2. $* million in Net Sales or Sublicensee Net Sales of Licensed Products or Licensed Services in the Field</td>
<td>$*</td>
</tr>
<tr>
<td>#3. $* million in Net Sales or Sublicensee Net Sales of Licensed Products or Licensed Services in the Field</td>
<td>$*</td>
</tr>
</tbody>
</table>

4.6 **Royalties.**

4.6.1 **Net Sales.** Licensee shall pay to COH or its designee royalties in an amount equal to *% of Net Sales of Licensed Products and Licensed Services, for clarity, including Net Sales by Affiliates. Royalties shall be paid on a Licensed Product-by-Licensed Product, Licensed Service-by-Licensed Service and country-by-country basis until the expiration in each country of the last to expire of the Valid Claims in such country Covering Licensed Products or Licensed Services.

4.6.2 **Sublicensee Net Sales.** Licensee shall pay to COH or its designee royalties in an amount equal to (i) *% of Sublicensee Net Sales of Licensed Products and Licensed Services if Licensee and Sublicensee (other than a Sublicensee that is an
Affiliate of Licensee) enter a sublicense agreement prior to the dosing of the first patient in a Phase 3 Clinical Trial for the applicable category of human disease in the Field; and (ii) *% of Sublicensee Net Sales of Licensed Products and Licensed Services if Licensee and Sublicensee (other than a Sublicensee that is an Affiliate of Licensee) enter a sublicense agreement after the dosing of the first patient in a Phase 3 Clinical Trial for the applicable category of human disease in the Field. Royalties shall be paid on a Licensed Product-by-Licensed Product, Licensed Service-by-Licensed Service and country-by-country basis until the expiration in each country of the last to expire of the Valid Claims in such country Covering Licensed Product or Licensed Service.

For clarity, royalties based on sales made by Affiliates shall be paid only by Licensee and only pursuant to Section 4.6.1, and neither Licensee nor any Affiliate shall have an obligation to pay royalties under this Section 4.6.2 based on sales of Licensed Products or Licensed Services made by an Affiliate of Licensee. In no event shall royalties be due under both Section 4.6.1 and Section 4.6.2 with respect to the same unit sale.

4.7 Sublicense Revenues. Licensee shall pay to COH a percentage of all Sublicense Revenues within sixty (60) days after payment is received from the relevant Sublicensee, determined as follows:

4.7.1 *% of Sublicense Revenues from those Proprietary Sublicenses granted prior to the dosing of the first patient in a Phase 2 Clinical Trial,

4.7.2 *% of all Sublicense Revenues from those Proprietary Sublicenses granted after dosing of the first patient in a Phase 2 Clinical Trial but prior to dosing of the first patient in a Phase 3 Clinical Trial,

4.7.3 *% of all Sublicense Revenues from those Proprietary Sublicenses granted after dosing of the first patient in a Phase 3 Clinical Trial.

4.7.4 *% of all Sublicense Revenues received in connection with Non-Proprietary Sublicenses.

If Sublicense Revenues are not in cash or cash equivalents, the percentage share payable to COH pursuant to this Section 4.7 shall be due, in COH’s sole discretion, either in kind or in its cash equivalent. For clarity, with respect to a particular item of consideration, in the event COH receives the applicable percentage of Sublicense Revenues from a Sublicensee with respect to such item of consideration, Licensee shall not be obligated to also pay COH a percentage of Sublicense Revenue received with respect to the same item of consideration.

4.8 Timing of Royalty Payments. Royalty payments due under Section 4.6, above, shall be paid annually within sixty (60) days following the end of each License Year until the first License Year in which aggregate Net Sales across all Licensed Product and License Services reach $* million. Thereafter, all royalty payments due under Section 4.6 shall be paid in quarterly installments, within sixty (60) days following the end of each calendar quarter.

4.9 No Deductions from Payments. Licensee shall not have the right to set off any amounts paid to any Third Party, including any fee, royalty or other payment, against any amount payable to COH hereunder.

4.10 Single Royalty. Only a single royalty payment shall be due and payable on Net Sales and Sublicensee Net Sales of a Licensed Product or performance of a Licensed Service, regardless if such Licensed Product or Licensed Service is Covered by more than one Valid Claim.

ARTICLE 5: REPORTS, AUDITS AND FINANCIAL TERMS

5.1 Royalty Reports. Within 60 days after the end of each calendar quarter in which a royalty payment under Article 4 is required to be made (the "Royalty Period"), Licensee shall send to COH a report of Net Sales of the Licensed Products and Licensed Services for which a royalty is due, which report sets forth for such calendar quarter the following information, on a Licensed Product-by-Licensed Product, Licensed Service-by-Licensed Service and country-by-country basis: (i) total Net Sales during the Royalty Period, (ii) total gross sales of Licensed Products and Licensed Services during the Royalty Period, (iii) the quantity of each Licensed Products sold by Licensee and Licensed Services performed by Licensee for value during the Royalty Period.
Period, (iv) the exchange rate used to convert Net Sales from the currency in which they are earned to United States dollars; and (v) the total royalty payments due.

5.2 Additional Financial Terms.

5.2.1 Currency. All payments to be made under this Agreement shall be made in United States dollars, unless expressly specified to the contrary herein. Net Sales outside of the United States shall be first determined in the currency in which they are earned and shall then be converted into an amount in United States dollars. All currency conversions shall use the conversion rate reported by Reuters, Ltd. on the last Business Day of the calendar quarter for which such payment is being determined.

5.2.2 Payment Method. Amounts due under this Agreement shall be paid in immediately available funds, by means of wire transfer to an account identified by COH.

5.2.3 Withholding of Taxes. Licensee may withhold from payments due to COH amounts for payment of any withholding tax that is required by law to be paid to any taxing authority with respect to such payments. Licensee shall provide to COH all relevant documents and correspondence, and shall also provide to COH any other cooperation or assistance on a reasonable basis as may be necessary to enable COH to claim exemption from such withholding taxes and to receive a full refund of such withholding tax or claim a foreign tax credit. Licensee shall give COH proper evidence from time to time as to the payment of such tax. The Parties shall cooperate with each other in seeking deductions under federal and state tax laws and any double taxation or other similar treaty or agreement from time to time in force.

5.2.4 Late Payments. Any amounts not paid on or before the date due under this Agreement are subject to interest from the date due through and including the date upon which payment is received. Interest is calculated, over the period between the date due and the date paid, at a rate equal to one and one-half percentage point (1.5%) over the “bank prime loan” rate, as such rate is published in the U.S. Federal Reserve Bulletin H.15 or successor thereto on the last Business Day of the applicable calendar quarter prior to the date on which such payment is due.

5.2.5 Blocked Currency. If, at any time, legal restrictions prevent the prompt remittance of part or all royalties with respect to any country where a Licensed Product is sold or Licensed Service provided, payment shall be made through such lawful means or methods as Licensee may determine. When in any country, the law or regulations prohibit both the transmittal and deposit of royalties or other payments, Licensee shall continue to report all such amounts, but may suspend payment for as long as such prohibition is in effect. As soon as such prohibition ceases to be in effect, all amounts that would have been obligated to be transmitted or deposited but for the prohibition, together with accrued interest thereon, shall promptly be transmitted to COH.

5.3 Accounts and Audit.

5.3.1 Records. Licensee shall keep, and shall require that each Sublicensee keep, full, true and accurate books of account containing the particulars of its Net Sales and the calculation of royalties. Licensee shall each keep such books of account and the supporting data and other records at its facilities located at the address set forth in Section 14.7, which Licensee may change upon change by sending notice to the COH in accordance with Section 14.7, and its Sublicensees shall each keep such books of account and the supporting data and other records at its principal place of business. Such books and records must be maintained available for examination in accordance with this Section 5.3.1 for four (4) calendar years after the end of the calendar year to which they pertain, and otherwise as reasonably required to comply with GAAP.

5.3.2 Appointment of Auditor. COH may appoint an internationally-recognized independent accounting firm reasonably acceptable to Licensee to inspect the relevant books of account of Licensee and its Sublicensees to verify any reports or statements provided, or amounts paid or invoiced (as appropriate), by Licensee or its Sublicensees, provided such accounting firm has entered into a confidentiality agreement with Licensee that is customary for audits of that nature.

5.3.3 Procedures for Audit. COH may exercise its right to have Licensee’s and its Sublicensees’ relevant records examined by an independent accounting firm, as set forth in Section 5.3.2, only during the four (4) year period during which Licensee is required to maintain records, no more than once in any consecutive four calendar quarters. Licensee and its Sublicensees are required to make records available for inspection only during regular business hours, only at such place or places where such records are customarily kept, and only upon receipt of at least 15 days advance notice from COH. All information and materials provided to COH’s accountant are and shall be deemed to be Licensee Confidential Information.

5.3.4 Audit Report. The independent accountant will be instructed to provide to COH an audit report containing only its conclusions and methodology regarding the audit, and specifying whether the amounts paid were correct and, if incorrect, the amount of any underpayment or overpayment.
5.3.5 **Underpayment and Overpayment.** After review of the auditor’s report: (i) if there is an uncontested underpayment by Licensee for all of the periods covered by such auditor’s report, then Licensee shall pay to COH the full amount of that uncontested underpayment, and (ii) if there is an uncontested overpayment for such periods, then COH shall provide to Licensee a credit against future payments (such credit equal to the full amount of that overpayment), or, if Licensee is not obligated to make any future payments, then COH shall pay to Licensee the full amount of that overpayment. Contested amounts are subject to dispute resolution under Article 12. If the total amount of any such underpayment (as agreed to by Licensee or as determined under Article 12) exceeds five percent of the amount previously paid by Licensee for the period subject to audit, then Licensee shall pay the reasonable costs for the audit. Otherwise, all costs of the audit shall be paid by COH.

**ARTICLE 6: LICENSEE COVENANTS**

6.1 Licensee covenants and agrees that:

6.1.1 in conducting activities contemplated under this Agreement, it shall comply in all material respects with all applicable laws and regulations including, without limitation, those related to the manufacture, use, labeling importation and marketing of Licensed Products and Licensed Services;

6.1.2 Licensee will at all times have a sufficient number of Conversion Shares reserved for issuance to COH upon any conversion of the COH Shares in accordance with the terms of the Charter;

6.1.3 Licensee will obtain all authorizations necessary for the issuance of the Conversion Shares after the Effective Date prior to the issuance of such Conversion Share;

6.1.4 Licensee will not, as of immediately after the closing of any Equity Financing or other event that causes an adjustment to the conversion rate of the COH Shares into Conversion Shares pursuant to the Charter, be in violation or default of any provision of the Charter or Licensee’s bylaws; and

6.1.5 Prior to a Qualified IPO of Licensee, Licensee will obtain COH’s consent, to be given at COH’s sole discretion, before the consummation of a Change of Control of Licensee. This Section 6.1.5 shall have no effect subsequent to a Qualified IPO of Licensee.

**ARTICLE 7: INTELLECTUAL PROPERTY; PATENT PROSECUTION, MAINTENANCE AND ENFORCEMENT.**

7.1 **Patent Prosecution, Maintenance, Enforcement and Defense.**

7.1.1 Subject to Section 7.4, COH shall be responsible for the preparation, filing, prosecution, maintenance and defense of all Patent Rights, including in connection with a Validity Action (as defined below), using counsel of its choice. COH will timely provide Licensee with copies of all relevant documentation relating to such prosecution and Licensee shall keep such information confidential. In addition, COH shall instruct the patent counsel prosecuting Patent Rights to (i) copy Licensee on patent prosecution documents that are received from or filed with the United States Patent and Trademark Office and foreign equivalent, as applicable; (ii) if requested by Licensee, provide Licensee with copies of draft submissions to the USPTO prior to filing; and (iii) give reasonable consideration to the comments and requests of Licensee or its patent counsel, provided that (a) COH reserves the sole right to make all final decisions with respect to the preparation, filing, prosecution and maintenance of such patent applications and patents; and (b) the patent counsel remains counsel to COH (and shall not jointly represent Licensee unless requested by Licensee and approved by COH, and an appropriate engagement letter and conflict waiver are in effect).

7.1.2 COH will not unreasonably refuse to amend any patent application in Patent Rights to include claims reasonably requested by Licensee to protect the products and services contemplated to be sold by Licensee under this Agreement. If Licensee informs COH of other countries or jurisdictions in which it wishes to obtain patent protection with respect to the Patent Rights, COH shall prepare, file, prosecute and maintain patent applications in such countries and any patents resulting therefrom (and, for the avoidance of doubt, such patent applications and patents shall be deemed included in the Patent Rights). On a country-by-country and patent-by-patent basis, Licensee may elect to surrender any patent or patent application in Patent Rights in any country upon sixty (60) days advance written notice to COH. Such notice shall relieve Licensee from the obligation to pay for future patent costs but shall not relieve Licensee from responsibility to pay patent costs incurred prior to the expiration of the sixty (60) day notice period. Such U.S. or foreign patent application or patent shall thereupon cease to be a Patent Right hereunder, Licensee shall have no further rights therein and COH shall be free to license its rights to that particular U.S. or foreign patent application or patent to any other party on any terms.
7.1.3 Notwithstanding Section 7.1.1 or Section 7.1.2, COH may elect not to file any particular claim or set of claims or in a particular country, and may elect to abandon prosecution and maintenance of any of the Patent Rights at any time. If COH elects not to file any particular claim or set of claims or in a particular country, or to abandon prosecution and maintenance of any of the Patent Rights (except in favor a continuation, continuation-in-part or utility application), then COH will provide Licensee with reasonable notice pursuant to Section 14.7 to that effect sufficiently in advance of any deadline for any filing or submission with respect to any such patent to permit Licensee to carry out such activity. After such notice, provided that Licensee is not in breach or default under this Agreement, Licensee may file, prosecute and maintain each such patent, and perform such acts as may be reasonably necessary for Licensee or COH to file, prosecute or maintain such patent application or issued patent (as applicable), in its sole discretion and at its sole cost and expense. If Licensee does so elect, then COH shall provide such full cooperation to Licensee, including the execution and filing of appropriate instruments, as may reasonably be requested to facilitate the transition of such patent activities and Licensee shall have no further obligation to pay any royalties or other consideration to COH with respect to such patent application or issued patent and related Patent Rights.

7.1.4 Each Party shall promptly provide written notice to the other in the event it becomes aware of any actual or probable infringement of any of the Patent Rights in or relevant to the Field (“Third Party Infringement”) or in the event of any claim or suit initiated by a Third Party regarding the non-infringement, enforceability, or validity of any Patent Rights (a “Validity Action”).

7.1.5 If infringing activity has not been abated within ninety (90) days following the date the Third Party Infringement notice takes effect, then Licensee may, following consultation with COH, take any and all action it deems necessary or desirable against any alleged infringer in connection with any Third Party Infringement, provided, that Licensee has exclusive rights in the category of human disease in the Field applicable to such infringing activity. Any recovery obtained by Licensee as the result of legal proceedings initiated and paid for by Licensee pursuant to this 7.1.5, after deduction of Licensee’s reasonable out-of-pocket expenses incurred in securing such recovery, shall be deemed to be Net Sales of Licensed Products and/or Licensed Services in the calendar quarter in which such recovery was received and royalties shall be due and payable thereon accordingly. Licensee shall own all rights to any such recovery.

7.1.6 If required by the applicable court in order for Licensee to maintain standing to prosecute Third Party Infringement and in the event that Licensee requests, in writing, that COH joins a suit to enforce the Patent Rights against an infringement in the Field, COH agrees to join (and will promptly join) such suit, at Licensee’s expense. If COH is involuntarily joined or requested to be joined for standing purposes in a suit initiated by Licensee, then the Licensee will pay all reasonable costs incurred by COH arising out of such suit, including but not limited to, all reasonable legal fees of counsel that COH selects and retains to represent it in the suit.

7.1.7 In the event that Licensee declines either to cause such Third Party Infringement to cease (e.g. by settlement or injunction) or to initiate and thereafter diligently maintain legal proceedings against the infringer other than as part of a mutually agreed upon bona fide strategy, developed with the guidance of outside patent counsel, to preserve the Patent Rights, COH may, in its sole discretion and at COH’s sole cost, take action against such alleged infringer or in defense of any such Third Party claim. At the request of COH, and if necessary for COH to maintain standing, Licensee agrees to join a legal proceeding initiated by COH against an infringer of the Patent’s Rights, at COH’s expense. Any recovery obtained by COH as the result of any such legal proceedings shall be for the benefit of COH only.

7.1.8 COH shall have the right and obligation to take all steps necessary to defend, protect, and to maintain the validity and enforceability of the Patent Rights in any Validity Action, and subject to Section 7.4, to pay all costs and expenses associated therewith. COH shall not take any position with respect to, or compromise or settle, any Validity Action in any way that would be reasonably likely to directly and adversely affect the scope, validity, or enforceability of the Patent Rights without the prior written consent of COH (which consent shall not be unreasonably withheld, conditioned or delayed.).

7.2 Trademarks. Licensee shall have the sole right to select, register, maintain and defend all trademarks for use in connection with the sale or marketing of Licensed Products and Licensed Services in the Field in the Territory (the “Marks”) and will be responsible for all expenses associated therewith. Licensee shall not, without COH’s prior written consent, use any trademarks or house marks of COH (including the COH corporate name), or marks confusingly similar thereto, in connection with Licensee commercialization of Licensed Products or Licensed Services under this Agreement in any promotional materials or applications or in any manner implying an endorsement by COH of Licensee or the Licensed Products or Licensed Services. Licensee shall own all Marks.

7.3 Challenge to the Patent Rights by Licensee. COH may terminate this Agreement or, notwithstanding Section 3.3, a sublicense issued hereunder, as applicable, upon written notice to Licensee in the event that Licensee or any of its Affiliates or
Sublicensee directly or indirectly asserts a Patent Challenge, provided that any such termination shall be applicable only with respect to the entity asserting such Patent Challenge and all of such entity’s Affiliates, and that this Agreement shall remain in place and in full force and effect with respect to all other entities. “Patent Challenge” means any challenge in a legal or administrative proceeding to the patentability, validity or enforceability of any of the Patent Rights (or any claim thereof), including by: (a) filing or pursuing a declaratory judgment action in which any of the Patent Rights is alleged to be invalid or unenforceable; (b) citing prior art against any of the Patent Rights, filing a request for or pursuing a re-examination of any of the Patent Rights (other than with COH’s written agreement), or voluntarily becoming a party to or pursuing an interference; or (c) filing or pursuing any re-examination, opposition, cancellation, nullity or other like proceedings against any of the Patent Rights; but excluding any challenge raised as a defense against a claim, action or proceeding asserted by COH against Licensee, its Affiliates, Sublicensees, or any downstream customers or users of any Licensed Products or Licensed Services. In lieu of exercising its rights to terminate under this Section 7.3, COH may elect upon written notice to increase the payments due under all of Article 4 by one hundred and fifty percent (150%), which election will be effective retroactively to the date of the commencement of the Patent Challenge. Licensee acknowledges and agrees that this Section 7.3 is reasonable, valid and necessary for the adequate protection of COH’s interest in and to the Patent Rights, and that would not have granted to Licensee the licenses under those Patent Rights, without this Section 7.3. COH will have the right at any time in its sole discretion to strike this Section 7.3 in its entirety from this Agreement, and COH will have no liability whatsoever as a result of the presence or absence of this Section 7.3.

7.4 Payment of COH Patent Expenses.

7.4.1 The Parties acknowledge that, prior to the Effective Date, COH provided to Licensee documentation of historic expenses incurred by COH with respect to the drafting, prosecution and maintenance of the Patent Rights. In consideration of such historic expenditures by COH, Licensee shall reimburse COH for * percent of such expenses within 30 days of the Effective Date, up to $*.

Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.

7.4.2 After the Effective Date, COH shall provide to Licensee an annual invoice and reasonably detailed documentation with respect to COH’s out-of-pocket expenses incurred with respect to the prosecution, maintenance and defense of the Patent Rights for the previous year, including in connection with any Validity Action. Licensee shall reimburse COH for * percent of such undisputed expenses within 30 days after receipt of such invoice and documentation. Notwithstanding anything to the contrary in this Agreement, Licensee shall have no obligation to reimburse COH any expenses incurred pursuant to Section 7.1.7.

7.5 Marking. Licensee and its Sublicensees shall mark all Licensed Products and all materials related to Licensed Services in such a matter as to conform with the patent laws of the country to which such Licensed Products are shipped or in which such products are sold and such Licensed Services performed.

ARTICLE 8: TERM AND TERMINATION

8.1 Term and Expiration of Term. The term of this Agreement (the “Term”) shall commence on the Effective Date and, notwithstanding any other provision of this Agreement, unless sooner terminated by mutual agreement or pursuant to any other provision of this Agreement, this Agreement shall expire on a country-by-country basis and on a Patent Right-by-Patent Right basis on the later to occur of: (a) the expiration of the last to expire of any of the Patent Rights in such country (or if no patent issues, until the last patent application in Patent Rights is abandoned), and (b) the date on which the last of the remaining obligations under this Agreement between the Parties with respect to the payment of milestones or royalties with respect to Licensed Products and Licensed Services have been satisfied (such expiry of the Term hereinafter referred to as “Expiration”).

8.2 Termination.

8.2.1 Material Breach. Either Party may terminate this Agreement prior to its Expiration for any material breach by the other Party, provided that the Party seeking to terminate shall have first given the breaching Party notice of such material breach with reasonable particulars of the material breach, and the Party receiving the notice of the material breach shall have failed to cure that material breach within sixty (60) days after the date of receipt of such notice.

[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion

8.2.2 Change of Control. Prior to a Qualified IPO of Licensee, COH may terminate this Agreement immediately upon written notice to Licensee in the event of a Change of Control of Licensee without the prior written consent of
COH, which consent is at the sole discretion of COH. This Section 8.2.2 shall have no effect subsequent to a Qualified IPO of Licensee.

8.2.3 **Bankruptcy.** COH shall have the right to terminate this Agreement prior to its Expiration upon notice to Licensee, in the event that: (i) Licensee seeks protection of any bankruptcy or insolvency law other than with the prior consent of City of Hope, or (ii) a proceeding in bankruptcy or insolvency is filed by or against Licensee and not withdrawn, removed or vacated within sixty days of such filing, or there is adjudication by a court of competent jurisdiction that Licensee is bankrupt or insolvent.

8.2.4 **Termination at Will by Licensee.** Licensee shall have the right to terminate this Agreement prior to its Expiration upon notice to COH without cause, effective no fewer than 90 days following the date of such notice.

8.3 **Effect of Termination.**

8.3.1 Upon any termination of this Agreement pursuant to Section 8.2 (but for clarity, not in the case of its Expiration), all rights and licenses granted to Licensee under Article 3 shall immediately terminate on and as of the effective date of termination as provided in Section 8.2, except that Licensee shall have the right to continue to sell Licensed Products manufactured prior to the effective date of such termination and to fulfill orders under accepted purchase orders until the later of: (i) one hundred and eighty (180) days after the effective date of termination, or (ii) the exhaustion of Licensee’s inventory of Licensed Products.

8.3.2 Upon termination of this Agreement pursuant to Section 8.2 (but for clarity, not in the case of its Expiration):

(a) Each Party shall promptly return to the other Party all relevant records and materials in its possession or control containing or comprising the other Party’s Confidential Information and to which the Party does not retain rights hereunder (other than to the extent necessary for Licensee to exercise its wind-down rights set forth in Section 8.3.1 hereof).

(b) Licensee shall discontinue making any representation regarding its status as a licensee of COH for Licensed Products and Licensed Services. Subject to Section 8.3.1, above, Licensee shall cease conducting any activities with respect to the marketing, promotion, sale or distribution of Licensed Products and Licensed Services.

8.3.3 Termination of this Agreement through any means and for any reason pursuant to Section 8.3 (but for clarity, not in the case of its Expiration), shall not relieve the Parties of any obligation accruing prior thereto, including the payment of all sums due and payable, shall not terminate any sublicenses granted in furtherance of this Agreement, and shall be without prejudice to the rights and remedies of either Party with respect to any antecedent breach of any of the provisions of this Agreement.

8.3.4 In the event of Expiration of this Agreement, the rights and licenses granted to Licensee under this Agreement shall become perpetual and irrevocable, provided the license to the Know-How shall be non-exclusive.

8.4 **Survival.** (i) Article 1, Sections 4.9, 5.3, 8.3, 8.4, Article 10, Article 11, Article 12 and Article 14; and (ii) Sections 5.1, 5.2, and 7.4. solely with respect to payment and expenses incurred prior to termination, shall survive termination of this Agreement for any reason pursuant to Section 8.2 and Expiration pursuant to Section 8.1.

**ARTICLE 9: REPRESENTATIONS AND WARRANTIES**

9.1 **Mutual Representations and Warranties.** COH and Licensee each represents and warrants as follows:

9.1.1 It has the right and authority to enter into this Agreement and all action required to be taken on its behalf, its officers, directors, partners and stockholders necessary for the authorization, execution, and delivery of this Agreement and, the performance of all of its obligations hereunder, and this Agreement, when executed and delivered, will constitute valid and legally binding obligations of such Party, enforceable in accordance with its terms, subject to: (i) laws limiting the availability of specific performance, injunctive relief, and other equitable remedies; and (ii) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect generally relating to or affecting creditors’ rights generally;

9.1.2 Entry into this Agreement will not constitute a breach of or conflict with any other agreement to which it is party;

9.1.3 It has read this Agreement, with assistance from its counsel of choice. It understands all of this Agreement’s terms. It has been given a reasonable amount of time to consider the contents of this Agreement before each Party executed it. It agrees that it is executing this Agreement voluntarily with full knowledge of this Agreement’s legal significance; and
9.1.4 It agrees that it is not relying in any manner on any statement, promise, representation or understanding, whether oral, written or implied, made by the other Party, that is not specifically set forth in this Agreement. It acknowledges that, after execution of this Agreement, it may discover facts different from or in addition to those which it now knows or believes to be true. Nevertheless, it agrees that this Agreement shall and remain in full force and effect in all respects, notwithstanding such different or additional facts.

9.2 **Representations and Warranties of COH.** COH represents and warrants that, as of the Effective Date:

9.2.1 All corporate action on the part of COH necessary for the authorization, execution and delivery of this Agreement and the performance of its obligations hereunder has been taken;

9.2.2 This Agreement is the legal, valid and binding obligation of COH, enforceable against it in accordance with its terms, except as such enforcement may be limited by general equitable principles or by applicable bankruptcy, insolvency, or similar laws affecting creditors’ rights generally;

9.2.3 To the actual knowledge of the Knowledge Group, COH has the full right and power to enter into this Agreement and has the full rights to grant to Licensee the licenses and license rights granted to Licensee under the terms of this Agreement;

9.2.4 Subject to the Rights of the U.S. Government as described in this Agreement, to the actual knowledge of the Knowledge Group, COH is the sole owner of all Patent Rights and COH has not granted to any Third Party any license, option or other rights with respect to the Patent Rights (other than any such license, option or other rights that has expired unexercised, or has been waived in writing such that COH is free to grant licensee the license and rights it purports to grant under this Agreement);

9.2.5 No member of the Knowledge Group has received any written notice from a Third Party challenging COH’s right to grant the licenses to Licensee pursuant to this Agreement; and

9.2.6 To the actual knowledge of the Knowledge Group, there are no actions, suits, investigations, claims or proceedings pending or threatened relating in any way to the Patent Rights or the Know-How (or any Intellectual Property Rights with respect thereto).

9.3 **Representations and Warranties of Licensee.** Licensee represents and warrants as follows:

9.3.1 all authorizations necessary for the issuance of the COH Shares on the Effective Date and the Conversion Shares have been obtained;

9.3.2 no consent, approval, order, or authorization of, or registration, qualification, designation, declaration, or filing with, any federal, state, or local governmental authority on the part of Licensee is required in connection with the offer, sale, or issuance of the COH Shares (and the Conversion Shares), except for the following: (i) the filing of the Charter, which has been filed by Licensee and accepted by the Secretary of State of the State of Delaware prior to the date of this Agreement in the form attached hereto as Exhibit A; (ii) the filing of a notice of exemption pursuant to Section 25102(f) of the California Corporate Securities Law of 1968, as amended, which shall be filed by Licensee promptly following the Effective Date; and (iii) the compliance with other applicable state securities laws, which compliance will have occurred within the appropriate time periods therefor. Assuming the accuracy of the representations and warranties of COH contained in Section 4.3 hereof, the offer, sale, and issuance of the COH Shares in conformity with the terms of this Agreement are exempt from the registration requirements of Section 5 of the Act, and from the qualification requirements of Section 25110 of the California Securities Law, and Licensee, nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemptions;

9.3.3 The sale of the COH Shares is not, and the subsequent issuance of the Conversion Shares will not be, subject to any preemptive rights or rights of first refusal, in either case imposed by the Licensee, that have not been properly waived or complied with;

9.3.4 The COH Shares, when issued, sold and delivered in accordance with the terms of this Agreement for the consideration expressed herein, will be duly and validly issued, fully paid and nonassessable and free of restrictions on transfer, other than restrictions on transfer under applicable state and federal securities laws and restrictions created by or on behalf of COH. The Conversion Shares have been (and will be prior to conversion) duly and validly reserved for issuance and, upon issuance in accordance with the terms of the Charter, will be duly and validly issued, fully paid and nonassessable and will be free of restrictions on transfer other than restrictions on transfer under applicable state and federal securities laws and restrictions created by or on behalf of COH;
9.3.5 The authorized capital stock of Licensee consists of 250,000,000, and: (i) the total number of shares of Class A Common Stock authorized to be issued is 187,350,000 shares, of which 12,000,000 are issued and outstanding as of the Effective Date; (ii) the total number of shares of Class B Common Stock authorized to be issued is 55,000,000 shares, of which 26,000,000 are issued and outstanding as of the Effective Date; (iii) the total number of shares of Class C Common Stock authorized to be issued is 2,650,000 shares, of which none are issued or outstanding as of the Effective Date; and (iv) the total number of shares of Preferred Stock authorized to be issued is 5,000,000 shares, $0.0001 par value per share, of which no shares are issued or outstanding as of the Effective Date. Licensee has also reserved an aggregate of 10,000,000 shares of Common Stock for issuance to employees and consultants pursuant to Licensee’s equity incentive compensation plans. Options to purchase an aggregate of 2,830,000 shares of Common Stock (the “Options”) are currently outstanding with a weighted average exercise price of $0.01 per share. A warrant to purchase 9,500,000 shares of Class B Common Stock of Licensee (the “Warrant”) is currently outstanding with an exercise price of $0.01 per share. As of the Effective Date, all issued and outstanding shares will have been duly authorized and validly issued and be fully paid and nonassessable. Other than the COH Shares, the Conversion Shares, the Options and the Warrant, there are no other outstanding rights, options, warrants, preemptive rights, rights of first refusal, or similar rights for the purchase or acquisition from Licensee of any securities of Licensee nor any commitments to issue or execute any such rights, options, warrants, preemptive rights or rights of first refusal. The respective rights, preferences, privileges, and restrictions of the Class A Common Stock, the Class B Common Stock and the Class C Common Stock are solely as stated in the Charter. Exhibit C sets forth a true and complete capitalization table of Licensee (taking into account the issuance of the COH Shares on the Effective Date); and

9.3.6 Licensee is not in violation or default of any provision of the Charter or its bylaws.

9.4 **Exclusions.** Except as explicitly provided in Section 9.2, nothing in this Agreement is or shall be construed as:

9.4.1 A warranty or representation by COH as to the validity or scope of any claim or patent or patent application within the Patent Rights;

9.4.2 A warranty or representation by COH that anything made, used, sold, or otherwise disposed of under any license granted in this Agreement is or will be free from infringement of any patent rights or other intellectual property right of any Third Party;

9.4.3 A grant by COH, whether by implication, estoppel, or otherwise, of any licenses or rights under any patents other than Patent Rights and Know-How as defined herein, regardless of whether such patents are dominant or subordinate to Patent Rights;

9.4.4 An obligation on COH to bring or prosecute any suit or action against a Third Party for infringement of any of the Patent Rights or Know-How;

9.4.5 An obligation to furnish any know-how outside of the Know-How listed on Exhibit B; or

9.4.6 A representation or warranty of the ownership of the Patent Rights and Know-How.

9.5 **DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NO WARRANTY IS GIVEN WITH RESPECT TO THE PATENT RIGHTS OR KNOW-HOW, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, AND, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, VALIDITY OF THE PATENT RIGHTS OR NON-INFRINGEMENT OF THE INTELLECTUAL PROPERTY OR OTHER RIGHTS OF ANY THIRD PARTY. THE WARRANTIES SET FORTH IN THIS AGREEMENT, ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, VALIDITY, NON-INFRINGEMENT AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

**ARTICLE 10: INDEMNIFICATION**

10.1 **Indemnification by Licensee.** Licensee shall defend, indemnify and hold harmless COH, its Affiliates, officers, directors, shareholders, employees and agents (“COH Indemnitees”) from and against any and all Third Party liabilities, claims, suits, and expenses, including reasonable attorneys’ fees (collectively, “Losses”), arising out of or are in any way attributable to: (i) the material breach of any representation or warranty made by Licensee under this Agreement, (ii) the research, development, marketing, approval, manufacture, packaging, labeling, handling, storage, transportation, use, distribution, promotion, marketing or sale of
Licensed Products or Licensed Services by or on behalf of Licensee, any of its Affiliates or a Sublicensee or any other exercise of rights under this Agreement or pursuant to any sublicense, or (iii) the negligence, willful misconduct or failure to comply with applicable law by a Licensee Indemnitee or Sublicensee; in each case except to the extent that such Losses are caused directly by: (a) COH’s material breach of any representation or warranty made by COH under this Agreement, (b) COH’s material breach of its obligations under this Agreement, and/or (c) the gross negligence or willful misconduct of a COH Indemnitee.

10.2 Indemnification by COH. COH shall defend, indemnify and hold harmless Licensee and its Affiliates and their respective officers, directors, shareholders, employees and agents (collectively, the “Licensee Indemnitees”) from and against any and all Losses caused directly by: (i) the material breach of any representation or warranty made by COH under this Agreement, or (ii) the gross negligence or willful misconduct of a COH Indemnitee, except to the extent that such Losses arise out of or are in any way attributable to: (a) the material breach of any representation or warranty made by Licensee under this Agreement, (b) the research, development, marketing, approval, manufacture, packaging, labeling, handling, storage, transportation, use, distribution, promotion, marketing or sale of Licensed Products or Licensed Services by or on behalf of Licensee or a Sublicensee, or (c) the negligence, willful misconduct or failure to comply with applicable law by a Licensee Indemnitee or a Sublicensee.

10.3 Procedure. The indemnities set forth in this Article 10 are subject to the condition that the Party seeking the indemnity shall forthwith notify the indemnifying Party on being notified or otherwise made aware of a liability, claim, suit, action or expense and that the indemnifying Party defend and control any proceedings with the other Party being permitted to participate at its own expense (unless there shall be a conflict of interest which would prevent representation by joint counsel, in which event the indemnifying Party shall pay for the other Party’s counsel); provided, that, the indemnifying Party may not settle the liability, claim, suit, action or expense, or otherwise admit fault of the other Party or consent to any judgment, without the written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, no delay in the notification of the existence of any claim of Loss shall cause a failure to comply with this Section 10.3 as long as such delay shall not have materially impaired the rights of the indemnifying Party.

10.4 Insurance.

(a) Within 30 days following the Effective Date, Licensee shall procure at its sole expense and provide to COH evidence of comprehensive or commercial general liability insurance (contractual liability included) with limits of at least: (i) each occurrence, $1 million; (ii) products/completed operations aggregate, $2 million; (iii) personal and advertising injury, $1 million; and general aggregate (commercial form only), $5 million, provided that, prior to initiating a clinical trial, Licensee shall procure at its sole expense and provide to COH evidence of comprehensive or commercial general liability insurance (contractual liability included) with limits of at least: (i) each occurrence, $5 million; (ii) products/completed operations aggregate, $10 million; (iii) personal and advertising injury, $5 million; and general aggregate (commercial form only), $10 million.

(b) The foregoing policies will provide primary coverage to COH and shall name the COH Indemnitees as additional insureds, and shall remain in effect during the term of this Agreement and for five (5) years following the termination or expiration of the term of this Agreement. The COH Indemnitees shall be notified in writing by Licensee not less than 30 days prior to any material modification, cancellation or non-renewal of such policy. Licensee’s insurance must include a provision that the coverages will be primary and will not participate with nor will be excess over any valid and collective insurance or program of self-insurance carried or maintained by the COH Indemnitees. Such insurance coverage shall be maintained with an insurance company or companies having an A.M. Best’s rating (or its equivalent) of A-XII or better.

(c) Licensee expressly understands that the coverage limits in Section 10.4(a) do not in any way limit the Licensee’s liability.

10.5 Limitation on Damages. Notwithstanding anything contained in this Agreement to the contrary, except arising out of a Party’s indemnification obligations under this Agreement. In no event shall either Party be liable to the other Party for any special, punitive, consequential, indirect, or incidental damages (including loss of profits, costs of procuring substitute goods, lost business or enhanced damages for intellectual property infringement) arising out of or relating to this Agreement, whether based upon breach of warranty, breach of contract, negligence, strict liability in tort or any other legal theory. In no event shall COH be liable to Licensee for an aggregate amount in excess of two-thirds of the total consideration paid to COH hereunder.
ARTICLE 11: CONFIDENTIALITY

11.1 Confidential Information. During the term of this Agreement and for five years thereafter without regard to the means of termination: (i) COH shall not use, for any purpose other than the purpose contemplated by this Agreement, or reveal or disclose to any Third Party Licensee Confidential Information; and (ii) Licensee shall not use, for any purpose other than the purpose contemplated by this Agreement, or reveal or disclose COH Confidential Information to any Third Party. The Parties shall take reasonable measures to assure that no unauthorized use or disclosure is made by others to whom access to such information is granted.

11.2 Exceptions. Notwithstanding the foregoing, a Party may use and disclose Confidential Information of the other Party as follows:

11.2.1 if required by applicable law, rule, regulation, government requirement and/or court order, provided that, the disclosing Party promptly notifies the other Party of its notice of any such requirement and provides the other Party a reasonable opportunity to seek a protective order or other appropriate remedy and/or to waive compliance with the provisions of this Agreement;

11.2.2 to the extent such use and disclosure occurs in the filing or publication of any patent application or patent on inventions;

11.2.3 as necessary or desirable for securing any regulatory approvals, including pricing approvals, for any Licensed Products or Licensed Services, provided that, the disclosing Party shall take all reasonable steps to limit disclosure of the Confidential Information outside such regulatory agency and to otherwise maintain the confidentiality of the Confidential Information;

11.2.4 to take any lawful action that it deems necessary to protect its interest under, or to enforce compliance with the terms and conditions of, this Agreement;

11.2.5 to its Affiliates, directors, officers, employees, consultants, vendors Sublicensees, and clinicians under written agreements of confidentiality at least as restrictive as those set forth in this Agreement, who have a need to know such information in connection with such Party performing its obligations or exercising its rights under this Agreement; and

11.2.6 by Licensee, to actual and potential investors, licensees, Sublicensees, consultants, vendors and suppliers, and academic and commercial collaborators, under written agreements of confidentiality at least as restrictive as those set forth in this Agreement.

11.3 Certain Obligations. During the Term and for a period of five years thereafter and subject to the exceptions set forth in Section 11.2, Licensee, with respect to COH Confidential Information, and COH, with respect to Licensee Confidential Information, agree:

11.3.1 to use such Confidential Information only for the purposes contemplated under this Agreement,

11.3.2 to treat such Confidential Information as it would its own proprietary information which in no event shall be less than a reasonable standard of care,

11.3.3 to take reasonable precautions to prevent the disclosure of such Confidential Information to a Third Party without written consent of the other Party, and

11.3.4 to only disclose such Confidential Information to those employees, agents and Third Parties who have a need to know such Confidential Information for the purposes set forth herein and who are subject to obligations of confidentiality no less restrictive than those set forth herein.

11.4 Termination. Upon termination, of this Agreement pursuant to Section 8.2 (but for clarity, not in the case of its Expiration), and upon the request of the disclosing Party, the receiving Party shall promptly return to the disclosing Party or destroy all copies of Confidential Information received from such Party, and shall return or destroy, and document the destruction of, all summaries, abstracts, extracts, or other documents which contain any Confidential Information of the other Party in any form, except that each Party shall be permitted to retain a copy (or copies, as necessary) of such Confidential Information for archival purposes or to enforce or verify compliance with this Agreement, or as required by any applicable law or regulation.
ARTICLE 12: DISPUTE RESOLUTION

All Disputes shall be first referred to a Vice President, Center for Applied Technology Development of COH (the “COH VP”) and the President of Licensee for resolution, prior to proceeding under the other provisions of this Article 12. A Dispute shall be referred to such executives upon one Party (the “Initiating Party”) providing the other Party (the “Responding Party”) with notice that such Dispute exists, together with a written statement describing the Dispute with reasonable specificity and proposing a resolution to such Dispute that the Initiating Party is willing to accept, if any. Within ten days after having received such statement and proposed resolution, if any, the Responding Party shall respond with a written statement that provides additional information, if any, regarding such Dispute, and proposes a resolution to such Dispute that the Responding Party is willing to accept, if any. In the event that such Dispute is not resolved within 60 days after the Responding Party’s receipt of the Initiating Party’s notice, either Party may bring and thereafter maintain suit against the other with respect to such Dispute; provided, however, that the exclusive jurisdiction of any such suit shall be the state and federal courts located in Los Angeles County, California, and the Parties hereby consent to the exclusive jurisdiction and venue of such courts.

ARTICLE 13: GOVERNMENTAL MATTERS

13.1 Governmental Approval or Registration. If this Agreement or any associated transaction is required by the law of any nation to be either approved or registered with any governmental agency, Licensee shall assume all legal obligations to do so. Licensee shall notify COH if it becomes aware that this Agreement is subject to a U.S. or foreign government reporting or approval requirement. Licensee shall make all necessary filings and pay all costs including fees, penalties and all other out-of-pocket costs associated with such reporting or approval process.

13.2 Export Control Laws. Licensee shall observe all applicable U.S. and foreign laws with respect to the transfer of Licensed Products and related technical data to foreign countries, including, without limitation, the International Traffic in Arms Regulations and the Export Administration Regulations.

13.3 Preference for United States Industry. If Licensee sells a Licensed Product in the U.S., Licensee shall manufacture said product substantially in the U.S.

ARTICLE 14: MISCELLANEOUS

14.1 Assignment and Delegation. Except as expressly provided in this Section 14.1, neither this Agreement nor any right or obligation hereunder shall be assignable in whole or in part, whether by operation of law, or otherwise by Licensee without the prior written consent of COH; provided, however, that, subsequent to a Qualified IPO of Licensee, Licensee may assign this Agreement without the consent of COH (i) to an Affiliate of Licensee and/or (ii) to a Third Party in connection with a merger, acquisition, change in control, or other sale of all or substantially all of the business or assets of Licensee that relate to this Agreement. Prior to a Qualified IPO, except with the prior written consent of Licensee, COH may not transfer the COH Shares other than to an Affiliate thereof. Upon and following a Qualified IPO, COH may transfer the COH Shares in compliance with federal and state securities laws. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties hereto and their respective successors and permitted assignees. Any transfer or assignment of this Agreement in violation of this Section 14.1 shall be null and void.

14.2 Entire Agreement. This Agreement contains the entire agreement between the Parties relating to the subject matter hereof, and all prior understandings, representations and warranties between the Parties are superseded by this Agreement.

14.3 Amendments. Changes and additional provisions to this Agreement shall be binding on the Parties only if agreed upon in writing and signed by the Parties.

14.4 Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California and all rights and remedies shall be governed by such laws without regard to principles of conflicts of law.

14.5 Force Majeure. If the performance of this Agreement or any obligations hereunder is prevented, restricted or interfered with by reason of earthquake, fire, flood or other casualty or due to strikes, riot, storms, explosions, acts of God, war, terrorism, or a similar occurrence or condition beyond the reasonable control of the Parties, the Party so affected shall, upon giving prompt notice to the other Parties, be excused from such performance during such prevention, restriction or interference, and any failure or delay resulting therefrom shall not be considered a breach of this Agreement.

14.6 Severability. The Parties do not intend to violate any public policy or statutory common law. However, if any sentence, paragraph, clause or combination of this Agreement is in violation of any law or is found to be otherwise unenforceable,
such sentence, paragraph, clause or combination of the same shall be deleted and the remainder of this Agreement shall remain binding, provided that such deletion does not alter the basic purpose and structure of this Agreement.

14.7 ** Notices.** All notices, requests, demands, and other communications relating to this Agreement shall be in writing in the English language and shall be delivered in person or by mail, international courier or facsimile transmission (with a confirmation copy forwarded by courier or mail). Notices sent by mail shall be sent by first class mail or the equivalent, registered or certified, postage prepaid, and shall be deemed to have been given on the date actually received. Notices sent by international courier shall be sent using a service which provides traceability of packages. Notices shall be sent as follows:

Notices to COH: with a copy to:
Office of Technology Licensing Office of General Counsel
City of Hope City of Hope
1500 East Duarte Road 1500 East Duarte Road
Duarte, CA 91010 Duarte, CA 91010
Attn: VP, Center for Applied Attn: General Counsel
Technology Development
Fax 626-301-8175 Fax 626-301-8863

Notices to Licensee: with a copy to:
LA Cell, Inc. LA Cell, Inc.
9380 Judicial Drive 9380 Judicial Drive
San Diego, CA 92121 San Diego, CA 92121
Attn: Henry Ji Attn: Legal Department

Either Party may change its address for notices or facsimile number at any time by sending notice to the other Party.

14.8 ** Independent Contractor.** Nothing herein shall create any association, partnership, joint venture, fiduciary duty or the relation of principal and agent between the Parties hereto, it being understood that each Party is acting as an independent contractor, and neither Party shall have the authority to bind the other or the other’s representatives in any way.

14.9 **Waiver.** No delay on the part of either Party hereto in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any power or right hereunder preclude other or further exercise thereof or the exercise of any other power or right. No waiver of this Agreement or any provision hereof shall be enforceable against any Party hereto unless in writing, signed by the Party against whom such waiver is claimed, and shall be limited solely to the one event.

14.10 **Interpretation.** This Agreement has been prepared jointly and no rule of strict construction shall be applied against either Party. In this Agreement, the singular shall include the plural and vice versa and the word “including” shall be deemed to be followed by the phrase “without limitation.” The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

14.11 **Counterparts.** This Agreement may be executed in counterparts, each of which together shall constitute one and the same Agreement. For purposes of executing this agreement, a facsimile copy or an emailed PDF of this Agreement, including the signature pages, will be deemed an original.

14.12 **Publicity.** Within 30 days of the Effective Date, Licensee shall issue a press release regarding the Parties entering this Agreement, which press release shall include the overall potential value of the Agreement to COH, so long as the detailed and specific terms and conditions of this Agreement are not disclosed. If a Third Party inquires whether a license is available, COH may disclose the existence of the Agreement and the extent of its grant in Section 3.1 and Section 3.2 to such Third Party. Licensee shall also use reasonable efforts to issue press releases regarding Licensee entering any Proprietary Sublicense or Non-Proprietary Sublicense, which press releases shall give credit to COH for such transactions and may include the overall potential value of such Proprietary Sublicense or Non-Proprietary Sublicense to Licensee.
IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

LA CELL, INC.
By: 
Name 
Title: 

CITY OF HOPE
By: 
Name: Robert Stone 
Title: President and CEO
EXHIBIT A

Form of Charter
EXHIBIT B

Know How List

[*]

[*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portion.
## EXHIBIT C

Licensee Capitalization Table

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<th>Class</th>
<th>Authorized</th>
<th>Outstanding</th>
<th>Fully-Diluted %</th>
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</thead>
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<tr>
<td>Class A Common Stock</td>
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<td>22.651%</td>
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<tr>
<td>Class B Common Stock</td>
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<td>49.076%</td>
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<tr>
<td>Class C Common Stock</td>
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<td>5.000%</td>
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<tr>
<td>Preferred Stock</td>
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</tr>
<tr>
<td>Equity Plan</td>
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<tr>
<td>Warrants to Purchase Class B Common Stock</td>
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</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>52,978,948</strong></td>
<td></td>
<td><strong>100.000%</strong></td>
</tr>
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</table>
CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

I, Henry Ji, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Sorrento Therapeutics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   (c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   (d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: November 13, 2015

By: /s/ Henry Ji, Ph.D.
Henry Ji, Ph.D.
Director, Chief Executive Officer and President
(Principal Executive Officer)
CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

I, Douglas Langston, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Sorrento Therapeutics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: November 13, 2015

By: /s/ Douglas Langston

Douglas Langston

Vice President of Finance

(Principal Financial and Accounting Officer)
CERTIFICATIONS OF
PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Henry Ji, Principal executive officer of Sorrento Therapeutics, Inc. (the “Company”), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that to my knowledge:

1. The Quarterly Report on Form 10-Q of the Company for the period ended September 30, 2015 (the “Report”) fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 13, 2015

By: /s/ Henry Ji, Ph.D.
Henry Ji, Ph.D.
Director, Chief Executive Officer and President
(Principal Executive Officer)

I, Douglas Langton, Principal financial and accounting officer of Sorrento Therapeutics, Inc. (the “Company”), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that to my knowledge:

1. The Quarterly Report on Form 10-Q of the Company for the period ended September 30, 2015 (the “Report”) fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 13, 2015

By: /s/ Douglas Langston
Douglas Langston
Vice President of Finance
(Principal Financial and Accounting Officer)

A signed original of these certifications has been provided to Sorrento Therapeutics, Inc. and will be retained by Sorrento Therapeutics, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

These certifications are being furnished solely to accompany this quarterly report pursuant to 18 U.S.C. Section 1350, and shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934 and are not to be incorporated by reference into any filing of Sorrento Therapeutics, Inc., whether made before or after the date hereof, regardless of any general incorporation language in such filing.